

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS E. MILLER and U.S. POSTAL SERVICE,
POST OFFICE, Stamford, CT

*Docket No. 98-232; Submitted on the Record;
Issued September 20, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant was disabled after July 23, 1992 due to residuals of his employment-related cervical condition.

In the present case, the medical evidence of record establishes that appellant, a mail carrier, began having neck and right upper extremity pain in October 1990 at home following a vacation. Appellant underwent anterior C6-7 discectomy and fusion of the iliac crest graft on March 4, 1991. Appellant returned to work in a light-duty position in June 1991. While working on August 13, 1991, appellant pulled open a mailbox and felt a sharp pain at the base of the neck and into the left trapezius. The Office of Workers' Compensation Programs accepted that appellant sustained a cervical strain on August 13, 1991. Appellant returned to light desk work on October 18, 1991. Appellant was terminated from his employment, for cause on July 23, 1992, after an investigation revealed that appellant had played league softball while continuing to allege at work that he was required to limit cervical movement.

Appellant filed a notice of occupational injury on October 5, 1992, alleging that he had sustained aggravation of degenerative disc disease due to his federal employment, which he first became aware of in 1990. The Office accepted appellant's occupational claim for temporary aggravation of cervical degenerative disc disease due to factors of his employment, which ceased by July 23, 1992. By decision dated August 5, 1997, the Office denied appellant's claim for continuing disability benefits after July 23, 1992.

Section 8102(a) of the Federal Employees' Compensation Act¹ sets forth the basis upon which an employee is eligible for compensation benefits. That section provides:

“The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty....”

In general the term “disability” under the Act means “incapacity because of injury in employment to earn the wage which the employee was receiving at the time of such injury.”² This meaning, for brevity, is expressed as “disability for work.”

In a factually similar case, the Board in *Normand*³ explained that if the employee is working at the time his employment is terminated for cause, the employee must establish that his employment was terminated due to his physical inability to perform his assigned duties, or that he stopped work due to his physical condition.

The Board finds that the medical evidence of record does not support a finding that appellant was disabled after July 23, 1992. Appellant's treating physician, Dr. John V. Mangieri, submitted a comprehensive report dated September 1, 1992. In this report, Dr. Mangieri noted that appellant's July 23, 1992 physical examination revealed some mild tenderness in the paracervical area bilaterally, more on the left than the right, but with good range of motion and no head/neck compression pain and negative neurological examination of the upper extremities. Dr. Mangieri concluded that appellant should be allowed to return to regular duty, as long as he not be required to carry more than 25 pounds.

The record reveals until July 23, 1992, the employing establishment provided light-duty work for appellant within the work restrictions outlined by his physician, Dr. Mangieri. Appellant was terminated from his position by the employing establishment effective July 23, 1992 for cause. There is no evidence in the record that appellant was terminated due to his physical inability to perform his assigned duties, nor is there evidence that appellant stopped work due to his physical condition. As there is no evidence in the record that appellant was not capable of performing his assigned duties after July 23, 1992, he was not “disabled” pursuant to the Act.

The Board also finds that appellant was entitled to medical benefits for the accepted condition of temporary aggravation of degenerative disc disease after July 23, 1992.

¹ 5 U.S.C. § 8102(a).

² *John W. Normand*, 39 ECAB 1378 (1988).

³ *Id.*

The Office, to terminate authorization for medical treatment, has the burden of establishing that appellant no longer has residuals of the employment condition that requires further medical treatment.⁴

In a report dated December 9, 1992, Dr. Mangieri clarified that appellant did not have any permanent residuals related to his seemingly minor injury of August 13, 1991, which had been accepted for cervical strain, but that appellant would have permanent residuals due to his degenerative cervical condition. He explained that appellant would not be able to perform duties as a letter carrier, which required heavy lifting, turning, twisting and swinging the bag, which was “secondary to his preexisting spondylosis with factors leading up to the surgical procedure in March of 1991.” The Office had accepted that appellant sustained temporary aggravation of his preexisting cervical condition, due to occupational disease commencing in 1990. While Dr. Mangieri’s reports supported a finding that appellant’s cervical strain sustained in September 1991 had ceased, the Office did not obtain medical evidence that the accepted temporary aggravation of cervical degenerative disc disease had ceased. In a report dated August 15, 1994, Dr. Mangieri noted that x-rays performed on that day revealed disc degeneration and spurring at C4-5 and C5-6, although Dr. Mangieri did not comment whether the accepted employment-related temporary aggravation of this condition continued. In a report dated October 30, 1996, Dr. William S. Maxfield also noted that current x-rays of the appellant’s cervical spine showed anterior fusion at the C6-7 level, anterior wedging of C5, marked narrowing of the C3-4 interspace, minimal anterior wedging of C3 and C4 and degenerative spurring at C3-4 and C5-6. The Office was obligated to continue payment of medical benefits pertaining to treatment of the accepted condition of temporary aggravation of cervical degenerative disc disease, until the medical evidence supported a finding that the accepted condition had ceased.

⁴ *Furman G. Peake*, 41 ECAB 361 (1990).

The decision of the Office of Workers' Compensation Programs dated August 5, 1997 is affirmed regarding the finding that appellant was not entitled to disability compensation benefits after July 23, 1992 and is reversed regarding the termination of medical benefits for the accepted condition of temporary aggravation of degenerative cervical disc disease.

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

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member