

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDUARDO V. DELACRUZ and DEPARTMENT OF DEFENSE,
OFFICE OF THE INSPECTOR GENERAL, Arlington, VA

*Docket No. 97-1714; Submitted on the Record;
Issued October 19, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant established that he was totally disabled for work during the period of May 2, 1993 to September 30, 1994.

On February 14, 1992 appellant, then a 47-year-old auditor, filed a notice of traumatic injury and claim for compensation alleging that on January 31, 1992 he injured his back while grabbing suitcases from an airport luggage carousel on his return from a temporary-duty assignment. The Office of Workers' Compensation Programs accepted his claim for lumbosacral strain, acute right elbow tendinitis and right arm contusion. Appellant was off work from February 20 until May 11, 1992, when he returned to light duty.¹

Appellant next filed an occupational disease claim alleging that he sustained back pain while attending a work training session from May 18 to 21, 1992. The Office accepted the claim for aggravation of chronic lumbosacral strain. Appellant stopped work on May 22, 1992. The Office combined the case files for work-related back injuries into file number A25-399505, pertaining to the January 31, 1992 claim.

In a series of attending physicians' reports dated June 30, July 6 and 14, 1992, Dr. Roy A. Heron, an internist and appellant's treating physician, noted appellant's history of work-related back injuries. He diagnosed acute lumbosacral strain with spinal arthritis for which he prescribed physical therapy. Dr. Heron opined that constant trauma caused by appellant's normal work requirements, including prolonged sitting and standing, traveling on confined spaces and lifting of over 15 pounds aggravated his back condition. He also noted that while surgery was an option, there was the risk of paralysis. In order to alleviate appellant's arthritic

¹ Appellant sustained two prior work-related back injuries. On August 18, 1988 appellant was injured in an automobile accident in the performance of duty. The Office accepted the claim for cervical strain. On October 7, 1991 appellant injured his back while moving bookcases at work. The Office accepted the claim for acute cervical strain, thoracic strain, lumbosacral strain and contusion to the right shoulder.

pain, Dr. Heron suggested that appellant relocate to a warm dry area. He further opined that constant trauma to the spine, commencing with appellant's work-related automobile accident and continuing with his other accepted work-related back injuries, directly caused appellant's back strain and spinal arthritis. Dr. Heron advised that it was possible that appellant could return to light duty after January 31, 1993 with restrictions.

The Office referred appellant for a second opinion evaluation with Dr. Panos Labropoulos, a Board-certified orthopedic surgeon. In an August 19, 1992 report, Dr. Labropoulos noted that appellant's symptoms, complaints of pain and his history of work-related back injuries. According to Dr. Labropoulos, x-rays of the cervical spine showed degenerative changes and a degree of spinal stenosis. He opined that appellant's chronic lumbosacral sprain was directly associated to his repeated back injuries and that the pain caused by the repeated back injuries aggravated a dormant condition of spinal stenosis. Dr. Labropoulos recommended a magnetic resonance imaging (MRI) scan and also suggested that appellant move to a warmer climate to alleviate some of the pain associated with his arthritic condition.

In a work restriction report (Form OWCP-5) dated August 19, 1992, Dr. Labropoulos advised that appellant could return to full-time work, 8 hours a day with restrictions that he lift no more than 10 pounds, that he sit and walk, kneel and stand no more than 4 hours and that he bend, squat and kneel no more than 2 hours a day. He also noted that appellant should avoid working in cold and damp areas.

In an October 21, 1992 report, Dr. Labropoulos opined that appellant had permanent residual degenerative changes in his lower back. He opined that if appellant moved to a warm and dry climate it would reduce his flare-ups of arthritis. Dr. Labropoulos concluded that appellant was able to work eight hours a day on a light-duty basis with restrictions.

Dr. Heron referred appellant to Dr. Harold J. Gould, a Board-certified neurologist. In a report dated January 5, 1993, Dr. Gould reported physical findings and noted that an MRI scan dated August 28, 1992, showed an area of density while a subsequent bone scan performed on December 15, 1992 was negative. He diagnosed focal sclerosis and recommended that the area be watched with repeated spinal films. Dr. Gould also recommended that appellant undergo physical therapy and wear a corset for his back pain.

