

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT E. ROSE and DEPARTMENT OF COMMERCE,
BUREAU OF CENSUS, Jeffersonville, IN

*Docket No. 98-341; Submitted on the Record;
Issued January 5, 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 on or after December 11, 1995 causally related to his August 7, 1995 employment injury.

On August 7, 1995 appellant, then a 41-year-old electronic technician, sustained a right knee sprain and lumbosacral strain in the performance of duty. He returned to full duty on August 21, 1995.

In notes dated August 31 and September 21, 1995, Dr. Raymond G. Shea, a Board-certified orthopedic surgeon, stated that appellant had much less pain and should return in one month. In notes dated October 26, 1995, he stated that appellant had much less pain in the knee and back and should "stay on light duty."¹ In notes dated November 29, 1995, Dr. Shea stated that appellant had much less pain and could return as needed. Two weeks later, in notes dated December 11, 1995, he stated that appellant had continued pain and stiffness in the back with radiation into the right lower extremity and should remain off work. In notes dated January 25, 1996, Dr. Shea stated that appellant had much less pain in his knee and back but should remain off work. In notes dated February 8, 1996, he stated that appellant had continued pain and stiffness in the back and should remain off work.

In a form report dated February 12, 1996, Dr. Shea indicated that appellant was totally disabled as of December 11, 1995 as a result of his right knee sprain.

By letter dated March 14, 1996, the Office of Workers' Compensation Programs asked Dr. Shea to describe the course of treatment provided to appellant and a reasoned explanation, including objective findings, as to why appellant was totally disabled.

¹ As noted above, the record shows that appellant returned to full duty on August 21, 1995.

In a report dated March 18, 1996, Dr. Shea stated that appellant had “recurrent subluxation of the patella and osteoarthritis of the knee.” He provided findings on examination and stated that appellant was temporarily totally disabled because of the sprain of the right knee superimposed on the underlying osteoarthritic process but he believed that appellant would be able to return to full duty in the near future when he adapted to his braces.

In a report dated March 21, 1996, Dr. Shea stated that the medical basis for appellant not working was the pain and giving way of his right knee and osteoarthritis.

By decision dated April 5, 1996, the Office denied appellant’s claim on the grounds that the evidence of record failed to establish that he had any remaining residuals causally related to his August 7, 1995 employment injury.

By letter dated April 18, 1996, appellant requested reconsideration of the denial of his claim.

In a report dated April 9, 1996, Dr. Shea related that appellant had complaints of pain and stiffness in his knee and was permanently disabled from regular work.

In a report dated April 11, 1996, Dr. Shea stated that appellant had a sprain of the right knee and back with marked atrophy of the right lower extremity and subluxation and dislocation of the patella and that these findings were shown on x-rays. He stated that these injuries were a result of the August 7, 1995 employment injury.

By decision dated May 15, 1996, the Office denied modification of its April 5, 1996 decision.²

By letter dated May 13, 1997, appellant requested reconsideration of the denial of his claim and submitted additional evidence.

In a report dated March 12, 1997, Dr. Richard P. Gardner, a Board-certified internist, provided a history of appellant’s condition and related that he sustained an employment injury in August 1995 with trauma to his right knee and low back and returned to work in a light-duty capacity but had an acute back strain in December 1996 and was unable to continue any light-duty work. He related appellant’s complaint that there was a worsening of the instability in his knee since his August 1995 employment injury. He provided findings on examination and diagnosed derangement of the knee with an unstable knee joint and low back disc disease by history with numbness of the lower extremity.

By decision dated July 16, 1997, the Office denied modification of its May 15, 1996 decision.

By letter dated August 15, 1997, appellant requested reconsideration and submitted additional evidence.

² In this decision, the Office accepted a back condition as employment related.

In a report dated August 6, 1997, Dr. Shea stated that appellant had progressive impairment to his spine, ankle and knee as a result of his injuries at work. He stated that the constant lifting, sitting and walking had caused an aggravation of his "condition" which had left him permanently disabled.

