

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of McARTHUR JONES and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Miami, FL

Docket No. 99-2451; Submitted on the Record;
Issued February 22, 2001

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant met his burden of proof to establish that his claimed disability from April 16 through May 9, 1996 was causally related to his employment injuries.

On October 25, 1990 appellant, then a 43-year-old custodian, injured his low back after moving heavy furniture at work. The Office of Workers' Compensation Programs accepted the condition for a lumbar strain and noted that he had a preexisting herniated disc at L4-5. Appellant missed work intermittently and the Office paid appropriate compensation.

Medical evidence of record from 1990 indicated that appellant received treatment for an acute lumbosacral sprain with right radiculitis, a herniated disc and bilateral facet hypertrophy at L5-S1.

In a September 24, 1993 decision, the Office found that appellant did not establish that his lumbar strain of October 25, 1990 caused a herniated disc at L4-5 or that he sustained a recurrence of disability beginning June 13, 1993 attributable to the October 25, 1990 injury. The Office found that his herniated disc preexisted his employment injury. Appellant did not appeal this decision.

On January 24, 1996 appellant filed a new claim for an injury on July 14, 1995 to his low back while taping work mats to the floor. The Office accepted that as a result of this injury, appellant sustained a lumbar strain and an aggravation of his preexisting disc herniation.

In a July 18, 1995 report, Dr. M. Calanthe Hamer, a Board-certified family practitioner, noted that appellant had a consistent history of back injury since 1990, with a herniated L4-5 and multiple injuries to the site. Dr. Hamer stated that, appellant would be treated from two to six weeks, recover and then be released to regular duty with the exception of his permanent restrictions. She stated that appellant informed her on July 14, 1995 that he was pushing a loaded cart when he felt a sharp pain in his back and down into his right leg.

Dr. Hamer assessed an acute exacerbation of the “chronic L-S myofascial pain syndrome and herniated disc, status post herniated disc L4-5, L5-S1.” She stated that a repeat magnetic resonance imaging (MRI) scan showed a small central disc herniation at L5-S1 and a small bulging annulus fibrosis at L4-5, slightly worse on the right. Dr. Hamer noted that appellant had been discharged from treatment on June 23, 1995, had reached baseline and was returned to work with his permanent restrictions.¹

In a report dated June 14, 1996, Dr Hamer noted that appellant returned following an episode in June 1995, when he again had an acute exacerbation of the L-S sprain and the herniated disc was noted as a reopening. She added that appellant was currently at his baseline with chronic pain and the ability to do a fair amount of bending and twisting within the restrictions due to his herniated disc, which included intermittent lifting to 20 pounds.²

In an October 16, 1996 report, Dr. Peter Millheiser, Board-certified in orthopedic surgery and a fitness-for-duty doctor, examined appellant. He noted that appellant was injured on October 25, 1990 while moving a heavy desk on the job and he felt low back pain. Dr. Millheiser noted that an MRI scan in 1991 showed a herniated disc at L4-5, that appellant's treatment consisted of surgery and some chiropractic manipulation, and that in 1994, appellant reaggravated his back pain while pushing a cart loaded with trash. In July 1995, appellant saw him and had a second MRI scan and nerve conduction studies. Dr. Millheiser concluded his examination with a diagnosis of post herniated disc L5-S1 and a lumbar sprain.

In a report dated April 15, 1998, Dr. Stephen Ticktin, Board-certified in orthopedic surgery and appellant's physician, reviewed appellant's history and diagnosed a herniated lumbar disc with lumbar radiculopathy, contusion and sprain of the right knee with partial ankylosis of the joint and contusion and sprain of the left knee. He opined that as a result of appellant's numerous work injuries, the symptoms would remain essentially unchanged and that appellant had received the maximum benefits from continued conservative medical care. Dr. Ticktin indicated that appellant had an eight to ten percent permanent residual disability to the body as a whole resulting from the injuries sustained from the above-mentioned work-related accident. He did not address any specific periods of work-related disability.³

On April 23, 1998 appellant filed a claim for continuing compensation on account of disability (Form CA-8) from April 16 to May 9, 1996.

In a letter dated April 29, 1998, the Office requested that appellant provide supporting medical evidence including a doctor's narrative and diagnosis explaining why appellant was disabled for work during the period claimed.

By decision dated July 16, 1998, the Office denied appellant's claim finding that he had established that his claimed disability was related to his accepted employment injuries.

¹ The date of the consultation was July 18, 1995, however, it was signed on July 25, 1995.

² The signature has Dr. M. Calanthe Wilson, as it appears that the doctors name had changed.

³ In a July 30, 1997 decision, the Office denied appellant's request for a schedule award.

By letter dated, August 14, 1998, appellant requested an oral hearing, which was held on March 25, 1999.

By decision dated July 2, 1999, the hearing representative affirmed the July 16, 1998 decision finding that the medical evidence did not establish that appellant's disability for the claimed period was caused by the accepted injuries.

The Board finds that appellant has failed to meet his burden of proof in establishing that the claimed disability was causally related to his accepted injuries.

An individual who claims disability due to an accepted employment injury or condition 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 or condition. 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 Causal relationship is a medical issue and can be established only by medical evidence.⁵

In this case, no rationalized medical evidence was submitted to support a causal relationship between appellant's claimed disability from April 16 to May 9, 1996 and his prior employment injuries. The July 18, 1995 report from Dr. Hamer placed a finite diagnosis on appellant's injury and noted that appellant was discharged from treatment on June 23, 1995 and had returned to his baseline with the exception of his permanent restrictions. This report did not explain the nature of the causal relationship between the claimed disability from April 16 to May 9, 1996 and the July 14, 1995 employment injury as it predated the period in question.⁶ In his July 14, 1996 report, Dr. Hamer noted appellant returned with an acute exacerbation of the lumbosacral sprain but did not offer any rationale addressing the issue of appellant's disability from April 16 to May 9, 1996.⁷ The reports dated October 16, 1996 from Dr. Millheiser and April 15, 1998 from Dr. Ticktin are of diminished probative value as neither physician discussed the period of disability claimed nor indicated that appellant's disability in 1996 was causally related to or aggravated by his accepted injuries.

Furthermore, there is no evidence that the aggravation which was accepted by the Office on July 14, 1995 continued. When employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related

⁴ See *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

⁵ See *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

⁶ Medical reports not containing rationale are entitled to little probative value and are generally insufficient to meet an employee's burden of proof. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

⁷ *Id.*

to the aggravation. However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.⁸

In this case, appellant has not presented any reports establishing total disability. The July 18, 1995 report from Dr. Hamer noted that appellant had an “acute exacerbation of the chronic L-S myofascial pain syndrome and herniated disc, status post herniated disc at L4-5, L5-S1.” She saw appellant on June 14, 1996 and noted that appellant was “pretty much at his baseline.” The other reports provided by appellant did not provide any indication that the aggravation sustained by appellant continued. Accordingly, as appellant has not submitted sufficient rationalized medical opinion evidence establishing that he had continuing disability causally related to his accepted employment injury, he has not met his burden of proof.

The July 2, 1999 decision of the Office of Workers’ Compensation Programs is affirmed.

Dated, Washington, DC
February 22, 2001

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁸ *Larry Warner*, 43 ECAB 1027 (1992).