

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BILLY J. MATHIS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Dallas, TX

*Docket No. 98-1006; Submitted on the Record;
Issued January 6, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant sustained a recurrence of disability beginning April 15, 1996, causally related to his October 12, 1995 employment injury.

On October 13, 1995 appellant, then a 43-year-old wheelchair repairman, filed a traumatic injury claim for compensation benefits alleging that, on October 12, 1995, while lifting a patient out of his wheelchair so that he could repair the wheelchair, he sustained injuries to his lower right back. The Office of Workers' Compensation Programs accepted that appellant sustained a cervical and lumbar strain on that date.

In support of his initial claim, appellant submitted progress notes from Dr. E.P. Hornyak, a Board-certified internist employed by the Employee Health Unit at the employing establishment. These notes indicate that appellant first sought treatment on October 13, 1995 at which time he indicated that he injured his back when helping to lift a patient the day before. Dr. Hornyak diagnosed appellant as having a mild lumbar strain and he did not place appellant on restrictions at this time. At his follow-up appointment on October 18, 1995, Dr. Hornyak diagnosed cervical and lumbar strains. He limited appellant to lifting no more than 15 pounds. Appellant also filed monthly duty status reports from October 18, 1995 to July 8, 1996, Form CA-17, indicating that after November 20, 1995 he was prohibited by Dr. Hornyak from lifting or carrying more than 10 pounds. Appellant continued to complain to Dr. Hornyak of neck and back pain but by March 8, 1996 the doctor reported that the pain had lessened.

Electromyogram/nerve conduction studies were performed on appellant on November 24, 1995 and the doctor, whose signature is illegible, found that there was no evidence of right C5-T1 radiculopathy, right ulnar tunnel or right carpal tunnel syndrome. The doctor also noted a decrease in range of motion in the cervical spine in extension with pain suggestive of facet/cervical syndrome.

The record reveals that the Office accepted appellant's claim for cervical and lumbar strain.

On September 15, 1997 appellant filed a notice of recurrence, Form CA-2a, commencing April 15, 1996. He alleged that he did not fully recover from the October 12, 1995 employment injury. In completing the claim form, appellant's supervisor indicated that appellant did not stop working following the alleged recurrence of disability and that he continued to work in a light-duty capacity with restrictions. The employing establishment controverted the alleged recurrence. The employing establishment further explained its objections by letter dated September 30, 1997, wherein it noted various inaccuracies, including the fact that its records indicate that appellant did not work the date of the alleged recurrence April 15, 1996.¹

In support of his recurrence claim, appellant filed progress notes from the Employee Health Unit. Many of these records preceded the date of the accepted October 12, 1995 work-related injury. Although these notes are largely illegible, they appear to indicate that appellant had a history of complaints of back and neck pain prior to the October 12, 1995 employment injury. Specific notations of lower back pain are made in the clinic notes for January 7 and July 25, 1991 and consistent complaints of back pain are noted from August 6 through August 21, 1992.²

Dr. Luta B. Roberts, a Board-certified radiologist, read an October 17, 1995 cervical spine x-ray as showing a normal cervical spine.

Dr. Jan T. Diehl, a radiologist, read a January 31, 1996 magnetic resonance imaging as showing "slight bony narrowing of the left neural foramina of C3-4 and C4-5, but otherwise no evidence of canal stenosis or disc protrusion at any level."

Beginning April 2, 1996 Dr. Hornyak's medical progress notes indicate that appellant was doing much better. He reported on May 7, 1996 that appellant's cervical strain was resolving. On June 7, 1996 Dr. Hornyak noted that appellant continued to do well and that the cervical strain was "almost" completely resolved. He continued appellant on restrictions. On October 23, 1996 Dr. Hornyak noted that he tried lifting the restrictions but appellant had some intermittent low back pain that responded well to Motrin and heat. Dr. Hornyak's note dated March 28, 1997 indicates that appellant continued to experience pain when lifting a wheelchair in a repetitive manner; he diagnosed cervical and lumbar strains and continued appellant on restrictions. Dr. Hornyak's April 28, 1997 notes indicated that appellant complained of pain mainly in the right paraspinals of the lumbar spine region. On May 21, 1997 Dr. Hornyak noted "exacerbation of low back pain since last week resolving." The last progress note of Dr. Hornyak dated September 12, 1997 indicates that, after extensive work-up, appellant was still complaining of periods of low back pain that is exacerbated by lifting over 10 pounds, bending and pushing.

¹ Pursuant to the records of the employing establishment, on April 15, 1996 appellant took five and one-half hours of sick leave and two and one-half hours of annual leave.

