U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOGAN JOHNSON and U.S. POSTAL SERVICE,
POST OFFICE, Detroit, MI

Docket No. 00-618; Submitted on the Record;
Issued June 15, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained a recurrence of total disability on July 22, 1997.

The Board has duly reviewed the case on appeal and finds that this case is not in posture for a determination of whether appellant sustained a recurrence of total disability on July 22, 1997. Further development of the medical and factual evidence is required.

On April 19, 1995 appellant, then a 52-year-old mailhandler, filed a claim alleging that on April 18, 1995 he experienced low back pain when he picked up a sack of mail in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for lumbar strain and later expanded its acceptance to include a herniated disc at L3-5. On May 21, 1997 appellant accepted the employing establishment's offer of a limited-duty position as a modified mailhandler. He returned to part-time limited duty on June 2, 1997 and began full-time limited-duty work on June 30, 1997.

Appellant filed a notice of recurrence of disability on August 8, 1997 after stopping work on July 22, 1997. He has not returned to work. By decision dated September 30, 1997, the Office denied appellant's claim finding that the evidence of record was insufficient to establish that appellant was totally disabled from performing his limited-duty job. He requested a review of the written record and by decision dated February 25, 1998, the hearing representative affirmed the Office's September 30, 1997 decision. Subsequently, in decisions dated January 20, 1998 and July 13 and October 1, 1999, the Office found the additional evidence submitted by appellant in support of his requests for reconsideration to be insufficient to warrant modification of the prior decisions.

When an employee, who is disabled from the job he held when injured on 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

that he 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 requirements.[1] Furthermore, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his recurrence of disability commencing July 22, 1997 and his April 18, 1995 employment injury.[2] 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 employment factors and supports that conclusion with sound medical reasoning.[3]

The employing establishment offered appellant a limited-duty position on May 5, 1997, which complied with the physical restrictions set forth by appellant's treating physician, Dr. Gary Chodoroff, a Board-certified physiatrist, who indicated in a report dated April 14, 1997, that if appellant were to do the modified mailhandler position, he should not push 100-pound carts, should not lift over 25 pounds or lift 25-pound parcels while bending forward and should be allowed to sit for 5 minutes every ½ hour. The offered position also involved no twisting or bending. The offered position also complied with Dr. Chodoroff's recommendation that appellant be able to begin by working four hours a day for the first two weeks, then work six hours a day for the second two weeks and then begin full-time eight-hour work.

In support of his claim for a change in the nature and extent of his injury-related conditions, appellant submitted numerous notes and reports from Dr. Chodoroff. In his report dated April 14, 1997, in which he stated that he felt appellant could perform the duties of a modified mailhandler, within certain restrictions, Dr. Chodoroff noted that on physical examination, appellant's patellar reflexes were trace, but he was not able to elicit Achilles or medial hamstring reflexes. On formal motor testing, appellant gave way in both lower extremities proximally and distally and when asked to raise his right foot while standing, said he could not do so, but was able to walk lifting one foot and then the next. Dr. Chodoroff reported appellant's stride length was diminished but that he had normal heel strike and push-off bilaterally. Appellant also had tenderness to palpation about the glutei and lumbar paraspinals and limited forward bending to 30 degrees and extension to 20 degrees secondary to back pain. Dr. Chodoroff further stated that he had nothing further to offer appellant, adding that while physical therapy would be medically reasonable, although not critical, appellant had refused to sign a consent form for physical therapy. On July 10, 1997 after appellant returned to full-time limited duty, Dr. Chodoroff noted that appellant reported having more pain "from the top of his head to the tip of his toes." On physical examination Dr. Chodoroff noted give-way weakness to formal motor testing in the upper and lower extremities, right and left, with normal tone but absent reflexes at the ankles and trace reflexes at the knees. He noted that straight leg raising produced low back pain bilaterally at 70 degrees and that appellant limited lumbar motions while standing to: Flexion 20 degrees, side-bending 20 degrees and extension 10 degrees, all with complaints of pain. Dr. Chodoroff noted normal lumbar lordosis and tenderness to palpation

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

[2] *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

[3] *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

about the cervical and lumbar paraspinals and trapezii, but no spasm or asymmetry. Cervical motions were also limited secondary to pain and appellant's gait was very slow and his posture stooped forward. Dr. Chodoroff noted that he felt appellant would benefit from a more rigorous exercise program, but that appellant would not sign a release form to attend physical therapy and further would not perform his home exercises because of reported pain. He concluded that he was concerned regarding the diffuse nature of appellant's pain, his give-way weakness and his reluctance to move.

