

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES B. GRUNDEN and U.S. POSTAL SERVICE,
POST OFFICE, El Paso, TX

*Docket No. 98-1247; Submitted on the Record;
Issued November 16, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained a recurrence of disability commencing October 31, 1996 and lasting through January 21, 1997, causally related to his May 20, 1996 lumbar strain injury or to aggravation of his preexisting degenerative disc disease.

The Board finds that appellant has failed to establish that he sustained a recurrence of total disability commencing October 31, 1996, causally related to his May 20, 1996 employment injuries.

The Office of Workers' Compensation Programs accepted that on May 20, 1996 appellant, then a 52-year-old rural carrier, sustained lumbar strain when his jeep hit a brick with its right rear wheel. Thereafter the Office also accepted that appellant sustained aggravation of preexisting degenerative disc disease from that May 20, 1996 incident. Appellant returned to work at a modified light-duty position answering telephones, filing and doing dispatch on May 22, 1996. Medical evidence following his return to light duty noted that appellant continued to have pain in his low back with activity, pain in the evening, discomfort with extension and a positive left straight leg raising past 60 degrees.

A July 22, 1996 report from Dr. Gregory Misenheimer, a Board-certified orthopedic surgeon, opined that appellant was suffering from degenerative disc disease of the lower spine and he opined that this disc condition was aggravated by appellant's recent accident. Dr. Misenheimer opined: "I believe that multiple accidents of this nature and severity may have lead (sic) to the underlying degeneration of [his] back which gave out at the time of his last accident on May 20, 1996.

On October 4, 1996 appellant underwent a lumbar epidural steroid injection at L5-S1 to treat his low back pain.

On October 31, 1996 appellant filed a Form CA-7 claiming compensation for temporary total disability commencing that date.

In support of his recurrence claim appellant submitted an October 30, 1996 report from Dr. Richard S. Westbrook, a Board-certified orthopedic surgeon, who noted that after appellant's first epidural steroid injection he did well for three days but that when he went back to work the pain increased. He noted that upon examination appellant had low back pain and continued to have a positive straight leg raising test and he referred appellant for a second epidural steroid injection. Dr. Westbrook stated: "I am going to keep [appellant] off work for two weeks to see if this will allow the back to settle down following the epidural steroid injection." He did not state that appellant was disabled from work, or that the work stoppage was related in any way to a change in the nature or extent of appellant's accepted lumbar strain condition or to the May 20, 1996 aggravation of his preexisting degenerative disc disease, but instead clearly explained that the work stoppage was prophylactic.

By reports dated November 26 and 27, 1996, Dr. Westbrook noted that appellant had been off work since October 30, 1996 as per his instructions and that he "was having increasing discomfort in his back, positive straight leg raising and a positive stretch test secondary to the disc problem in the lumbar spine." Dr. Westbrook again noted that appellant was taken off work so that he could receive an epidural steroid injection with time after the injection to allow it to work. He noted that the injection decreased appellant's back pain but that he continued to have right leg pain and scheduled him for a third epidural steroid injection. Dr. Westbrook opined that appellant needed to be off work for another three weeks to see if it would help and opined that appellant could not continue "to work as a postman because of the continuing irritation secondary to the lumbar disc problems."¹

By letter dated December 11, 1996, the Office requested that further information on appellant's allegations that his light-duty assignment became more demanding and a complete medical narrative describing the objective findings which convinced Dr. Westbrook that appellant's condition had worsened. The Office also requested an explanation as to how and why appellant could no longer perform his modified light duties when he stopped work.

Dr. Westbrook completed three attending physician's form reports noting a diagnosis of "L4-5 disc with right leg pain" and checking "yes" to the question of whether appellant was totally disabled. Date of injury was noted as May 20, 1996 and "yes" was checked indicating that he believed appellant's present condition was due to the injury identified. These reports, however, are of diminished probative value as they lack any explanation or rationale to support the "yes" check marks.²

¹ The Board notes that appellant was working a limited-duty assignment in the employing establishment building annex and was not delivering mail as a "postman."

² See *Ruth S. Johnson*, 46 ECAB 237 (1994); *Lillian M. Jones*, 34 ECAB 379 (1982) (a physician's opinion consisting only of "yes" to a form question has little probative value and is insufficient to establish causal relationship).

A December 27, 1996 report from Dr. Westbrook noted that appellant continued to have increasing symptomatology of back pain as well as leg pain and that if he sat for any length of time he had increasing discomfort. He also noted that appellant had experienced incontinence for three weeks.