² The record reveals that appellant sustained a back injury at work on the loading docks on March 10, 1990. He filed a claim with the Office to which the Office assigned File No. A16-0172246.

Frequent duty status reports from Dr. Hornyak from August 23, 1996 through September 12, 1997 indicate continuing restrictions limiting appellant from lifting greater than 10 pounds.

By letter dated October 10, 1997, the Office requested that appellant submit additional factual and medical evidence supportive of his claim. Specifically, the Office requested that appellant submit a description of the employment factors to which he attributes the alleged recurrence of disability, a description of his physical conditions from his return to work to date and a statement as to why he believed his condition was employment related. The Office noted that, although appellant submitted treatment notes relative to his back, it was necessary for him to submit a rationalized medical report explaining a causal relationship between his claimed condition and the employment injury. Appellant was allotted 30 days to respond. Appellant did not submit any additional evidence within the time allotted.

By decision dated November 12, 1997, the Office denied appellant's claim, finding that appellant failed to establish that the claimed recurrence was causally related to the employment injury of October 12, 1995. Specifically, the Office noted that the evidence was insufficient to establish that the claimed recurrence was causally related to the accepted injury because no explanation of the causal relationship between the current condition and the injury of October 12, 1995 was given.

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained a recurrence of disability on April 15, 1996 causally related to his October 12, 1995 employment injury.

Where appellant claims a recurrence of disability due to an accepted work-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.³ As part of this burden, appellant must 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 employment factors and supports the conclusion with sound medical reasoning.⁴

The Office accepted that appellant sustained cervical and lumbar strain on October 12, 1995 and appellant has been on light duty since that time, with restrictions that he is not to lift over 10 pounds. Although appellant contends that he suffered a recurrence of this injury on April 15, 1996, he has not provided the necessary supporting documentation. Despite the Office's instructions on the evidence necessary to support this claim, appellant did not submit rationalized medical opinion evidence showing that the claimed recurrence was related to his employment injury.

³ *Carmen Gould*, 50 ECAB___ (Docket No. 97-2225, issued August 3, 1999); *Jose Hernandez*, 47 ECAB 288, 293-94 (1996).

⁴ *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996).

With regard to the evidence submitted, much of the evidence including the clinic notes of back pain from January 7, 1991 through August 21, 1992, predated the October 12, 1995 employment injury. Dr. Hornyak's notes from May 7, 1996 indicate that appellant's condition was "resolving," not recurring. In this regard, on October 23, 1996 Dr. Hornyak noted that he attempted to lift the restrictions and that appellant had some intermittent pain that responded well to Motrin. However, this note does not constitute competent medical evidence as it is devoid of a history of the injury and medical treatment, specific findings on physical, radiographic evidence, a definitive diagnosis and a rationalized medical opinion relating the diagnosed condition to the October 12, 1995 employment injury.⁵ For the same reasons, Dr. Hornyak's subsequent notes dated March 28 and April 28, 1997 also fail to establish a causal relationship by competent medical evidence. Although these notes indicate that appellant continued to experience pain suffered from cervical and lumbar strains and noted that appellant was still on lifting restrictions, they fail to state the reason for any recurrence. By note dated May 21, 1997, over one year after the alleged recurrence, Dr. Hornyak noted "exacerbation of low back pain since last week resolving" but provided no rationale indicating why appellant continued to suffer from an injury occurring 18 months prior, nor that the restrictions were attributable to such. Dr. Hornyak's final medical note dated September 12, 1997, indicates that after extensive work-up, appellant was still complaining of periods of low back pain that was exacerbated by lifting over 10 pounds bending and pushing, but again, makes no statement regarding causal relationship or provides any medical rationale in support thereof. Accordingly, none of the progress notes constitute a rationalized medical opinion linking the alleged recurrence to the October 12, 1995 injury.

The Board has long held that medical opinions not containing rationale or causal relation are entitled to little probative value and are generally insufficient to meet appellant's burden of proof.⁶ As appellant has not submitted rationalized medical evidence based upon a complete and accurate background establishing causal relationship, the Board finds that appellant has failed to meet his burden of proof in establishing that he sustained a recurrence of disability on April 15, 1996 causally related to his October 12, 1995 accepted injury.

⁵ See *Barbara J. Williams*, 40 ECAB 649, 656 (1989).

⁶ *Carmen Gould*, *supra* note 2; *Carolyn F. Allen*, 47 ECAB 249 (1995).

The November 12, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
January 6, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member