

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM EVANS and U.S. POSTAL SERVICE,
POST OFFICE, East Elmhurst, NY

*Docket No. 98-716; Submitted on the Record;
Issued January 10, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a recurrence of disability causally related to his November 4, 1994 accepted employment injury.

On November 4, 1994 appellant, then a 71-year-old tractor-trailer operator, filed a claim for compensation stated that on that day he fractured his right foot and heel when a bulk mail container (BMC) ran over his legs.

In a medical report dated November 8, 1994, Dr. Charles M. Lombardi, a podiatrist, stated that he had examined appellant on November 7, 1994 and that appellant had sustained a right calcaneal and navicular fracture at work on November 4, 1994. Dr. Lombardi fitted appellant with a short leg cast.

In a medical report dated November 21, 1994, Dr. Lombardi stated that appellant had sustained multiple right foot fractures on November 4, 1994 "with exquisite pain and edema." He stated that appellant was totally disabled beginning November 7, 1994.

In a medical report dated December 9, 1994, Dr. Benzion Benatar, Board-certified in orthopedic surgery, stated that appellant required physical therapy "for left shoulder due to injury sustained on (November 4, 1994) while he was at work." Dr. Benatar also advised that appellant had a fractured right navicular and calcaneus, lumbosacral sprain and a torn rotator cuff.

On January 10, 1995 the Office of Workers' Compensation Programs accepted appellant's claim for fracture of the right calcaneus. On the same date, the Office notified Dr. Benatar that it had authorized "physical therapy two times a week for 8 weeks."¹

In an attending physician's report dated January 5, 1995 and received by the Office on January 20, 1995, Dr. Benatar stated that appellant sustained a lumbar sprain, torn rotator cuff, left shoulder and a fractured navicular and calcaneus on the right foot on November 4, 1994. He stated that appellant was totally disabled from November 4, 1994 and was unable to return to work.

In an undated report received by the Office on January 20, 1995 appellant stated that on November 4, 1994 an unsecured BMC rolled along the floor of the loading dock over 25 feet down hill and "crushed my body, it knocked me down on my face as it passed over my legs pinning me under [the] BMC." Appellant further stated that his "achilles tendons in both legs were cut, multi fractures of right leg, left shoulder torn out, severe back pains, neck and back of my head. Sharp pain. I also have injury to the nerve muscles in my back."

In a medical report dated January 16, 1995 received January 23, 1995, Dr. Benatar stated that he initially treated appellant on November 21, 1994 subsequent to his November 4, 1994 work-related injury. Dr. Benatar noted that appellant related "functionally debilitating lower back pain," and that he had fractured his right foot and ankle and had sustained an injury to his left shoulder. X-rays revealed a fracture in the right calcaneus, navicular and ankle. He also noted that appellant had an injury to the rotator cuff of the left shoulder which "may require up to six to nine months of physical therapy and may possibly require surgical repair."

In a claim for compensation received by the Office on January 26, 1995, appellant claimed wage loss from December 20, 1994 to January 17, 1995. The employing establishment noted that appellant was on continuation of pay from November 5 to December 19, 1994.

In a narrative received by the Office on January 30, 1995, appellant stated that the BMC crashed into his back and that his legs and back were under the cart. His head hit the floor, resulting in severe pain and memory loss. The next day he was aware of multiple fractures, nerve damage to the back and rotator cuff injury.

In a medical report dated December 27, 1994 and received by the Office on January 30, 1995, Dr. Robert Kersh stated that a magnetic resonance imaging (MRI) scan taken that day of appellant's left shoulder revealed hypertrophic changes of the acromioclavicular joint.

In a February 3, 1995 progress note to the file, a nurse consultant noted that appellant related that he had provided an incomplete statement to the Office regarding his November 4, 1994 work-related injury because he was dizzy after the accident. He stated that the BMC²

¹ Although Dr. Benatar requested therapy for appellant's left shoulder, the Office did not accept that condition but appeared to authorize therapy for it. The authorization letter used the claim number for the right calcaneus acceptance.