In a letter dated November 4, 1992, the Office advised appellant that he was placed on the short-term roll until January 9, 1993, the date approximated by his treating physician as to when appellant would be fit for light duty. The Office also advised appellant that after January 9, 1993 he would be required to submit CA-8 forms with supporting medical evidence to claim compensation.²

In an attending physician's report dated January 22, 1993, Dr. Heron noted that Dr. Gould's finding of focal sclerosis was consistent with his conclusion that appellant's back pain was muscular rather than orthopedic in nature. He also opined that appellant had spinal

² Appellant filed a series of CA-8 claim forms requesting compensation for the period of January 10 through May 1, 1993 which were awarded.

arthritis, which could not be relieved by surgery and reiterated his opinion that appellant should move to a warmer climate. According to Dr. Heron, appellant was either fully or partially disabled depending on weather conditions. He opined that “appellant [was] fully disabled until April 30, 1993, but may be able to perform limited work during the spring and summer months but definitely not during the fall and winter months. Dr. Heron concluded that appellant was totally disabled until April 30, 1993, but stated that appellant “may be able to perform very limited work during the period of May 1 through October 1993. He noted work restrictions which included that appellant not lift more than 15 pounds, that he neither sit nor stand for an extended period of time of one hour or more and that he not travel in confined spaces.

By letter dated March 17, 1993, the Office requested that Dr. Heron provide a rationalized report addressing appellant’s capacity for work.

In an April 22, 1993 letter, appellant advised the Office that he was moving to the Philippines.

On April 28, 1993 the employing establishment offered appellant a modified auditor position with accommodations for his medical restrictions.

In a report dated May 11, 1993, Dr. Alicia G. Heron,³ a family practitioner, noted that appellant suffered from a chronic back condition or “unstable back” related to age and related to trauma to the spine since 1988. She noted that objective findings of chronic cervical spine tenderness C1-6 with limited range of motion of the neck due to spasms of the sternocleidomastoid and trapezius muscle and chronic lumbosacral spine tenderness L1-5 with limited range of motion in the back due to muscle spasms of paraspinal muscles. According to Dr. Heron, appellant was totally disabled through April 1993 because the cold weather aggravated his chronic back pain and made him more susceptible to recurrent injury. She concluded, however, that appellant could return to work in May 1993 with the restrictions.

By letter dated May 10, 1993, appellant rejected the job offer, noting that his treating physician had not yet released him to return to limited duty. He further requested that he be given a job in a warmer climate.

The record indicates that appellant subsequently moved to the Philippines and was treated by Dr. Edward H.M. Wang, a family practitioner. In a report dated August 9, 1993, Dr. Wang noted that he first examined appellant on July 14, 1993 at which time he recorded appellant’s history of injury and prescribed physical therapy. He noted that at the time of the August 9, 1993 evaluation, appellant described having recently carried groceries weighing approximately six pounds, which brought on back pain and necessitated bed rest. Dr. Wang’s physical findings included paraspinal spasm and palpation of the lower back. He diagnosed chronic lumbosacral strain with radiculopathy, left leg chronic cervical strain which he attributed to appellant’s work injuries. Dr. Wang opined that unless there was a cure for spinal arthritis and effective therapy for chronic lumbosacral strains, appellant would remain unable to perform

³ Dr. Alicia G. Heron appears to be in practice with Dr. Roy A. Heron. She signed the January 22, 1993 report on his behalf.

his normal job. He was unable to predicate when appellant could return to light work. In this regard, he specifically stated:

“Although [appellant] has marked improvement since initial injury, normal work may aggravate problems. Standing and sitting for extended periods of time is a problem for him and he will be relying on regular analgesics, pain medications. Furthermore, with his kind of work and the severe changes in climate (*e.g.*, weather) in his current post of duty, pain may be aggravated. I would recommend continuing treatment and allowing work only after complete reversal of symptoms, which at this stage, is highly unlikely.”

In a treatment note dated August 30, 1993, Dr. Wang reported that, since appellant had undergone a hernia operation on August 18, 1993 he had been unable to undergo physical therapy; therefore, his back pain remained essentially the same. He recommended daily physical therapy and opined that appellant should remain off work.