By decision dated January 3, 1997, the Office denied appellant's claim for recurrence of disability finding that the evidence of record failed to establish that he was totally disabled for work beginning October 31, 1996. The Office found that the record lacked medical evidence with clear, concise medical rationale supporting total disability commencing October 31, 1996. The Office also explained that an increase of pain alone did not constitute objective evidence of disability.

On February 4, 1997 the Office received appellant's request for an oral hearing. In support he submitted medical reports dated September 29, August 14, July 7, June 5, May 12, April 7 and February 4 and 6, 1997 which did not address his alleged recurrence of disability on October 31, 1996. A January 13, 1997 report from Dr. Westbrook stated that appellant was taken off work because of a disc herniation at L4-5, that he was having increasing symptomatology and that he attempted to return to light-duty work but was unable due to back and leg discomfort.³

In a February 6, 1997 report, Dr. Misenheimer diagnosed degenerative disc disease L5 and opined that appellant's "current job requirements aggravate his degenerative disc disease in that he is required to drive a jeep for four to six hours a day. I believe the vibrations caused by the jeep do aggravate his underlying condition. I believe the repetitive bending, lifting and twisting associated with his job also aggravate his pain."

A hearing was held on September 23, 1997 at which appellant testified.

By report dated November 21, 1997, Dr. Westbrook noted that appellant was on light duty but that because of "his increasing symptomatology with pain, as well as problems with urinary incontinence,⁴ [appellant] had been taken off his light[-]duty activities."

By decision dated December 9, 1997, the hearing representative affirmed the January 3, 1997 Office decision finding that appellant failed to establish a change in the nature or extent of his light-duty requirements or a change in the nature or extent of his accepted employment injury.

An employee returning to light duty, or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability by the weight of reliable, probative and substantial evidence and to show that he cannot perform the light duty.⁵ As part of his burden, the employee must show a change in the nature and extent

³ A condition not accepted by the Office as being employment related.

⁴ Also a condition not accepted by the Office as being employment related.

⁵ *Terry R. Hedman*, 38 ECA 222, 227 (1986).

of the injury-related conditions or a change in the nature and extent of the light-duty requirements.⁶ Appellant has failed to demonstrate either in this case.

Appellant did not present any evidence that there was any change in the nature or extent of his light-duty requirements. Therefore, he has not established that this was the basis for his recurrence of total disability commencing October 31, 1996.

Further, none of the medical evidence submitted identified any objective change in the nature or extent of appellant's injury-related conditions which caused total disability commencing October 31, 1996. Dr. Westbrook recommended that appellant remain off work beginning October 30, 1996 as prophylactic therapy to give his back a rest and to give the epidural steroid injections treatment a chance to work. He did not present any objective findings of change in appellant's accepted conditions causing a recurrence of total disability, mentioning appellant's symptomatology at that time as low back pain and a positive straight leg raising test, both of which had been regularly reported since his injury and for multiple months preceding October 31, 1997 and thereafter mentioning that appellant stopped work in part due to urinary incontinence, a condition not accepted as being injury related. Following that, appellant's low back pain was attributed to an L4-5 disc herniation, which was also not a condition accepted by the Office as being employment related. None of Dr. Westbrook's reports identify objective evidence of a change in the nature or extent of appellant's accepted employment injuries or relate this objective change to the onset of total disability commencing October 31, 1996. Consequently, Dr. Westbrook's reports do not support appellant's claim of a recurrence of total disability commencing October 30, 1996, causally related to an objective change in the nature or extent of his May 20, 1996 lumbar muscular strain or aggravation of degenerative disc disease.

Additionally, although Dr. Misenheimer opined that appellant's "current job requirements" aggravated his degenerative disc disease, he did not address appellant's May to October 1996 light-duty activities but instead erroneously implicated appellant's duties prior to the May 20, 1996 accident and he further did not address whether an onset of total disability occurred on October 31, 1996 as claimed. This opinion, therefore, has little probative value as it is based on an inaccurate history and is insufficient to establish a recurrence claim.⁷

As appellant has not submitted any rationalized medical evidence identifying any objective change in the nature or extent of his employment-related conditions, he has not established that he sustained a recurrence of total disability commencing October 31, 1996, causally related to his accepted employment injuries.

⁶ *Id.*

⁷ See *Connie Johns*, 44 ECAB 560 (1993); *Billie C. Rae*, 43 ECAB 192 (1991) (medical opinion is of little probative value if predicated on an inaccurate factual or medical history.)

Accordingly, the decision of the Office of Workers' Compensation Programs dated December 9, 1997 is hereby affirmed.

Dated, Washington, D.C.
November 16, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member