² Appellant stated at various times that the BMC weighed over 2,000 pounds.

“rolled over his body not just the legs,” that he broke his teeth, hurt his head, shoulders and back and was paralyzed. He noted that he was initially seen by Dr. Lombardi, a podiatrist, who referred him to Dr. Benatar who in turn referred him to Dr. Ronald F. Klinger, a Board-certified neurologist. The nurse advised appellant to have Dr. Benatar submit “a good description of the injuries and how they are related to the accident.”

In a medical report dated February 22, 1995, Dr. Klinger stated that appellant was doing well except for some sticking pains in the arms, legs, chest wall and thorax. Appellant was symptomatic with pain in the neck and back. Physical examination revealed “some concern” regarding “minor weakness in the left upper extremity in grasp.”

In a limited-duty form dated March 7, 1995, Dr. Benatar stated that appellant was unable to perform any duty.

In a medical report dated March 22, 1995, Dr. Klinger stated that he had performed a follow-up neurologic examination on appellant that day and noted “a hint of left-sided weakness and left hyperreflexia.” Dr. Klinger noted that appellant had status post multiple injuries and that he recommended continued conservative treatment including physical therapy and medication.

In an attending physician’s report dated April 6, 1995, Dr. Benatar stated that appellant had contusions, cervical and lumbar sprain, fracture of the calcaneus and rotator cuff sprain. He also noted that appellant would be disabled for at least 90 days. In a limited-duty form dated the same day, Dr. Benatar stated that appellant was unable to perform any duty.

In a statement of accepted facts dated April 17, 1995, the Office stated that it had accepted appellant’s claim for fractured right calcaneus sustained on November 4, 1994, that appellant had been referred to Dr. Benatar, that he had been receiving physical therapy twice a week and that appellant had not returned to work since that time.³

On April 18, 1995 the Office placed appellant on the periodic rolls from February 9 to August 19, 1995, or until he returned to work.

On May 15, 1995 the Office referred appellant’s case along with a statement of accepted facts to Dr. Richard L. Parker, Board-certified in orthopedic surgery, for a second opinion medical evaluation.

In a duty status report dated May 15, 1995 and received by the Office on May 19, 1995, Dr. Benatar stated that appellant could return to limited work. He listed restrictions as standing for no more than two and a half hours a day, walking for no more than 30 minutes a day and limited climbing/pulling and reaching above shoulder activities. In an attending physician’s supplemental report dated the same day Dr. Benatar stated that appellant could return to limited work.

³ The statement of accepted facts did not specify what condition or conditions it had approved for physical therapy.

In a Form CA-8 dated May 18, 1995, appellant claimed wage loss from April 11 to May 18, 1995, noting also that he wanted to work.

In a Form CA-3 dated May 18, 1995, the employing establishment stated that appellant would return to limited duty on May 19, 1995.

In a medical report dated June 5, 1995, Dr. Parker reported that appellant related that he sustained a work-related injury on November 4, 1994 when a BMC rolled over him, resulting in multiple injuries to his back, right knee, right heel and left shoulder. He reported that appellant had pain in the low back without radiation or paresthesias and that he still had pain in the right knee, heel and left shoulder with limited range of motion in the left shoulder. Dr. Parker noted that appellant was doing office work "at the present time." Upon examination he noted left shoulder restricted motion, abduction and forward flexion at 80 degrees, internal and external rotation of 20 degrees with pain but without gross instability. Dr. Parker reported right knee prepatellar effusion, but with full range of motion without instability. He noted a swollen right heel and reported that appellant could dorsiflex about 10 degrees, plantar flex about 20 degrees and eversion/inversion about 10 to 15 degrees on the right. Dr. Parker noted that appellant could bend at the waist, fingertip to floor, straight leg raise was negative and extensor hallucis longus, peroneals, anterior tibialis were noted as intact. He stated that appellant had a moderate, partial disability, but was able to continue working at a sedentary type of position which would require no prolonged standing, walking or climbing stairs.

