

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRENCH A. CLENDENIN and TENNESSEE VALLEY AUTHORITY,
WATTS BAR NUCLEAR POWER PLANT, Chattanooga, TN

*Docket No. 98-2497; Submitted on the Record;
Issued June 13, 2000*

DECISION and ORDER

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

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on and after August 24, 1995 causally related to his April 8, 1994 employment injury.

In this case, the Office of Workers' Compensation Programs accepted appellant's claim of his April 8, 1994 injuries for lumbar and cervical strains. He stopped work and appropriate compensation was paid. On January 23, 1995 appellant filed for a recurrence of disability. He was terminated from the employing establishment in July 1995. The record reflects that appellant was approved for compensation from July 18 through August 23, 1995. He is claiming compensation from August 25, 1995 onward.

In a medical report of March 13, 1995, Dr. Scott Hodges, an orthopedic surgeon, provided the results of his examination and assessed a minimal to mild cervical spondylosis and mild to moderate lumbar spondylosis. He stated that he did not suspect there was a significant organic cause for appellant's pain as the positive Waddell's signs along with appellant's overall reaction to examination with pain seemed to be significantly out of proportion to physical findings. Dr. Hodges noted that appellant had some normal aging changes in the L-spine as the result of the previous surgery as well as the natural history of disc degeneration. He noted that he was not impressed with the L4-5 right-sided disc protrusion as there was only a mild bulging and it did not correlate with appellant's physical findings, although his findings were altered by his overall pain reaction. Dr. Hodges stated that there were no surgically treatable abnormalities and opined that appellant could continue with his normal job. In an April 17, 1995 letter, he could not provide a definite opinion as to whether appellant continued to experience residuals from the April 8, 1994 work injury as appellant had some preexisting organic conditions and an exaggerated pain reaction. Dr. Hodges opined, however, that appellant was released to work his regular job with his only restriction being working 8 hours a day versus 12 hours a day.

In an August 23, 1995 report, Dr. Carl Dyer, a Board-certified orthopedic surgeon and an Office referral physician, provided the results of his examination and diagnosed status post lumbar strain and degenerative disc disease in the lumbar and cervical spine. He stated that the injury of April 8, 1994 most likely aggravated appellant's preexisting conditions, but he could not exclude the fact that appellant may have had some discomfort in his neck and back prior to that. Dr. Dyer stated that the acute effects of the injury have most likely resolved and opined that appellant is not totally disabled for work. He stated that appellant could work a full eight-hour day within the limits of his discomfort.

By decision dated November 7, 1995, the Office denied the claim stating that the evidence of record failed to establish that the claimed recurrence of disability on or after August 25, 1995 was causally related to the April 8, 1994 employment injury.

Appellant requested a hearing and was advised, at the hearing, of the necessity of providing an updated medical report. In a May 22, 1997 office note, Dr. Dyer noted that appellant had a full range of motion of the lumbar spine. He had a negative neurologic examination ... there was no muscle spasm. Appellant was able to squat in the floor and place his shoulders on his knees. There was a negative straight leg raising sign and sciatic stretch test. Dr. Dyer further noted that appellant had been installing and doing maintenance work on swimming pools.

By decision dated and finalized October 18, 1997, an Office hearing representative affirmed the Office's finding that the medical evidence did not establish that appellant continued to be disabled as a result of the 1994 employment injury and, thus, he was not entitled to additional compensation from August 25, 1995 onward.

Subsequent to the hearing representative's October 18, 1997 decision, appellant requested reconsideration and submitted additional evidence.

In December 9, 1997 and January 13, 1998 treatment notes, Dr. Dyer noted the results of his examination and diagnosed degenerative disc disease, lumbar spine; degenerative arthritis, right hip, mild; degenerative arthritis cervical spine, mild; radiculopathy, sciatic nerve, nonlocalizing, right side; and occlusive vascular disease, right lower extremity. In his February 10, 1998 treatment note, Dr. Dyer stated that, "at the very least, I feel that [appellant] has an ongoing process which is directly related to his workmen's injury. He is still having exacerbations and remissions. I feel that [appellant] most likely has had an aggravation of a preexisting problem. He is noted to have significant degenerative arthritis of the lumbar spine.... I feel that this problem has never been completely resolved... It should be noted that [appellant's] life is fraught with exacerbations and remissions, which is compatible with the natural history of degenerative disc disease of the lumbar spine. In a March 3, 1998 treatment note, Dr. Dyer stated that "It is obvious that [appellant's] problem today is directly related to the on-the-job injury and at the very worst, represents an aggravation of a preexisting problem." A January 7, 1998 magnetic resonance imaging (MRI) scan of the lumbar spine revealed degenerative changes.

