U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL S. KESSLER and U.S. POSTAL SERVICE,
SOUTH PARK STATION, Alexandria, LA

Docket No. 00-1772; Submitted on the Record;
Issued November 27, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof to establish that he sustained a recurrence of disability on or after November 5, 1997 due to his May 13, 1996 employment injury.

The Board has duly reviewed the case record in this appeal and finds that the case is not in posture for decision.

On May 13, 1996 appellant, then a 39-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging on that date he sustained whiplash of the back and neck, a broken right shoulder and lacerations on his head and chin when he was rear-ended in an employing establishment vehicle while delivering the mail.

The Office of Workers' Compensation Programs accepted appellant's claim for right scapula pain, a right knee contusion, a rib fracture, right rotator cuff tendinitis, post-traumatic headaches, a chest wall contusion and a back sprain.

On November 19, 1997 appellant filed a claim for compensation on account of traumatic injury or occupational disease (Form CA-7) for the period November 5 through 21, 1997.

By decision dated May 13, 1998, the Office found the evidence of record insufficient to establish that appellant was totally disabled for work on or after November 5, 1997 causally related to his May 13, 1996 employment injury. In a June 9, 1998 letter, appellant, through his counsel, requested an oral hearing before an Office representative.

In a September 9, 1999 decision, the hearing representative affirmed the Office's decision finding the medical evidence of record insufficient to establish that appellant's recurrence of total disability on or after November 5, 1997 was causally related to the May 13, 1996 employment injury. By letter dated December 21, 1999, appellant, through his counsel, requested reconsideration of the hearing representative's decision.

By decision dated March 27, 2000, the Office denied appellant's request for modification based on a merit review of the claim.

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.[1] When an employee, who is disabled from the job he held when injured on the account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 show that he cannot perform such light duty.[2] As part of this burden, the employee must show a change in the nature and extent of the light-duty job requirements.[3] This burden includes the necessity of furnishing 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.[4] However, while the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.[5] The Office has an obligation to see that justice is done.[6]

On October 7, 1997 appellant accepted a limited-duty job assignment offered by the employing establishment. He performed limited-duty work at the employing establishment until November 1, 1997 when he stopped work and claimed a recurrence of total disability causally related to the May 13, 1996 employment injury.

In the present case, appellant submitted the July 15, 1999 deposition testimony of Dr. John A. Fritchie, an orthopedic surgeon and appellant's treating physician. He deposed that he had been treating appellant since August 1996. Dr. Fritchie further deposed that he changed appellant's status from limited-duty work to total disability in the fall of 1997 due to several reasons, all of which he could not remember. However, he did note two reasons. Dr. Fritchie stated that appellant was being harassed by his coworkers and appellant experienced an exacerbation of his neck pain. He provided a diagnosis of chronic pain syndrome and instability as evidenced on a cervical spine fluoroscopy at the C5-6 level. Dr. Fritchie explained that segmental instability was an abnormal motion or translation at that level. Regarding a causal relationship between this condition and appellant's employment injury, he explained:

> "Bones all over our body, knee, fingers, spine, back, are all held together by ligaments and when you have a[n] injury or a force that exceeds the tensile strength of a ligament, the ligaments tears and if the ligament is holding the two

[1] *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

[2] *George DePasquale*, 39 ECAB 295, 304 (1987); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[3] *Id.*

[4] *See Nicolea Bruso*, 33 ECAB 1138 (1982).

[5] *Dennis J. Lasanen*, 43 ECAB 549, 550 (1993); *Robert A. Redmond*, 40 ECAB 796 (1989).

[6] *Dennis J. Lasanen, supra* note 5 at 550; *William J. Cantrell*, 34 ECAB 1233 (1983).

bones together and it tears and it allows abnormal bone motion, would be etiology of that problem."

Dr. Fritchie also responded "yes" to the question of whether the fluoroscope was objective evidence to substantiate the condition that was causing the pain appellant experienced from his employment injury.

While Dr. Fritchie's report is insufficient to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that he sustained a recurrence of total disability on or after November 5, 1997 due to his accepted employment injury, it constitutes sufficient evidence in support of appellant's claim to require further development of the record by the Office.[7]

On remand, the Office should prepare a statement of accepted facts and refer the case record and appellant to a Board-certified physician in the appropriate field of medicine for a rationalized medical opinion addressing whether appellant was totally disabled on or after November 5, 1997 due to the May 13, 1996 employment injury. Following this and any necessary further development, the Office shall issue a *de novo* decision.

The March 27, 2000 and September 9, 1999 decisions of the Office of Workers' Compensation Programs are hereby vacated and the case remanded for further consideration consistent with this decision.

Dated, Washington, DC
November 27, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

[7] *John J. Carlone*,41 ECAB 354, 358-60 (1989); *see Horace Langhorne*, 29 ECAB 820 (1978).