In a work evaluation form dated June 27, 1995, Dr. Parker reported that appellant should not be on his feet for more than 15 minutes at a time in a 2-hour period, that appellant's limitations were caused by a fracture to the calcaneus and that he has "multiple injuries not included in the statement of accepted facts."

On July 11, 1995 appellant filed a notice of recurrence of disability alleging that on June 29, 1995 disability recurred due to injuries originally sustained on November 4, 1994.⁴ Appellant stated in the section reserved for a description of the recurrence of disability that he "begged the doctor to allow me to come back to clerical duties, but pain would not allow me." Appellant further noted that he had been "in constant pain all over and my legs give out on me without notice," and that he has "the same pain from the same injuries ... it continued.... It got no better and I am still in pain." The employing establishment noted that when appellant returned to work on May 22, 1995 he answered telephones and performed filing work. Appellant stopped work on June 29, 1995.

In a duty status report dated July 12, 1995 and received by the Office on July 17, 1995, Dr. Benatar stated that appellant was totally disabled from work. On August 7, 1995 he stated that appellant could not operate a tractor-trailer, had dizziness and a light headed feeling. In a duty status report dated August 7, 1995, Dr. Benatar stated that appellant was disabled and could not operate a tractor-trailer.

⁴ The Board notes that the date on the form reflecting the date that appellant signed the form reads August 8, 1995. However, the Office received the form on July 12, 1995 and the number 8 indicating the month of August appears to be an altered 7.

By letter dated August 24, 1995, the Office advised appellant that he needed to submit additional information regarding his claim for recurrence of disability including evidence, which showed he could not perform his light or limited-duty position. The Office further required that appellant show that there was a change in the nature and extent of his work-related condition, or a change in the nature and extent of the light-duty requirements.

In a medical report dated July 5, 1995 and received September 5, 1995, Dr. Klinger advised Dr. Benatar that appellant "tried to go back to work but could not function. He was labeled by both you and the compensation doctor as being totally disabled, but [appellant] insisted on trying to return to work. After a few hours he realized that he would not be able to function." Upon examination, he noted that appellant was tentative in his movements, ambulated with a cane and had some "give-way weakness in his shoulders, more so on the left than right." Dr. Klinger opined that appellant now had chronic pain disorder as a result of multiple injuries and was placed on medication.

In a closing report dated August 30, 1995, the nurse consultant noted that appellant returned to work on May 22, 1995 although his "physician of record considers [appellant] unable to work."

In a medical report dated August 16, 1995 and received on September 1, 1995, Dr. Klinger stated that he examined appellant in a follow-up examination and that appellant advised that he was "doing slightly better over all," but was intermittently symptomatic in the left side including the leg and shoulder. Dr. Klinger noted that appellant related dizziness and lightheadedness after a short period of working. He noted an unremarkable physical examination except for "splinting on muscle testing on the left side as a result of pain." Dr. Klinger stated that appellant was "suffering from multi-trauma."

In a report received by the Office on August 31, 1995, the employing establishment stated that appellant "was working inside the office, filing papers."

In an attending physician's report dated September 7, 1995, Dr. Benatar stated that appellant was totally disabled from work as a result of multiple fractures of the right heel and foot, rotator cuff injury and left shoulder injury.

In a decision dated September 26, 1995, the Office denied appellant's claim for recurrence of disability. In an attached memorandum, the Office stated that appellant provided no medical evidence indicating that he could not perform the limited-duty position offered by the employing establishment.

On October 12, 1995 the Office received appellant's request for an oral hearing.