In an October 9, 1996 decision from the Merit Systems Protection Board, an administrative law judge stated, "Based on the evidence of record, I find that appellant has

demonstrated that he meets the definition of an individual with a disability. [His] undisputed statements indicate that he suffers from a permanent medical condition, *i.e.*, back pain. I further find that the [employing establishment] indicated that it regarded appellant as having physical impairment because of his medical conditions, by offering him light[-]duty assignments. Based on the undisputed evidence of record, I find that [he] suffers from an impairment which substantially limits one or more of his life activities, here, his ability to work.” A September 2, 1994 wage and loss benefit statement was also included.

By decision dated June 8, 1998, the Office, after performing a merit review, denied modification of its previous decision.

The Board finds that the evidence fails to support that appellant sustained a recurrence of disability beginning August 24, 1995, as alleged.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.¹ This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.²

In the present case, the Office accepted that appellant sustained employment-related lumbar and cervical strains and paid compensation for appropriate periods of disability. He was no longer employed with the employing establishment when he filed a recurrence claim for the period beginning August 25, 1995, which was after his compensation payments from the employing establishment ended August 23, 1995. Appellant, however, has not submitted medical evidence sufficient to establish that he sustained a recurrence of disability due to the April 8, 1994 employment injury.

Both Drs. Hodges and Dyer, in their reports of 1995, opine that appellant’s 1994 lumbar and cervical strains have resolved and that he was capable of working at least 8 hours a day. In his May 22, 1997 treatment notes, Dr. Dyer confirmed that appellant was not disabled, as he was working and doing physically demanding work of installing and providing maintenance on swimming pools. No neurological deficits or orthopedic problems were noted on the relatively unremarkable physical examination. In later treatment notes of 1997 and 1998, Dr. Dyer diagnosed appellant with conditions of degenerative disc disease in the lumbar spine, degenerative arthritis in the right hip, degenerative arthritis in the cervical spine and radiculopathy in the sciata nerve. He further opined that those conditions were connected to appellant’s employment injury. In his February 10, 1998 treatment note, Dr. Dyer stated that appellant “most likely” has an aggravation of a preexisting problem. In his March 3, 1998 treatment note, Dr. Dyer opined that it was “obvious” that appellant’s problems were directly related to the employment injury or, at the very worst, represented an aggravation of a

¹ *Robert H. St. Onge*, 43 ECAB 1169 (1992).

² 20 C.F.R. § 10.121(b).

preexisting problem.” However, he failed to provide any medical reasoning to support how appellant, who had no neurological deficits or orthopedic problems on examination in May 1997 later developed permanent medical conditions. Moreover, Dr. Dyer failed to explain how appellant’s employment injury of 1994 played a role in appellant’s current medical conditions as appellant was able to engage in the physically demanding work of installing and maintaining swimming pools. Thus, his opinion is of limited probative value in establishing appellant’s recurrence claim.³

Although the results of the MRI scan of the lumbar spine showed degenerative changes, there is no reasoned medical opinion to establish that such changes are the result of the employment injury of 1994.

The Board also notes that the finding of entitlement to benefits by the Merit Systems Protection Board has no evidentiary value in this case because, as the Board has held previously, entitlement to benefits under one Act does not establish entitlement to benefits under the Federal Employees’ Compensation Act.⁴ In determining whether an employee is disabled under the Act, the findings of the Merit Systems Protection Board are not determinative of disability under the Act. The Merit Systems Protection Board and the Act have different standards of medical proof on the question of disability. Therefore, disability shown under the Merit Systems Protection Board does not establish disability under the Act. Furthermore, under the Act, for a disability determination, appellant’s injury or occupational disease must be shown to be causally related to an accepted injury or factors of his federal employment. Under the Merit Systems Protection Board, conditions which are not employment related may be taken into consideration in rendering a disability determination.⁵

³ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

⁴ *Daniel Deparini*, 44 ECAB 657 (1993).

⁵ See *Hazelee K. Anderson*, 37 ECAB 277 (1986).

Because appellant has failed to establish by rationalized medical opinion evidence that he sustained a recurrence of disability commencing August 24, 1995, the decisions of the Office of Workers' Compensation Programs dated June 8, 1998 and October 18, 1997 are affirmed.

Dated, Washington, D.C.
June 13, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member