U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALFONSO N. MARTINEZ and U.S. POSTAL SERVICE,
POST OFFICE, Clearfield, UT

Docket No. 98-1343; Submitted on the Record;
Issued December 12, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability as of October 10, 1997 causally related to his accepted January 20, 1978 lower back injury.

On January 20, 1978 appellant, a 30-year-old mail clerk, injured his lower back while lifting parcels. The Office of Workers' Compensation Programs accepted his claim for herniated nucleus pulposus at L4-5. Appellant returned to light-duty work on a part-time basis on October 16, 1978, and was terminated by the employing establishment on September 14, 1979. Appellant was reemployed as a modified distribution clerk on April 1, 1980, and stopped working in October 1981. He was reemployed on April 17, 1993 as an office clerk, beginning at six hours per day and progressing to eight hours per day. Appellant stopped working in December 1995. Appellant was placed on the periodic rolls on January 2, 1996, and received compensation for temporary total disability.

In a report dated July 22, 1997, Dr. Carl A. Mattsson, a Board-certified orthopedic surgeon and appellant's treating physician, stated that appellant had agreed to return to work with restrictions, which included no lifting, pushing, pulling, standing or sitting for long periods of time. Dr. Mattsson advised that, if appellant were allowed to go back to work on a trial basis with the opportunity to sit or stand for intermittent periods of time, there was a good possibility that he would be able to return to work.

The employing establishment offered appellant a limited-duty job as a clerical worker within Dr. Mattsson's physical restrictions on July 25, 1997. The position entailed limited, miscellaneous duties including answering telephones, ordering supplies, data inputting, document filing, and other duties as needed, within his restrictions of no lifting, pushing, pulling, standing or sitting for long periods of time, being allowed to move about as personal comfort levels dictated. Appellant accepted the modified, light-duty offer, for eight hours per day, and returned to work on August 11, 1997.

On October 3, 1997 Dr. Mattsson submitted a treatment note which placed appellant on light duty for four hours per day.

In a report dated October 17, 1997, Dr. Mattsson indicated that appellant was injured in an automobile accident on October 10, 1997. Dr. Mattsson noted that appellant was brought to the hospital in an ambulance and had experienced pain in his mid back and left lower back. He indicated that appellant felt worse at that time than he did prior to the accident. Dr. Mattsson further advised that appellant was doing better with just working four hours per day and was experiencing less pain. He diagnosed acute strain to the upper mid back and lower back, with some radiculopathy; Dr. Mattsson further stated that appellant's symptoms had increased, and were worse since the accident. He believed appellant could return to work in two weeks.

In a form report dated October 23, 1997, Dr. Mattsson indicated that appellant had not been able to work for two weeks as a result of his motor vehicle accident.

Appellant subsequently filed a November 6, 1997 Form CA-8 claim for compensation based on loss of wages beginning October 10, 1997 and continuing through November 7, 1997.[1] In support of his claim, appellant submitted a December 2, 1997 treatment note from Dr. Mattsson which placed appellant off work entirely for an indefinite period. Dr. Mattsson also submitted a December 2, 1997 report in which he indicated that appellant had continued symptoms of back pain, that he had been working four hours per day, but that appellant felt that working four hours per day still caused him to have a lot of symptoms, and that he did not feel he could continue to work. Dr. Mattsson recommended that appellant file for a medical disability.

On December 8, 1997 the employing establishment controverted the claim, contending that appellant was claiming compensation for an injury not related to his employment.

In a form report dated January 8, 1998, Dr. Mattsson stated that appellant was 100 percent disabled and noted that appellant had been advised that he should no longer be working.

By decision dated January 13, 1998, the Office denied appellant's claim, finding that appellant failed to submit evidence sufficient to establish that his current condition or disability was causally related to the January 20, 1978 employment injury. The Office found that appellant's condition was caused by an accident which occurred outside of his employment.

On January 15, 1998 the Office referred appellant for a second opinion examination with Dr. Peter G. Larcom, a specialist in orthopedic surgery.