In a medical report dated May 24, 1995 and received by the Office on November 3, 1995, Dr. Klinger stated that he had examined appellant that day and reported that appellant related his attempts to return to work, but that he could not perform the light-duty position that he was offered. Appellant noted that he still had back pain, neck pain and pain in the back of the head. He noted that appellant's neurological condition was unremarkable except for some "give-way"

in the left shoulder as a result of pain. Dr. Klinger noted that appellant was suffering from chronic pain syndrome secondary to multiple injuries.

In a medical report dated November 16, 1995, Dr. Benatar stated that appellant had been under his care since November 1994 when appellant was injured at work. He noted that appellant sustained injuries to his back, both legs and left shoulder and direct trauma to both Achilles tendons, heel cords and lower back as well as a full tear of the rotator cuff. Upon examination appellant was symptomatic with continued problems in the left shoulder with chronic pain and swelling in his right foot and ankle and chronic back syndrome. Dr. Benatar stated that appellant was totally disabled noting also that he attempted to return to work but was unable to do so due to back pain, inability to use his shoulders and basic inability to stand or walk for any extended period of time.

In a medical report dated March 20, 1996, Dr. Benatar stated that appellant was totally disabled and had continuous problems with back pain, inability to use his shoulders and basic inability to use or to stand or to walk for any extended period of time as a result of injuries sustained in his November 4, 1994 work-related injury.

In a medical report dated March 27, 1996, Dr. Klinger stated that he examined appellant on that day and reported findings including diminished grasp in both hands, that appellant noted additional complaints including sticking sensations in his thumbs and feelings that his hands were going to sleep especially at night. He noted that this symptom "may suggest a mild carpal tunnel syndrome."

Appellant testified at the hearing held on April 16, 1996 in New York City. He described the events surrounding his accident on November 4, 1994 and stated that he wanted to return to duty in order to determine whether he could, in fact, work again. He noted that his desire to return to work was opposed by his doctor.

In a medical report dated May 8, 1996, Dr. Klinger stated that appellant had some residual changes in the skin surface of his knees from trauma and discomfort. Neurologically, he stated that there was some decreased effort and decreased motor power as a result of discomfort. Dr. Klinger further stated that appellant was clearly disabled and not back to normal but that he could function on a day-to-day basis.

In a decision issued and finalized on August 2, 1996, the hearing representative affirmed the Office's denial of benefits on the grounds that the medical evidence of record failed to establish that appellant's claimed recurrence of disability was causally related to his work-related injury. The hearing representative noted that none of the medical reports from either Drs. Benatar or Klinger provided a rationalized medical opinion showing causal relationship between appellant's condition and his work-related injury on the grounds that they did not cite an employment factor as a cause nor did they show how an employment factor may have affected appellant's preexisting condition and thus were insufficient to establish a causal relationship.

In a letter received by the Office on September 5, 1996, appellant requested reconsideration. In support of his request, appellant submitted a medical report from Dr. Klinger

dated August 28, 1996, in which he stated that appellant sustained severe injuries on November 4, 1994 and that the injuries included a complete tear of the rotator cuff of the left shoulder, a herniated disc in the lower back and fractures of both calcanei. Dr. Klinger stated that these injuries were permanent and that appellant was totally disabled as a result.

