U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELTER CARR and U.S. POSTAL SERVICE,
POST OFFICE, Cincinnati, OH

Docket No. 98-1821; Submitted on the Record;
Issued May 22, 2000

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained a recurrence of disability on or after January 2, 1989 causally related to his October 14, 1988 employment injury.

On October 16, 1988 appellant, then a 35-year-old casual employee, filed a claim alleging that on October 14, 1988 he injured his neck and back when he slipped on the floor. The Office of Workers' Compensation Programs accepted appellant's claim for neck and back strain.

In a letter dated December 6, 1988, the employing establishment informed appellant that he had been reappointed to a second casual term not to exceed December 31, 1988.

In a report of termination of disability and/or payment (Form CA-3) dated December 29, 1988, an official with the employing establishment indicated that appellant had returned to work on December 22, 1988 and that he was offered a limited-duty job assignment but that he did not accept the position.

By letter dated December 29, 1988, the employing establishment noted that appellant's temporary appointment ended December 31, 1988 and that he would not be rehired. The employing establishment further noted that appellant did not respond to a job offer on November 16, 1988 and that he returned on December 22, 1988 with a disability certificate from Dr. Clyde Brown, who specializes in family practice and is appellant's attending physician and who opined that he was totally disabled from December 9 to 22, 1988.

In a form report dated January 9, 1989, Dr. Brown diagnosed low back pain and found that appellant was totally disabled from October 26 to December 1, December 9 to December 25 and December 30, 1988 to January 30, 1989. He found that appellant could resume work with restrictions on January 30, 1989. In another form report of the same date, Dr. Brown found that

appellant was totally disabled from December 30, 1988 to January 30, 1989 and his return to work date was "unknown."

By letter dated January 9, 1990, the Office requested that appellant submit a rationalized medical report addressing the causal relationship between his current condition and his employment injury.

In a report dated January 23, 1990, Dr. Clyde E. Henderson, a Board-certified orthopedic surgeon, noted appellant's history of an October 1988 employment injury and diagnosed "chronic and persistent cervical strain" and "lower back strain" with possible evidence of a compression fracture. He found that appellant could perform a light-duty job and recommended objective tests and an aggressive work hardening program.

In an evaluation from a pain clinic dated October 30, 1990, Dr. Walter G. Broadnax diagnosed chronic pain syndrome secondary to lumbosacral and cervical sprain.

In a report dated February 13, 1992, Dr. Brown noted that appellant had continued complaints of back and neck pain with normal objective findings. He noted that a magnetic resonance imaging scan revealed mild disc bulging at L3-4 and L5-S1 without neural involvement. Dr. Brown opined that the "deviated lumbar disc" injury was "accelerated and precipitated by his job as a mail clerk, which accounts for his neck and low back pain." He found that appellant was 75 percent disabled from his job as a mail clerk and requested reimbursement for his services.

By letter dated January 12, 1993, the Office referred appellant, together with a statement of accepted facts, to Dr. Nicholas Mirkoupulos, a Board-certified orthopedic surgeon, for a second opinion evaluation. The Office requested that he provide an opinion supported by rationale regarding the relationship between appellant's current condition and/or disability with his accepted employment injury and whether he had any chronic condition due to the October 14, 1988 injury.

In a report dated March 4, 1993, Dr. Mirkoupulos discussed appellant's October 14, 1988 employment injury and listed findings on physical examination. He found that appellant's subjective complaints were greater than the objective findings. Dr. Mirkoupulos opined that appellant had "chronic back sprain from a work-related injury. He also has a neck sprain as a result of that injury." He found that appellant could perform limited-duty employment for six hours per day. In an accompanying work restriction evaluation, Dr. Mirkoupulos detailed appellant's physical limitations and indicated that he could work for six hours per day.

Appellant submitted office visit notes dated 1996 from Dr. Leroy Vickers, a Board-certified orthopedic surgeon, who diagnosed chronic neck and back pain. In a form report dated February 28, 1996, he diagnosed chronic neck and low back pain, found that appellant was totally disabled from employment and checked "yes" that the condition was due to the injury for which he claimed compensation. In a form report dated April 24, 1996, Dr. Vickers diagnosed chronic neck pain and chronic low back pain and found that appellant was totally disabled from October 14, 1988 to the present. He further checked "yes" that the history of injury corresponded to that shown on the front of the form.