By letter dated January 21, 1998, appellant requested reconsideration. In support of his claim, appellant submitted a January 16, 1998 report from Dr. Mattson, who stated:

> "[Appellant] has been suffering with back pain since his injury in 1978 and due to this injury he has had to take time off work as well as a cut in hours. At this point he still suffers greatly with back pain, which I have found to be chronic and incurable.... He was recently involved in an automobile accident, which flared-up

[1] The Office adjudicated this claim as a recurrence of disability case.

his back pain more ... than usual, but it did not reinjure his back or cause any more disability than what he already had. I believe that it would be in the best interest of [appellant] to file for a medical disability and no longer return to the type of work he is currently doing…. I have recently examined [appellant] and have found him to be 100 percent disabled from any type of work. This disability is [solely] due to the injury he suffered [on] January 20, 1978."

By decision dated February 10, 1998, the Office denied modification of the January 12, 1998 decision.

In a report dated February 5, 1998, Dr. Larcom, after stating findings on examination and reviewing appellant's medical history, diagnosed chronic progressive low back symptoms. He stated that appellant had undergone discectomy, laminectomy, and fusion which appeared to have healed well, although he remained significantly disabled. Dr. Larcom advised that, following his most recent surgery in March 1997, appellant attempted to work, initially full time, but was unable to do so. He indicated that appellant stated that he subsequently tried to return to work for four hours a day, but was allegedly unable to tolerate it. Dr. Larcom stated that appellant's condition was chronic in nature and progressive, but advised that it dated back to 1978. He stated that appellant's recent motor vehicle accident may have caused a flare up of his symptoms, but was certainly not the cause of his severe disability. Dr. Larcom stated that appellant's current condition was completely disabled, and that there was little in the way of functional overlay regarding his back and leg complaints. He concluded that appellant was unable to work due to his chronic disability.

By memorandum dated February 18, 1998, the Office determined that Dr. Larcom's report was inadequate and failed to address important questions, and that Dr. Larcom provided no explanation to support his stated opinion. The Office noted that appellant had been working prior to his October 1997 automobile accident and that Dr. Larcom failed to provide objective evidence that total disability was related only to factors of his employment.

By letter dated February 20, 1998, appellant requested reconsideration. Appellant contended that he was not working eight hours per day at the time of his October 1997 automobile accident, but had been placed on a four-hour workday by Dr. Mattsson on October 3, 1997.

Appellant submitted a February 17, 1998 report from Dr. Mattsson, who stated:

"[Appellant] was indeed performing his job up until the nonwork accident on [October 10, 1997], but it was with great difficulty that he was doing this four hours a day. There is no question that the accident tipped [appellant] over the above performance level.... But, at the same time, [appellant's] symptoms were close to 95 [percent] of inability to do his 4 hours of work daily. The auto accident was probably the [five percent] that tipped him over the scale. In that sense there probably is a contraindication, but it is my firm opinion that [appellant] is undoubtedly disabled to work further, as he has in the past. I would still say that 95 [percent] or more is secondary to his original injury and the auto accident was enough to tip over the scale."

By decision dated March 12, 1998, the Office denied modification of the January 13, 1998 Office decision.

The Board finds that the case is not in posture for decision.

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 of record establishes that he 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 show that he 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.[2]

The Board finds that the evidence submitted by appellant, which contains a history of the development of the condition and a medical opinion that the condition found was consistent with the history of development, is sufficient to require further development of the record.[3] Although the medical evidence submitted by appellant is not sufficient to meet his burden of proof, the medical evidence of record raises an uncontroverted inference of causal relationship between appellant's January 20, 1978 work injury and his alleged October 10, 1997 recurrence of disability.

The Board finds that appellant has submitted sufficient medical evidence to establish a *prima facie* claim that his disability commencing October 10, 1997 was the direct and natural result of his January 20, 1978 employment injury. It is an accepted principle of workers' compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.[4]

In discussing how far the range of compensable consequences is carried, once the primary injury is causally connected with the employment, Professor Larson notes:

> "When the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of 'direct and natural results' and of claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury."[5]

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[2] *Terry R. Hedman*, 38 ECAB 222 (1986).

[3] *John J. Carlone*, 41 ECAB 354 (1989).

[4] Larson, *The Law of Workers' Compensation* § 13.00; *see John R. Knox*, 42 ECAB 193 (1990).

[5] Larson at § 13.11.