In a medical report dated January 30, 1997, Dr. Klinger stated that he had been treating appellant since January 25, 1995. He reported that on November 4, 1994 appellant was struck in the back by a heavy mail container, knocking him to the ground, causing multiple injuries which rendered him unconscious including severe injuries to the left shoulder and right ankle. Dr. Klinger reported that motor examination revealed mild weakness of the left shoulder girdle and weakness about the right foot; that a follow-up examination in February 1995 demonstrated some intermittent sticking pains in arm, legs, chest wall and thorax and some difficulty in movement in general. He then noted that the March examination was essentially similar to the February examination. Dr. Klinger noted that appellant had attempted to return to work in May 1995, but that he could not function "even inside in a desk job with light duty." He stated that he believed appellant was suffering from a chronic pain syndrome, secondary to multiple injuries. Dr. Klinger further noted appellant's July 5, 1995 visit, commenting that appellant had returned to work even after he had considered appellant disabled. He reported that appellant related that he had pain all over, including headaches, neck pain, back and extremity pain, after he attempted to return to work. Dr. Klinger reported that appellant was tentative in his movements and prescribed medication for chronic pain. In August 1995, he noted appellant was symptomatic with pain in the shoulder and other areas "previously described." Dr. Klinger reported that appellant's October 1995 examination was essentially the same, with a diagnosis of chronic pain syndrome. He next reported seeing appellant in January 1996 with complaints of sleeping problems, shaking arms, difficulty in the lower extremities and generalized weakness. Dr. Klinger noted that in March and May 1996 appellant was seen with essentially similar findings and that in December 1996 appellant was seen with pain in hands, neck, wrist and generalized discomfort. In summary, he stated that appellant was involved in a work-related injury on November 4, 1994 which had developed into a chronic pain syndrome and that appellant was totally disabled as a result. Dr. Klinger noted that appellant's recurrent state was a result of his returning to work in June 1995, which was against the wishes of his doctors.

In a medical report dated February 12, 1997 and received by the Office on March 11, 1997, Dr. Klinger stated that he had examined appellant on that day and reported findings. Dr. Klinger stated that appellant made generalized complaints of pain, headaches and upper neck pain as well as mid-back and low-back pain. Appellant related pain when he would lie on his back and rib cage pain. He also noted trouble sleeping. Dr. Klinger again determined that appellant had chronic pain syndrome as a result of injuries sustained on November 4, 1994.

On July 16, 1997 appellant, through counsel, requested reconsideration. Appellant also requested the Office to accept additional medical conditions as having been caused by the November 4, 1994 work-related accident. In support of his request, appellant submitted a March 18, 1997 medical report from Dr. Benatar. In that report, he related appellant's history of injury stating that appellant injured both ankles, left shoulder and lower and upper back on November 4, 1994. Dr. Benatar noted that he initially treated appellant on November 21, 1994 for continuous complaints of pain in the left shoulder, both ankles and lower and upper back. On

examination, Dr. Benatar reported that appellant demonstrated restricted range of motion of the left shoulder, findings consistent with a subacromial impingement syndrome and a possible torn rotator cuff. He noted a December 1994 MRI scan revealed hypertrophic changes in the acromioclavicular joint and that appellant had impingement of the rotator cuff at that time due to the hypertrophic changes occasioned by the November 4, 1994 incident. Dr. Benatar further noted that he allowed appellant to return to work although "it was my opinion then that the patient would not be able to return to work, even in a modified position in the [employing establishment]." He stated that appellant had continued complaints of pain "a month later." Dr. Benatar stated that authorization for a spinal MRI scan was never received and that it was his opinion that appellant had a herniated disc not documented by a proper examination. He added that appellant's final diagnosis was fracture of the right calcaneus, bruises and contusions of both achilles with chronic achilles tendinitis in both feet, a low back syndrome with a possible herniated disc, a cervical sprain and an impingement in the right shoulder. Dr. Benatar further reported that appellant also had fractured teeth and a concussion syndrome. He added that appellant was no longer able to lift, carry, or push a hamper, use his arms repetitively, nor able to sit or stand for any length of time and that appellant "had definite disability for the work required in the [employing establishment]." Dr. Benatar noted that as appellant stopped work in June 1995, "after only a month's worth of work of return to light work, that disability was related to the exacerbation of symptoms from his original neck and back and the injury to both heels, which the patient suffered in the accident of November 4, 1994." He added that appellant's disability was directly related to the November 4, 1994, work-related injury and that appellant should not have attempted to return to work in May 1995 because he was "not able to return to the active workplace." Dr. Benatar concluded that appellant was disabled and had been disabled from the work-related injury of November 4, 1994.

