U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT M. LESTER and U.S. POSTAL SERVICE,
POST OFFICE, Springfield, MO

Docket No. 98-1422; Submitted on the Record;
Issued November 22, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant is entitled to wage-loss compensation from August 21 to December 9, 1997.[1]

On August 21, 1997 appellant, then a 38-year-old letter carrier, filed a claim of occupational disease, stating that on that day he was aware that his multiple hernias were caused or aggravated by his employment. In a section of the form reserved for the employing establishment's comment, the employing establishment stated that appellant was given light duty on August 22, 1997 with a lifting restriction of no more than 20 pounds.

In support of his claim, appellant submitted an August 21, 1997 narrative in which he stated that since February 1997 he has had to move heavy equipment with poor rolling mechanisms while negotiating around other equipment and has had to lift heavy stacks of mail. Appellant noted an occasion where he was pushing a bulk mail container which got stuck and that he had felt a tightness or burning sensation in his abdomen that day as a result. He noted that the pain progressed "to the point of being intolerable at work." Appellant also submitted a September 2, 1997 medical record from Dr. Jose M. Dominguez, his treating physician and Board-certified in colon and rectal surgery, who stated that he initially treated appellant for rectal carcinoma on August 23, 1997,[2] for which appellant underwent appropriate treatment. On March 15, 1997 he noted that appellant was six weeks post second operation, that he had no lifting restrictions and that his wounds were healing nicely. In a May 27, 1997 note, Dr. Dominguez noted that appellant showed "firmness in the inferior portion of his wound felt possibly to be related to scarring or early hernia." On August 21, 1997 he noted that "a recheck

[1] The Board notes that, subsequent to the Office's February 26, 1998 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

[2] The medical report reads 1997 instead of 1996.

of his abdominal wound shows development of an incisional hernia" which "developed due to heavy lifting at work." In a medical report also dated that day, Dr. Dominguez stated that appellant could return to work with a restriction against lifting greater than 20 pounds and no moving heavy machinery until after surgery.

By letter dated September 25, 1997, the Office of Workers' Compensation Programs advised appellant that he needed to submit additional information regarding his compensation claim including a comprehensive medical report from his treating physician which described his symptoms and, if Dr. Dominguez believed that his condition was causally related to his employment, an explanation of how such a condition resulted from his employment.

In a medical report dated October 1, 1997, Dr. Dominguez stated that appellant had two operations for his rectal carcinoma and that after each operation he was restricted to lifting no more than ten pounds for a six-week period. He then stated that appellant developed a hernia more than six weeks after his second operation, after he returned to work. Dr. Dominguez noted that "[T]here was no hernia noted up to six weeks after each surgery. He has developed a new ventral hernia at the site of his incision."

On October 8, 1997 the employing establishment controverted appellant's claim stating that he returned to full duty on March 3, 1997.

By decision dated November 4, 1997, the Office accepted appellant's claim for ventral hernia.

On November 11, 1997 appellant filed a claim for wage loss from August 21 to November 12, 1997. He noted in the section reserved for the dates for which he sought compensation to "[S]ee attachment." On the reverse side of appellant's claim, the employing establishment noted that his pay stopped on December 1, 1997 and that he had claimed compensation from August 21 to December 19, 1997. Attached to the claim was appellant's leave analysis which listed intermittent leave-without-pay (LWOP) dates from September 22 through December 19, 1997. In a report dated November 25, 1997, the employing establishment stated that appellant asked that he be placed in a LWOP status for certain dates, that the Office had approved his surgery scheduled for December 1, 1997 and that the employing establishment had accommodated his request for light duty for all dates prior to December 1, 1997.

By letter dated December 1, 1997, the Office notified appellant that it had received his claim for wage loss from August 21 to December 9, 1997 and that he would need to submit medical documentation establishing that he was totally disabled for that time period.