Once the work-connected character of any condition is established, "the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause."[6] If a member weakened by an employment injury, contributes to a later fall or other injury, the subsequent injury will be compensable as a consequential injury, if the further medical complication flows from the compensable injury, *i.e.*, "so long as it is clear that the real operative factor is the progression of the compensable injury, with an exertion that in itself would not be unreasonable in the circumstances."[7]

In this case, the Office found that appellant's current disability was attributable to his nonwork-related automobile accident which occurred on October 10, 1997. However, liability under the Federal Employees' Compensation Act continues so long as the disability is in any part caused by the employment-related injury.[8] Appellant has submitted medical evidence indicating that his disability commencing October 10, 1997 was the direct and natural result of his employment-related lower back condition, and that he still suffered residual pain from his January 20, 1978 employment injury, which relates his disability for work as of October 10, 1997 to his January 20, 1978 employment injury. The reports and treatment notes of Dr. Mattsson indicate that appellant's alleged recurrence of his accepted, employment-related low back condition resulted from the natural consequences or progression of his January 20, 1978 employment injury. He stated in his January 16, 1998 report that appellant has been suffering with back pain since his injury in 1978, as a result of which he been forced to miss time from work and reduce his work hours. Dr. Mattson stated that appellant continued to experience chronic, incurable back pain, and advised that, although he had recently been involved in an automobile accident, which aggravated and "flared-up" his back pain to an even greater extent, this did not reinjure his back or cause any increase in his current level of disability. Dr. Mattsson concluded that appellant was 100 percent disabled from any type of work, which was solely attributable to the January 20, 1978 employment injury.

In a February 17, 1998 report, he stated that, although appellant was indeed performing his job up until the nonwork accident of October 10, 1997, he had been experiencing great difficulty performing the job for four hours a day. Dr. Mattson emphasized that appellant's symptoms had rendered him almost 95 percent unable to perform his work for four hours per day, and that the automobile accident was probably responsible for the additional five percent. Thus, Dr. Mattsson's medical reports addressed his progression from partial disability to total disability for work due to residuals of his accepted employment-related injury.[9] Further,

[6] *Id.* at § 13.11(a); *see also Dennis J. Lasanen*, 41 ECAB 933 (1990). In *Lasanen*, appellant had a work-related knee condition. Subsequently, appellant fell while ice skating and reinjured the knee. The Board remanded the case for a determination of whether appellant's recurrence of disability was a further medical complication flowing from the employment injury or whether it was caused by an independent intervening cause, the ice skating incident.

[7] *Id.*

[8] *See Charlet Garrett Smith*, 47 ECAB 562 (1996); *Charles R. Hollowell*, 8 ECAB 352 (1955).

[9] *Compare Sandra Dixon-Mills*, 44 ECAB 882 (1993), in which appellant failed to submit medical evidence which discussed or explained how the alleged, subsequent recurrence constituted a natural progression from the original, accepted employment injury, and did not submit any reports providing a medical rationale to relate the condition after the alleged recurrence to the accepted injury.

although his report was invalidated by the Office, Dr. Larcom, the referral physician, essentially concurred with Dr. Mattsson's opinion, stating that appellant's condition was chronic in nature, progressive, and that it began in 1978. He agreed that appellant's recent motor vehicle accident may have caused a "flare-up" of his symptoms, but was certainly not the cause of his severe, chronic disability. Dr. Larcom advised that appellant was unable to work due to this chronic disability. Unlike the fact patterns in *Meeson*, therefore, the medical evidence in this case indicates that appellant's disability was not the result of an independent intervening cause. Instead, the unrefuted medical evidence submitted by appellant suggests that the October 17, 1997 recurrence of disability arose from the natural consequences or progression of his employment injury.

On remand, therefore, because the evidence in this case record has not been adequately developed, the Office must determine whether appellant met his burden of establishing that on October 10, 1997, he experienced a recurrence of his employment-related disability which was caused or aggravated by his January 20, 1978 employment injury, thereby entitling him to continuing compensation for total disability. Accordingly, the Office should further develop the medical evidence by requesting that the case be referred to an appropriate Board-certified physician to submit a rationalized medical opinion on whether the exacerbation of appellant's chronic low back condition which occurred on October 10, 1997 is solely responsibly for appellant's current disability and constitutes an independent intervening cause. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The March 12, 1998 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
December 12, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member