

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS HINKEN and U.S. POSTAL SERVICE,
POST OFFICE, Kansas City, MO

*Docket No. 98-895; Submitted on the Record;
Issued January 28, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established a recurrence of disability commencing September 8, 1993 causally related to his October 3, 1992 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied authorization for back surgery.

In the present case, appellant filed a claim for injuries sustained in a motor vehicle accident while in the performance of duty on October 3, 1992. The Office accepted a lumbar strain and left leg strain. The record indicates that appellant returned to regular duty in December 1992, and filed a claim for recurrence of disability commencing February 3, 1993. He returned to light duty and then regular duty in May 1993. Appellant filed a claim for a traumatic injury on June 21, 1993, and was off work through June 28, 1993.¹

On September 17, 1993 appellant filed a claim for recurrence of disability (Form CA-2a). He indicated that the date of the recurrence was September 8, 1993. Appellant returned to work at four hours per day on November 1, 1993. On April 25, 1994 he underwent back surgery.

By decision dated December 20, 1993, the Office denied appellant's claim for a recurrence of disability as of September 8, 1993. An Office hearing representative, by decision dated October 17, 1994, remanded the case for further development. In a decision dated January 21, 1997, the Office determined that appellant had not established a recurrence of disability commencing September 8, 1993, nor had he established that the back surgery in April 1994 was causally related to the employment injury. By decision dated November 14, 1997, the Office denied modification of its prior decision.

The Board has reviewed the record and finds that the Office properly denied appellant's claim for a recurrence of disability commencing September 8, 1993.

¹ The Office denied this claim by decision dated December 17, 1993.

A person 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 he claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish 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 reasoning.²

In the present case, the Office referred appellant to Dr. Satish C. Bansal, an orthopedic surgeon. In a report dated July 11, 1996, Dr. Bansal provided a history, results of examination and reviewed the medical evidence of record and stated in pertinent part:

“There is no relationship between the 2nd of October 1992 injury diagnosed as a lumbar strain with claimant’s condition in September of 1993 and afterwards. The medical rationale related with my opinion in earlier statement is because [appellant] has had lumbar spondylosis, did not have significant or constant lower extremity symptoms for a long, long time after the 2nd of October 1992 accident, and did not have abnormalities on EMG [electromyogram] and no disc herniation on CT [computerized tomography] scan, which were done earlier than [the] MRI [magnetic resonance imaging]. The claimant also had shown improvement with restriction in activities, as well as physical therapy. Sometimes, he had more pain in left leg than the right leg and visa-versa. He has had history of left leg symptoms before the accident.”³

Dr. Bansal thus provided a reasoned medical opinion that appellant did not have a disabling condition commencing in September 1993 causally related to the employment injury. On the other hand, appellant’s attending physicians have not provided a reasoned opinion with respect to appellant’s condition on September 8, 1993 or disability commencing September 8, 1993. The record contains a brief note dated September 17, 1993 from Dr. Damon Mountford, a family practitioner, indicating that appellant had a lumbar strain with radicular symptoms, and should be off work until further evaluation. Dr. Mountford did not discuss causal relationship with the employment injury. In a duty status report (Form CA-17), Dr. John Yost, an orthopedic surgeon, indicated that appellant was examined on September 23, 1993 and was totally disabled, without providing further explanation. A treatment note dated September 23, 1993 from Dr. Yost diagnosed lumbar radiculopathy, without discussing causal relationship with appellant’s federal employment. In a report dated December 21, 1993, Dr. Robert P. Bruce, an orthopedic surgeon, noted that appellant was seen in September 1993 with a recurrence of radicular pain on the right side which seemed to have increased and was exacerbated with work activity. Dr. Bruce did not specifically discuss disability commencing September 8, 1993, and his reference to exacerbation by work activity is not fully explained.⁴

² *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

³ Dr. Bansal’s report appears to contain typographical errors in referring to the date of injury as October 2, 1992, instead of October 3, 1992.

⁴ To the extent that appellant’s light-duty job was alleged to have aggravated his condition, this would constitute

In the absence of a reasoned medical opinion that appellant had an employment-related condition as of September 8, 1993, and an employment-related disability commencing September 17, 1993, the Board finds that the weight of the evidence rests with Dr. Bansal.

The Board further finds that the Office properly denied authorization for back surgery on April 25, 1994.

Section 8103(a) of the Federal Employees' Compensation Act provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Office considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.⁵ The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office therefore has broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.⁶

In this case, Dr. Bruce diagnosed a right-sided L5-S1 herniated disc in his December 21, 1993 report, and indicated that appellant may require disc excision surgery in the future. The Board notes that the Office has not accepted a herniated disc as causally related to the October 3, 1992 employment injury. Dr. Bruce stated that herniated disc "was most likely caused by his automobile accident and/or his employment at the [employing establishment]," without further explanation. Another attending physician, Dr. Rebecca L. Turner, a family practitioner, stated in a June 29, 1994 report that "it is rare that this kind of injury [herniated lumbar disc] is seen as a result of the type of motor vehicle accident in which [appellant] was involved.... Job activities certainly exacerbated his back problems at the very least." To the extent that the physicians are implicating appellant's job activities, this would constitute a new claim for occupational injury that is not before the Board. There is no probative evidence establishing causal relationship between a herniated disc and the October 3, 1992 employment injury.⁷

a claim for a new injury, rather than a recurrence of disability with respect to the October 3, 1992 injury. A recurrence of disability includes a work stoppage caused by a spontaneous material change in the employment-related condition without an intervening injury. If the disability results from new exposure to work factors, an appropriate new claim should be filed; *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (January 1995).

⁵ 5 U.S.C. § 8103(a).

⁶ *Francis H. Smith*, 46 ECAB 392 (1995); *Daniel J. Perea*, 42 ECAB 214 (1990).

⁷ It is axiomatic that the Office has no obligation to authorize surgery for a condition not related to employment. *Sophie Maxim (Edward Gerard Maxim)*, 10 ECAB 61 (1958).

In an April 11, 1994 report, Dr. Bruce noted that appellant had a preexisting back condition, opining that appellant's condition was exacerbated by the October 3, 1992 injury; "Based on the records that are available to me at this time, I do believe this was an exacerbation of a preexisting condition; however, if it were not for the accident of October 1992, I feel that it is less likely that he would require operative treatment." This report is of limited probative value in that Dr. Bruce does not clearly explain how the October 3, 1992 employment contributed to the need for surgery.

In a report dated October 10, 1997, Dr. John A. Pazell, an orthopedic surgeon, provided results on examination and reviewed medical records. Dr. Pazell concluded that: "[Appellant] was injured on October 3, 1992. This caused an injury in his back which led to surgery. This injury was the cause of his disabling condition. There is nothing else in his history to deny this." Although Dr. Pazell stated that his conclusion was based on his review of appellant's history and medical records, he does not discuss appellant's preexisting back condition, nor does he explain his opinion on causal relationship between the back surgery and the employment injury.

The second opinion referral physician, Dr. Bansal, stated in his July 11, 1996 report that the April 1994 surgery was not related to the October 3, 1992 injury. He indicated that his reason for this opinion was described in his discussion of the relationship between appellant's condition in September 1993 and the employment injury, which is quoted above.

The Board accordingly finds that the evidence does not establish that the April 1994 back surgery was causally related to the employment injury, and therefore the Office did not abuse its discretion in denying authorization for the surgery.

The decisions of the Office of Workers' Compensation Programs dated November 14 and January 21, 1997 are affirmed.

Dated, Washington, D.C.
January 28, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member