U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WAYNE E. MOODY and DEPARTMENT OF THE ARMY, LETTERKENNY ARMY DEPOT, Chambersburg, PA

Docket No. 99-167; Submitted on the Record;
Issued July 17, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant established that his medical condition on or about October 6, 1997 was causally related to his November 18, 1994 work-related injury.

On December 5, 1994 appellant, then a 43-year-old heavy mobile equipment mechanic, filed a claim for traumatic injury alleging that on November 18, 1994 he injured his back while in the performance of duty.[1]

In a medical report dated December 5, 1994, Dr. Vasantha A.R. Kumar, Board-certified in neurological surgery, stated that appellant related prior episodes of back pain which lasted for a day or two. Upon examination, he noted that appellant's lumbar spine movement was restricted in all directions, especially forward flexion. Straight leg raising was normal up to 80 degrees and he did not notice any specific motor weakness in any muscle group. Dr. Kumar stated that appellant's sensations were intact, knee jerks were one plus and equal, plantars were two plus and equal. He noted a negative Babinsky reflex, and stated that the remaining neurological examination was unremarkable. Dr. Kumar stated that x-rays revealed spondylolysis of L5 with no listhesis present. He noted the need to rule out a "midline disc problem because of the changes we see on the x-rays associated with some degenerative changes and spondylolysis" and would obtain a magnetic resonance imaging (MRI) scan to evaluate appellant's disc status "so that he can return to work with no major restrictions if the disc should be normal." Dr. Kumar then noted a diagnosis of acute lumbosacral sprain.

In a medical report dated December 19, 1994, Dr. Kumar stated that appellant "basically has some degenerative disease at L5-S1, very minimal spondylolisthesis and a bulging disc in this location. My feeling is that this is a chronic problem and he has had enough rest to recover from the acute attack that he has had and he should return to limited duty to keep himself active." In a medical report dated February 13, 1995, Dr. Kumar stated that on the basis of a

[1] Appellant referred to his position as a mechanic's helper.

follow-up evaluation that day appellant noted only occasional back pain, had no major complaints, no leg pain and had regained full range of motion. He stated that appellant "should live with occasional discomfort and return to full duty with no restrictions." Dr. Kumar then released appellant to full duty.

On January 29, 1996 the Office accepted appellant's claim for lumbosacral sprain.

In a medical report dated November 7, 1996, Dr. Kumar related that appellant had continued to work since February 1995, the date of his last examination, but that appellant now related that the pain was too severe to continue to work, noting subjective complaints of pain "mostly in the back, with some radiation down the leg." Upon examination he noted that appellant's straight leg raising was to about 60 degrees, but noted no definite motor weakness. Upon review of appellant's x-rays and MRI scans, he noted that appellant had spondylolysis of L5 and Grade I listhesis of L5 on S1. He also noted disc degeneration at L4-5 and L5-S1, and further noted that L5-S1 "seems to be herniated and protruding back towards the foramen area." Dr. Kumar recommended discectomy and fusion to include L5-S1 and L4-5 and referred appellant to Dr. Shabbar Hussain for surgery.

On October 8, 1997 appellant filed a claim for a recurrence of disability alleging that his recurrence occurred on October 6, 1997 consisting of severe lower back pain extending down his left leg.

In a medical report dated October 8, 1997, Dr. Hussain, Board-certified in orthopedic surgery, stated that upon examination appellant had herniated nucleus pulposus (HNP) with spondylolysis and Grade I listhesis. He recommended nerve conduction studies. On that same day, Dr. Hussain placed appellant in a total disability status until further notice as a result of his HNP.[2] Also on that day, appellant filed two CA-8 claims for lost wages from October 6 to 17, 1997 and October 20 to 31, 1997. On October 10, 1997 appellant accepted the employing establishment's offer of light duty as soon as he was able to perform such work.

In a medical report dated October 13, 1997, Dr. Hussain stated that appellant had subjective complaints regarding pain to the lower back radiating to the left leg and noted that appellant "has been treated with other nonoperative modalities with no improvement. [Appellant] was even seeing a neurosurgeon." Upon examination Dr. Hussain noted decreased sensation at L5-S1 and decreased dorsiflexion and ankle jerk. He further noted a positve electromyography (EMG) for L5 radiculopathy. Dr. Hussain further noted that a recent MRI scan revealed HNP at L4-5 with a Grade I spinal listhesis at L5-S1. He requested authorization for surgical intervention.