By decision dated September 16, 1997, the Office denied modification of its July 16, 1997 decision.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability on or after December 11, 1995 causally related to his August 7, 1995 employment injury.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.³ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.⁴ Where no such rationale is present, medical evidence is of diminished probative value.⁵

In this case, appellant sustained a right knee sprain and lumbosacral strain in the performance of duty on August 7, 1995 and returned to full duty on August 21, 1995. He subsequently alleged that he sustained a recurrence of total disability which he attributed to his employment injury.

In notes dated November 29, 1995, Dr. Shea, appellant's attending Board-certified orthopedic surgeon, stated that appellant had much less pain and could return as needed. In notes dated December 11, 1995, he stated that appellant had continued pain and stiffness in the back with radiation into the right lower extremity and should remain off work. In notes dated January 25, 1996, Dr. Shea stated that appellant had much less pain in his knee and back but should remain off work. In notes dated February 8, 1996, he stated that appellant had continued pain and stiffness in the back and should remain off work. As Dr. Shea provided no objective findings on examination and no rationalized explanation as to how appellant's disability was causally related to his August 7, 1995 employment injury, these notes do not support appellant's claim of an employment-related recurrence of disability.

In a form report dated February 12, 1996, Dr. Shea indicated that appellant was totally disabled commencing on December 11, 1995 as a result of his right knee sprain. However, he provided no medical rationale in support of his opinion and therefore this report does not discharge appellant's burden of proof.

³ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

⁴ *Mary S. Brock*, 40 ECAB 461, 471 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁵ *Michael Stockert*, 39 ECAB 1186, 1187-188 (1988).

In response to a request from the Office for a reasoned explanation, including objective findings on examination, as to how appellant's disability was causally related to his August 1995 employment injury, Dr. Shea provided a report dated March 18, 1996 in which he stated that appellant was temporarily totally disabled because of the sprain of the right knee superimposed on the underlying osteoarthritic process. However, osteoarthritis is not an accepted condition in this case and Dr. Shea has provided insufficient medical rationale explaining how the osteoarthritis condition was causally related to the right knee sprain in August 1995. Furthermore, he did not explain how appellant was able to perform full duty for several months before becoming totally disabled or why he was not able to perform light duty. Due to these deficiencies, this report is not sufficient to establish that appellant sustained a recurrence of disability in November 1995 causally related to his August 1995 employment injury.

In a report dated March 21, 1996, Dr. Shea stated that the medical basis for appellant not working was the pain and giving way of his right knee and osteoarthritis. However, he provided insufficient medical rationale explaining how the osteoarthritis condition was causally related to the August 1995 employment injury or why he was unable to work full duty or light duty in light of the fact that he returned to full duty two weeks after his employment injury and performed full duty for several months before Dr. Shea found him totally disabled. Therefore, this report does not discharge appellant's burden of proof.

In a report dated March 12, 1997, Dr. Gardner, a Board-certified internist, provided a history of appellant's condition and related that he sustained an employment injury in August 1995 with trauma to his right knee and low back and returned to work in a light-duty capacity but had an acute back strain in December 1996 and was unable to continue any light-duty work. He related appellant's complaint that there was a worsening of the instability in his knee since his August 1995 employment injury. Dr. Gardner provided findings on examination and diagnosed derangement of the knee with an unstable knee joint and low back disc disease by history with numbness of the lower extremity. However, derangement of the knee is not an accepted condition and he provided insufficient medical rationale explaining how this condition was causally related to the right knee sprain on August 7, 1995 or why appellant was totally disabled. Additionally, his report is not based upon a complete and accurate factual background as he stated that appellant returned to work in a light-duty capacity but the record shows that he was performing full duty as of August 21, 1995. Due to these deficiencies, this report is not sufficient to establish that appellant sustained a recurrence of disability causally related to his August 1995 employment injury.

In a report dated August 6, 1997, Dr. Shea stated that appellant had progressive impairment to his spine, ankle and knee as a result of his injuries at work. He stated that the constant lifting, sitting and walking had caused an aggravation of his "condition" which had left him permanently disabled. However, he did not provide a specific diagnosis of the "condition" which was aggravated and he provided insufficient medical rationale explaining how appellant was rendered totally disabled due to his August 7, 1995 back strain and right knee sprain when the record shows that appellant performed full-duty work two weeks after the employment injury and continued working full duty for several months. Additionally, no ankle condition has been accepted by the Office as employment related.

The September 16 and July 16, 1997 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
January 5, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member