On December 8, 1997 the Office notified appellant that his surgery had been approved but that he would need to support his claim for wage loss for intermittent hours of total disability between August 21 to November 12, 1997. The Office also notified appellant that he had been authorized to see a second opinion physician on a one-time basis only.

On December 8, 1997 appellant filed a claim for wage loss from December 15, 1997 to January 26, 1998.

In a December 12, 1997 medical report, Dr. Marc R. Wittmer, a Board-certified surgeon, stated that he had examined appellant as a second opinion physician regarding symptomatic incisional hernias. He stated that he had treated patients who had painful symptoms from incisional hernias and that in this case he suspected that "the causes for the painful symptoms were traction on the intestinal tract as it protrudes through the abdominal wall." Dr. Wittmer noted that visceral pain can cause nausea as well. He added that although he believed appellant's symptoms were compatible with ventral hernias, he could not "state this absolutely in [appellant's] case, as this is the first time I have seen him."

In a medical report dated December 16, 1997, Dr. Dominguez stated that he had performed a repair of appellant's incisional hernia on December 15, 1997. In a telephone conference memorandum dated January 2, 1998, the Office stated that it had advised appellant that it could pay compensation from December 10 to December 12, 1997.

On January 23, 1998 appellant submitted a CA-8, claim for continuing compensation, for December 9 to December 12, 1997. On the same day appellant filed a claim for continuing compensation from January 27 to February 3, 1998. On February 5, 1998 appellant submitted a CA-8, claim for continuing compensation, from February 4 to February 18, 1997. In a February 12, 1998 medical report, Dr. Dominguez stated that appellant had an open wound with exposed mesh and therefore could not return to work.

In a letter decision dated February 26, 1998, the Office notified appellant that it denied his claim for compensation from August 21 to December 9, 1997. In an attached memorandum, the Office stated that Dr. Dominguez released appellant to work on September 2, 1997 with a lifting restriction of no greater than 20 pounds until after surgery. The Office noted that medical evidence supported total disability from December 10, 1997[3] to February 18, 1998 and that appropriate compensation had been paid for this time period. However, the Office noted that no medical evidence had been submitted to support total disability from August 21 to December 9, 1997 and that it therefore denied compensation for that time period.

The Board finds that appellant has not established that he was totally disabled from work from August 21 to December 9, 1997.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[4]

[3] The Board notes that the date in the Office's decision should read December 10, 1997 vice December 10, 1998.

[4] *Cloteal Thomas*, 43 ECAB 1093 (1992); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

In this case, the Office accepted that appellant sustained a ventral hernia. The record establishes that appellant was assigned light duty on August 22, 1997. That assignment was consistent with the restrictions noted by Dr. Dominguez, who stated that appellant could return to a limited-duty position with a lifting restriction not to exceed 20 pounds. Further, Dr. Wittmer noted that he could not state with certainty that appellant's painful symptoms were caused by his ventral hernia. An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.[5] To establish causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and his medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to discharge his burden of proof. These reports are insufficient to meet appellant's burden of proof as neither doctor offered medical rationale explaining the causal relationship between appellant's medical condition and his accepted injury, or how and why appellant's work-related aggravation prevented him from performing the duties of his light-duty position from August 21 to December 9, 1997. As appellant has failed to submit a sufficient rationalized medical opinion to establish that he was unable to work in his light-duty position from August 21 to December 9, 1997, he has failed to establish that he was disabled and thus is not entitled to continuing compensation benefits for that time period. Without such evidence, appellant cannot establish his claim for compensation from August 21 to December 9, 1997.

Consequently, appellant has not met his burden of proof as he submitted insufficient medical evidence indicating that the accepted injury caused a continuing disability from August 21 to December 9, 1997.

[5] *Donald W. Long*, 41 ECAB 142 (1989).

The February 26, 1998 decision of the Office of Workers' Compensation Programs is affirmed as modified.[6]

Dated, Washington, D.C.
November 22, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

[6] The Board notes that the record file does not contain final Office decisions based on appellant's claims for compensation for time lost after December 12, 1997.