On October 23, 1997 the Office requested Dr. Seymour Shlomchik, Board-certified in orthopedic surgery, to determine whether Dr. Hussain's request for surgery was causally related to appellant's work-related injury.

[2] The record does not explain why appellant did not see Dr. Hussian until October 1997, a year after Dr. Kumar noted his intention to refer appellant to the doctor "to see if he could help us out in the fusion aspect of surgery."

In a medical report dated November 4, 1997, Dr. Shlomchik noted a familiarity with appellant's history of injury, including appellant's subjective complaints of intermittent back pain since 1991, reviewed the statement of accepted facts and appellant's medical records. He concluded that appellant had "significant preexisting pathology in lumbar spine including degenerative disc disease and spondylosis at L5 and spondylolisthesis." However, Dr. Shlomchik stated that appellant's work-related injury of November 1994 "could not have produced or aggravated the underlying pathology to thereby require surgical treatment. The pathology demonstrated in the MRI scan of December 8, 1994 clearly indicates the chronicity of this problem. This pathology preexisted and certainly is progressive in nature." He then questioned the need for surgery because of the lack of medical evidence regarding nerve root pressure as revealed by the MRI scan nor any neurological findings by Dr. Kumar. Dr. Shlomchik further noted that the MRI scan showed "slight posterior displacement of the left S-1 nerve root" which would "negate the EMG finding of an L5 radiculopathy."

On December 5, 1997 the Office referred appellant, a copy of his medical records and a statement of accepted facts to Dr. John S. Rychak, Board-certified in orthopedic surgery, for a second opinion regarding whether the conditions and complaints of appellant were attributable to his work-related injury and, if so, "whether the proposed surgery is appropriate for the effects of the work injury."

On November 20 and 28, 1997 and December 14 and 26, 1997, appellant filed CA-8 claims for lost wages from November 3 to 14, 1997, November 17 to 28, 1997, December 1 to 12, 1997, and December 15 to 26, 1997.)

In a medical report dated November 26, 1997, Dr. Hussain released appellant to light duty effective December 1, 1997.

In a medical report dated October 9, 1997 and received by the Office on January 14, 1998, Dr. Jay Jung Cho, Board-certified in physical medicine and rehabilitation, noted that appellant's nerve conduction studies conducted on that date revealed acute radiculopathy in left L5 nerve root and chronic radiculopathy in right L5 nerve root.

In a report dated January 13, 1998, Dr. Rychak stated that he was familiar with appellant's history of injury and evaluated him on that day. He stated that he was aware of appellant's 1994 MRI scan, his brief trial of physical therapy and motrin prescription and noted that there has not been a significant amount of work lost in the last year or two and that appellant appeared to be managing "fairly well." Dr. Rychak noted that appellant stated that his current pain had not changed in several years and can "go several days at a clip and have no discomfort, and then other times [appellant] can have difficulty simply getting out bed in the morning." He noted that the MRI scan revealed degenerative disc disease at L4-5 and the L5-S1 levels and minimal spondylolisthesis Grade 1 of L5 and S1. Dr. Rychak also noted that the MRI scan revealed a small posterior disc at S1 which did not appear to cause neural compromise, "nor does it cause any direct effect on the lumbar sac." He further noted that if the EMG revealed L5 radiculopathy as reported by Dr. Shlomchik, then it was unlikely to be secondary to the small nerve root as revealed by the 3-year-old MRI scan and therefore was an unlikely candidate for surgical compression and fusion. Dr. Rychak then stated that appellant related that he has had back pain which was relieved when he stands up and walks around. He also noted appellant's

history of medical treatment noting that it was almost a year after he had last seen Dr. Kumar that he was examined by Dr. Hussian. Upon review of his medical treatment history, he noted that appellant had not had an epidural, bracing or any other diagnostic test other then the 1994 MRI scan. Dr. Rychak stated that appellant appeared to be in no distress and who sat well and comfortably throughout the examination. He did note, however, that "[w]ith hypertension of his lumbar spine, he does have increased pain at the lumbosacral junction." Dr. Rychak noted that appellant's lateral bending and rotation were symptomatic, that he had no sciatic notch tenderness, that his straight leg raising was negative and that his deep tendon reflexes were normal, diminished at the ankles equally and bilaterally. He further noted some S1 dermatome involvement but no vascular impairment of his feet. Dr. Rychak again noted review of appellant's x-rays, noting mild degenerative discs at L4-5 and L5-S1 with minimal grade I spondylolisthesis. He then stated that appellant had had complaints "that for the most part antedate his alleged injury of November 1994. I am certain that he had an aggravation of his ongoing condition at that point in that the degenerative changes and the small disc are noted at the S5 level." Dr. Rychak added that appellant had managed well with his condition but had not yet had an adequate trial of conservative measures including bracing, epidural steroid injections or increased studies at the L5-S1 levels. He then recommended against surgical intervention at that time.