Appellant stopped work on July 22, 1997 and the record contains a July 23, 1997 medical certificate on which Dr. Chodoroff wrote that appellant was totally disabled for work beginning July 22, 1997, however, his next medical report of record, dated August 26, 1997 indicates that he had not examined appellant since July 10, 1997, the date of his prior report. In his August 26, 1997 report, Dr. Chodoroff noted that appellant complained of being in a lot of back pain and was now willing to attend physical therapy. He further noted that the results of his physical examination were "no different than that of the July 10, 1997 evaluation" and that appellant moved quite slowly, limited all his back motions and had no neurologic deficits. Dr. Chodoroff concluded that he had rewritten appellant's physical therapy orders and had taken appellant off work. In subsequent reports dated October 6, November 5 and December 17, 1997, Dr. Chodoroff reported on appellant's progress, explained the necessity for additional physical therapy and reiterated that appellant was disabled for work, but did not offer any explanation as to why appellant could not perform his limited-duty job, or otherwise comment on appellant's work stoppage on July 22, 1997. In a report dated February 25, 1998, Dr. Chodoroff requested a magnetic resonance imaging (MRI) be authorized by the Office. In a report dated May 19, 1998, he noted that the MRI showed no significant change from prior studies and thus did not offer any new explanation for appellant's symptoms. In follow-up reports dated June 30, August 12, November 12 and October 1, 1998 and January 14, March 4, April 29, June 10 and July 15, 1999, Dr. Chodoroff reported on appellant's progress with physical therapy, which had been authorized by the Office and discussed his potential return to work, but did not address the reasons for appellant's work stoppage on July 22, 1997.

While the medical reports of Dr. Chodoroff are not sufficiently well rationalized to establish a change in the nature and extent of appellant's injury-related condition, as he did not offer sufficient physical findings or medical rationale in support of his decision to take appellant off work on July 23, 1997, the Board finds that Dr. Chodoroff's uncontroverted medical reports, taken together, raise an inference of causal relationship between appellant's 1997 recurrence of disability and his accepted employment injuries and is sufficient to require further development of the case record by the Office.[4] On remand, the Office should further develop the medical evidence by referring appellant and a complete statement of accepted facts to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether appellant sustained a recurrence of disability due to a change in his medical condition or whether appellant's current medical condition is causally related, either directly or by way of aggravation, acceleration or precipitation, to his 1995 accepted back condition.

[4] *See John J. Carlone*, 41 ECAB 354 (1989).

The Board further finds that the record also requires further development on the issue of whether appellant's recurrence was due, in part, to a change in the nature and extent of his light-duty requirements, as alleged. Appellant submitted a signed, notarized affidavit dated April 21, 1999, in which he stated that in violation of his limited-duty job offer, his limited-duty position in fact required him to lift loaded letter trays weighing approximately 36 pounds, to push loaded gurneys weighing in excess of 200 pounds, to bend and twist to pick up mail which had dropped to the floor and to bend, lift and twist to stack empty letter trays. Appellant further stated that he was unable to direct other employees to perform these tasks as he is not a supervisor and does not have the authority to supervise other employees. A statement from the employing establishment dated December 2, 1997, however, stated that appellant had performed the duties of his limited-duty job, as set forth in the position description and that appellant had never complained. On remand, the Office should further investigate appellant's specific contentions and ask appellant's supervisor to comment on each allegation with respect to the work appellant actually performed during the approximately 30 days following his return to work. The Office should then make specific findings, supported by factual evidence, regarding whether the nature and extent of appellant's limited-duty position changed or otherwise exceeded the physical restrictions imposed by appellant's treating physician. After such development of the case record as the Office deems necessary, the Office should issue an appropriate decision.

The October 1 and July 13, 1999 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, DC
June 15, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member