On October 3, 1997 the Office denied appellant's request for reconsideration on the grounds that the medical evidence failed to establish that appellant sustained a recurrence of disability based on the accepted right fractured calcaneus injury. The Office noted that appellant's counsel requested that the claim be expanded to include additional injuries sustained on November 4, 1994 and stated that a final decision regarding additional injury-related conditions had not been issued and that the case was not in posture for reconsideration with respect to whether conditions other than the accepted right fractured calcaneus were causally related to the injury and whether said other conditions caused appellant to be disabled. The Office further stated that it was required to conduct a limited review of the file when reconsideration was requested and the request to expand the claim to include additional medical conditions required additional development on the part of the Office.

In order to establish a recurrence of disability, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his recurrence of disability commencing on or about June 29, 1995 and his November 4, 1994 employment injury.⁵ 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

⁵ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁶

In this case, appellant submitted multiple reports from Dr. Benatar in support of his claim for recurrence of disability. In reports dated July 12, August 7 and September 7, 1995, Dr. Benatar stated that appellant was totally disabled from work. He noted in his November 16, 1995 medical report and in his March 20, 1996 report that appellant had chronic pain and swelling in his right ankle, tenderness in both achilles tendons and that appellant was totally disabled.

In a March 18, 1997 medical report, Dr. Benatar stated:

“When he stopped working in June of 1995, after only a month’s worth of return to light work, that disability was related to an exacerbation of the symptoms from his original neck and back and the injury to both heels which the [appellant] suffered in the accident of November 4, 1994.

“It is my opinion that the disability is directly related to the accident of November 4, 1994. It is also my opinion that the [appellant] was foolish in attempting to return to work in May of 1995 because he was capable of standing and walking a little more, but he was certainly not able to return to the active work required of the [employing establishment]....”

The Board finds that appellant has sufficient evidence to establish that he has sustained a recurrence of disability casually related to the single accepted condition of “fractured right calcaneus.” In this connection, the Office accepted the claim and approved physical therapy on January 10, 1995 and requested a report regarding diagnosis, findings, etc. In a report dated January 5, 1995, Dr. Benatar diagnosed lumbar sprain, torn rotator cuff of left shoulder and fractured navicular calcaneus right. He stated these conditions were caused by the injury. In a further report dated January 16, 1995, Dr. Benatar stated:

“As you requested, this letter is to explain [appellant’s] need for physical therapy intervention. [Appellant] is a U.S. Postal service employee who was treated by this office for injuries he sustained at work on November 4, 1994. The patient was first treated in an emergency room hospital in the borough of Queens, and subsequently sought care in this office because of his local residence.

“Upon initial examination in this office on November 21, 1994, this patient complained of functionally debilitating lower back pain. He also had sustained fractures of his right foot and ankle as well as an injury to his left shoulder in the fall. X-rays showed a fracture in the navicular and calcaneous in his right foot and ankle. Clinically the patient has an injury to the rotator cuff of his left shoulder.

⁶ See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

"The patient was casted in the emergency room in Queens, and the cast was continued in this Office until the fracture was healed. Mr. Evens has been subsequently stated on a physical therapy program. Injuries to calcaneous, navicular bone and especially injuries to the lower back and rotator cuff require physical therapy as part of their care. Indeed the rotator cuff injury may require as much as six to nine months of physical therapy and possibly may require surgical repair of the rotator cuff."

The Board finds that the multiple medical reports of Dr. Benatar dating from July 1995 through March 18, 1997 coupled with the medical reports of Dr. Klinger dating from August 1995 through February 12, 1997 are sufficient to establish that appellant has sustained a recurrence of disability due to his employment-related injury of November 4, 1994.⁷

The decisions of the Office of Workers' Compensation Programs dated October 3, 1997 and August 2, 1996 are hereby reversed.

Dated, Washington, D.C.
January 10, 2000

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ The Board notes that subsequent to the Office's October 3, 1997 decision, appellant submitted additional evidence. The Board has no jurisdiction to review the evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).