In a supplemental medical report dated March 24, 1998, Dr. Rychak stated that appellant had an aggravation of a preexisting condition in November 1994 which had resolved by the time of the report. He added that "the changes in [appellant's] back are of long-standing nature and are not the result of an isolated event in November 1994" and that "an event in 1994 … aggravated his ongoing back condition but … the results of that aggravation have resolved and what he is left with is his ongoing problem that is related to the mechanical instability and the degenerative spondylosis of his lumbar spine." Dr. Rychak added that it may be necessary to perform surgery at some point but the surgery would not be the "direct result of a lifting event that occurred in 1994. This is the result of a gradual degenerative process which is ongoing over several years."

In a decision dated April 9, 1998, the Office denied appellant's claim for recurrence of disability on the grounds that the medical evidence failed to establish that appellant's condition was causally related to his work-related injury.[3]

The Board finds that appellant has not met his burden of proof in establishing that his medical condition on and after October 6, 1997 is causally related to his work-related November 18, 1994 lumbosacral sprain.

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. This burden includes the necessity of furnishing medical evidence

[3] The Board notes that the Office stated in the background section of the decision that appellant, after 14 months of light duty, was released to full duty on February 13, 1995. Appellant was released to full duty within three months from the date of injury.

from a qualified 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.[4]

In this case, Dr. Hussian stated that appellant's lower back complaints were causally related to his November 1994 work-related injury. The Office's consultant, Dr. Shlomchik, stated that appellant's condition was a manifestation of a low back condition that preexisted his November 1994 work-related injury. The Office therefore referred appellant to Dr. Rychak as a second opinion physician to determine whether appellant's condition was related to his November 1994 work-related injury.[5]

In Dr. Rychak's report he noted that appellant's 1994 MRI scan did not reveal any neural compromise, that appellant had been treated sporadically since his November 1994 incident, that he had lost very little work since the injury, that conservative measures such as bracing and epidural steroid injections had yet to be used and that appellant had a history of preexisting lower back problems. In a supplemental report, Dr. Rychak stated that appellant's November 1994 injury was an aggravation of his preexisting pathology, that given his ability to work since then indicates that continuing symptoms are related to the preexisting pathology and not the November 1994 injury.[6] He noted that appellant's condition had been stable for several years, that he could work for several days without discomfort, that standing up and walking around was enough to relive his condition and that he had sought medical treatment only intermittently since his November 1994 incident. Dr. Raychak further noted that appellant's physical examination was essentially unremarkable, save for some increased pain upon hyperextention of his lumbar spine and returning to a straight position after bending down. He noted that the diagnostic tests demonstrated mild disc degeneration at L4-5 and L5-S1 which were manifestations "for the most part" of a preexisting lower back condition. Given the absence of a rationalized medical opinion from Dr. Hussian establishing a causal relationship between appellant's condition and the work-related injury and Dr. Rychak's well-reasoned opinion based on a review of the records and an evaluation of appellant, the Board finds that appellant has not submitted the necessary rationalized medical evidence to support his claim of recurrence of disability and thus has failed to establish that his current condition is causally related to his work-related injury.

[4] *Carolyn F. Allen*, 47 ECAB 240 (1995), *Jose Hernandez*, 47 ECAB 288 (1996); *Alfredo Rodriguez*, 47 ECAB 437 (1996).

[5] The Board notes that although Dr. Rychak was a second opinion physician, the Office stated in its decision that it referred appellant to Dr. Rychak "[T]o resolve the conflict" between Drs. Hussian and Shlomchik. The record, however, notes that the Office's referral to Dr. Rychak was in the capacity as a second opinion physician.

[6] The Board notes that Dr. Rychak did not have the benefit of appellant's most recent EMG results but that his analysis of appellant's condition outweighed the opinion of Dr. Hussian.

The April 9, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
July 17, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member