In a July 29, 1994 report, Dr. Wang reported that appellant had been under his care since July 14, 1993 and was last examined on November 15, 1993 at which time his back condition was stable. He indicated that appellant was hospitalized in March 1994, for a heart attack; and had been unable to return for a back evaluation until July 20, 1994. Dr. Wang recorded appellant’s subjective complaints but noted normal physical findings. He diagnosed chronic lumbosacral strain with radiculopathy in the left leg and improved cervical strain. Dr. Wang concluded his report by opining that appellant’s back condition was contributed to by the January 31, 1992 work injury. He also opined that appellant would be limited in his work by his cardiac condition. According to Dr. Wang, appellant’s disability related to his back condition remained the same as noted in his August 30, 1993 report.

By letter dated September 27, 1994, claimant filed a series of CA-8 claim forms requesting continuing compensation for the period of May 2, 1993 to September 30, 1994.⁴ Appellant noted in his letter that although his treating physician did not feel that his present orthopedic condition would prevent him from returning to light duty, the doctor was concerned about his cardiac condition. Appellant further noted that his cardiologist had opined that his heart condition may have been caused by stress he incurred in his federal employment.

By letter dated October 18, 1996, the Office requested that appellant submit a detailed narrative medical report from his treating physician showing that he was totally disabled to perform work.

In a decision dated February 7, 1997, the Office denied compensation for the period of May 2, 1993 to September 30, 1994 on the grounds that the medical evidence of record was insufficient to establish that appellant was temporarily totally disabled during that period.

⁴ On April 28, 1993 the employing establishment offered to return appellant to his auditor position which had been modified in accordance with his medical restrictions. Appellant rejected the job offer on May 10, 1993.

The Board finds that appellant failed to establish that he was totally disabled for work during the period of May 2, 1993 to September 30, 1994.

In this case, the Office accepted that an employee sustained an employment-related injury. However, appellant retains the burden of proof to establish disability for work based on the CA-8 claim forms filed for the period May 2, 1993 to September 30, 1994.⁵

In this regard, the implementing regulations⁶ of the Federal Employees' Compensation Act⁷ provide as follows:

“Form CA-8 is provided to claim compensation for additional periods of time after Form CA-7 is submitted to the Office. It is the responsibility of the employee to submit Form CA-8. Without receipt of such claim, the Office has no knowledge of continuing wage loss.... The employee is responsible for submitting, or arranging for this submission of, medical evidence in support of the claim. Form CA-20a is attached to Form CA-8 for this purpose....”

In the instant case, the Office accepted appellant's January 31, 1992 claim for lumbosacral strain, acute right elbow tendinitis and acute forearm contusion. Appellant filed a CA-8 claim form requesting compensation for wage loss for the period May 2, 1993 to September 30, 1994. The Office, however, properly denied appellant's claim for compensation on the grounds that he failed to present sufficient medical evidence to establish that he was disabled from work as a result of his accepted work-related back injury for the period in question.

The Board notes that appellant was approved for light-duty work with certain medical restrictions as early as August 19, 1992 by Dr. Labropoulos. The employing establishment subsequently offered appellant a light-duty position which he refused on May 10, 1993. Although the basis cited by appellant for rejecting the light-duty position was that his treating physician had not approved him for a return to work, Dr. Heron specifically stated in a May 11, 1993 report that appellant was approved to return to light duty in May 1993, with restrictions that he not lift over 15 pounds, that he not sit or stand for prolonged periods of time and that he not travel in confined spaces.

In support of his claim, appellant also submitted two reports dated August 9, 1993 and July 9, 1994 from Dr. Wang, his treating physician since he moved to the Philippines. Although he suggested that appellant was totally disabled from work, the sole basis for the doctor's opinion was his fear that appellant's normal work, described as sitting or standing for an extended period of time, “might be a problem” for appellant. Dr. Wang further speculated that normal work “may aggravate” appellant's back condition. Because Dr. Wang's opinion is

⁵ See *Donald L. Ballard*, 43 ECAB 876 (1992).

⁶ 20 C.F.R. § 10.122.

⁷ 5 U.S.C. §§ 8101-8193.

speculative in nature it is entitled to little probative weight.⁸ Moreover, Dr. Wang's opinion does not address appellant's disability for the claimed period due to residuals of the accepted employment-related conditions. To the extent that appellant has failed to provide a rationalized opinion finding that he was totally disabled as a result of his work-related back condition for the period May 2, 1993 to September 30, 1994, the Office properly denied compensation.

The decision of the Office of Workers' Compensation Programs dated February 7, 1997 is hereby affirmed.

Dated, Washington, D.C.
October 19, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ See *Arthur P. Vilet*, 31 ECAB 366 (1979).