

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SALVADOR O. MARTINEZ, III and DEFENSE LOGISTICS AGENCY,
NAVAL SUPPLY CENTER, San Diego, CA

*Docket No. 97-550; Submitted on the Record;
Issued October 20, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant has met his burden of proof to establish that he sustained a recurrence of disability beginning April 9, 1996 causally related to his March 17, 1989 employment injury.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability beginning April 9, 1996 causally related to his March 17, 1989 employment injury.

On March 17, 1989 appellant, then a warehouse worker, filed a traumatic injury claim (Form CA-1) alleging that on that date he experienced low back pain while loading boxes of forms into a van truck. Appellant stopped work on March 17, 1989 and returned to light-duty work on March 29, 1989.

The Office of Workers' Compensation Programs accepted appellant's claim for a lumbosacral strain. The Office authorized a laminectomy, which was performed in 1989 and 1990 and a bilateral posterolateral fusion from L4 to the sacrum which was performed in May 1992.

Appellant returned to light-duty work on November 14, 1994.

On July 18, 1996 appellant, filed a claim (Form CA-2a) alleging that he sustained a recurrence of disability accompanied by factual and medical evidence. Appellant stopped work on April 9, 1996.

By decision dated September 17, 1996, the Office found the evidence of record insufficient to establish that the alleged recurrence of disability was caused by the March 17, 1989 employment injury.¹

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 substantial, reliable and probative evidence and to show that he or she cannot perform the light duty.² As part of his burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.³

In the present case, appellant has neither shown a change in the nature and extent of his injury-related condition or a change in the nature and extent of the light-duty requirements. The record shows that following the March 17, 1989 employment-related lumbosacral strain, appellant returned to work in a light-duty capacity. The record does not establish, nor does appellant allege, that the claimed recurrence of total disability was caused by a change in the nature or extent of the light-duty job requirements.

The medical evidence of record is insufficient to establish that appellant was disabled from his light-duty position due to a change in the nature or extent of his accepted March 17, 1989 employment injury, a lumbosacral strain. In support of his claim, appellant submitted the disability certificates of Dr. Steven E. Horowitz, an orthopedist, regarding his back and stress conditions for the period January 23, 1995 through August 26, 1996. These disability certificates are insufficient to establish appellant's burden because they failed to indicate a diagnosis and to discuss whether or how the diagnosed condition was caused by appellant's March 17, 1989 employment-related injury.⁴ Dr. Horowitz's August 5, 1996 disability certificate revealed that appellant had increased stress and financial problems and a recurrence of low back pain with prolonged sitting. This disability certificate failed to address a causal relationship between appellant's current back pain and his March 17, 1989 employment injury. Therefore, Dr. Horowitz's disability certificates are insufficient to establish appellant's burden.

In further support of his claim, appellant submitted the May 17, 1996 notes of Cathy Boppert, a physical therapist. Appellant also submitted the June 21, 1996 notes of Mike Winicki, a physical therapist. The notes of appellant's physical therapists are of no probative value inasmuch as a physical therapist is not a physician under the Federal Employees' Compensation Act and, therefore, is not competent to give a medical opinion.⁵

¹ Subsequent to the Office's September 17, 1996 decision, the Office received additional evidence. Further, on appeal, appellant submitted additional evidence. However, the Board cannot consider evidence that was not before the Office at the time of the final decision; *see* 20 C.F.R. § 501.2(c)(1).

² *Terry R. Hedman*, 38 ECA 222, 227 (1986).

³ *Id.*

⁴ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

⁵ 5 U.S.C. § 8101(2); *see also Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649

Additionally, appellant submitted Dr. Horowitz's June 6, 1996 medical report indicating that a combination of increasing anxiety and stress at work and the discontinuance of his inability to use the gym room have conspired to increase appellant's discomfort to the present level. Dr. Horowitz's June 21, 1996 medical report revealed that appellant was depressed and experienced anxiety. Dr. Horowitz opined that the major precipitating cause and trigger of appellant's exacerbations of anxiety and depression seem to be associated with work. He recommended that appellant undergo psychological treatment. Dr. Horowitz's medical reports failed to address whether appellant's emotional condition was caused by his March 17, 1989 employment injury. Further, the Board notes that the Office did not accept appellant's claim for an emotional condition. Therefore, Dr. Horowitz's medical reports are insufficient to establish appellant's burden.

Appellant also submitted a June 19, 1996 computerized tomography lumbar myelogram report of Dr. K. Bradford Snyder, a radiologist, revealing status post L5 laminectomy and placement of posterior internal fixation rods spanning the L4 to the S1 vertebral bodies. His report further revealed that metallic artifact obscured detail at the L4-5 level and that there was no evidence of significant central canal or neural foramina stenosis in the axial plane. Dr. Snyder's report does not reveal that appellant's current back condition was caused by his March 17, 1989 employment injury and, therefore, is insufficient to establish appellant's burden.

In a July 15, 1996 medical report, Dr. Horowitz indicated that appellant suffered from financial stressors due to his inability to work and that this contributed to increasing symptomatology in his back. He further indicated his findings on physical and objective examination regarding appellant's back condition. Dr. Horowitz recommended that appellant undergo psychological treatment. Dr. Horowitz's medical report is insufficient to establish appellant's burden inasmuch as it failed to address whether appellant's current back condition was caused by his March 17, 1989 employment injury.

Appellant submitted Dr. Horowitz's July 16, 1996 attending physician's supplemental report (Form CA-20a) indicating the date of appellant's employment injury and a diagnosis of status postoperative lumbar laminectomy/disc with nerve root involvement. Dr. Horowitz indicated that appellant's condition was due to the injury, for which compensation was claimed by placing a checkmark in the box marked "yes." He reiterated his findings and opinion in an August 5, 1996 Form CA-20a. The Board has held that an opinion on causal relationship, which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history is of diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁶ Because Dr. Horowitz failed to provide any medical rationale to support his conclusion regarding causal relation, the Board finds that his report is insufficient to establish appellant's burden.

(1989); *Jane A. White*, 34 ECAB 515 (1983).

⁶ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

Because appellant has failed to submit rationalized medical evidence establishing a causal relationship between his current back condition and his March 17, 1989 employment injury, he has not satisfied his burden of proof in this case.

The September 17, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
October 20, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member