On March 1, 1996 appellant filed a notice of recurrence of disability alleging that on January 3, 1989 he sustained a recurrence of disability causally related to his accepted employment injury.

By decision dated August 19, 1996, the Office denied appellant's claim for a recurrence of disability on the grounds that the medical evidence did not establish that he was disabled due to his accepted employment injury. In a letter dated September 3, 1996, appellant requested a hearing before an Office hearing representative. At the hearing, held on January 21, 1998, appellant related that he was working in a limited-duty capacity at the time he stopped work.

By decision dated April 14, 1998 and finalized April 17, 1998, the hearing representative affirmed the Office's August 19, 1996 decision. The hearing representative found that appellant had not submitted sufficient medical evidence to establish that he stopped work on January 2, 1989 because he was physically unable to perform his employment duties.

The Board finds that appellant has not established that he sustained a recurrence of disability on or after January 2, 1989 causally related to his October 14, 1988 employment injury.

Where an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[1]

In the present case, appellant sustained neck and back strain in the performance of duty. He returned to work in a limited-duty capacity on December 22, 1988 and worked until December 31, 1988, the last day of his temporary appointment. The Office procedure manual states that a recurrence of disability does not include a work stoppage caused by, *inter alia*, the "termination of a temporary appointment, if the claimant was a temporary employee at the time of the injury."[2] In the present case, appellant was a temporary employee hired in a position not to exceed December 31, 1988. Thus, the fact that his temporary appointment ended does not constitute a recurrence of disability. The term disability is defined as "the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury."[3] Therefore, the issue is whether the medical evidence establishes that appellant was unable to perform his employment on or after January 2, 1989 due to his employment injury.

In support of his claim, appellant submitted form reports dated January 9, 1989 from Dr. Brown, who diagnosed low back pain, found him disabled from employment and checked

[1] *Terry R. Hedman*, 38 ECAB 222 (1986).

[2] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(2)(a) (May 1997).

[3] 20 C.F.R. § 10.5(17).

"yes" that the condition was caused or aggravated by employment. However, the opinion of a physician on causal relation which consists only of checking "yes' to a question on a form, without any explanation or rationale, has little probative value and is insufficient to establish causal relationship.[4]

In a report dated February 13, 1992, Dr. Brown diagnosed a deviated lumbar disc "accelerated and precipitated by his job as a mail clerk…." The Board notes that the Office did not accept appellant's claim for a deviated disc and thus appellant has the burden of proof in establishing that the condition is causally related to employment factors by the submission of rationalized medical evidence.[5] In this case, Dr. Brown provided no medical rationale in support of his causation finding and thus his opinion is entitled to little probative value.[6]

In a report dated January 23, 1990, Dr. Henderson diagnosed chronic cervical strain and low back strain and found that appellant could perform light-duty employment. He did not specifically address the cause of the diagnosed condition or find appellant totally disabled from employment and thus his opinion is insufficient to meet appellant's burden of proof.[7]

In office visit notes from 1996, Dr. Leroy Vickers, a Board-certified orthopedic surgeon, listed findings of chronic neck and back pain, but did render a diagnosis or a causation finding. In form reports dated February 28 and April 24, 1996, he noted appellant's chronic neck and low back pain, found that he was totally disabled from employment and checked "yes" that the condition was related to his employment. As discussed above, a physician's checkmark indicating causation, without further explanation, is insufficient to meet appellant's burden of proof.[8]

Moreover, Dr. Mirkoupulos, the Office referral physician, found that appellant's subjective "complaints far outweigh his clinical signs" and that he could perform light-duty employment.

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.[9] To establish causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and his medical history, state whether the employment injury caused or aggravated

[4] *Robert J. Krstyen*, 44 ECAB 227 (1992).

[5] *See Charlene R. Herrera*, 44 ECAB 361 (1993).

[6] *Jacquelyn L. Oliver*, 48 ECAB 232 (1996) (Medical conclusions unsupported by rationale are of diminished probative value).

[7] *Linda I. Sprague*, 48 ECAB 386 (1996) (Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

[8] *Lee R. Haywood*, 48 ECAB 145 (1996).

[9] *Donald W. Long*, 41 ECAB 142 (1989).

appellant's diagnosed conditions and present medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to discharge his burden of proof.

The decision of the Office of Workers' Compensation Programs dated April 14, 1998 and finalized April 17, 1998 is affirmed.

Dated, Washington, D.C.
May 22, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member