

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES W. GREENE and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Eagan, MN

*Docket No. 00-1435; Submitted on the Record;
Issued June 14, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant met his burden of proof in establishing that he had any disability from February 18 to June 6, 1997, causally related to work factors.

On October 6, 1995 appellant, then a 38-year-old mail clerk, filed a traumatic injury claim, alleging that on October 2, 1995 while pulling parcels and reaching to clear jams he injured his neck and shoulders.¹ The Office of Workers' Compensation Programs accepted appellant's claim for cervical strain and sprain of both shoulders. Appellant stopped work on October 5, 1995 and returned to limited duty on October 6, 1995.

On February 27, 1996 appellant filed a traumatic injury claim, alleging that on January 16, 1996 he injured his neck and shoulders while zip-coding parcels at work. The Office accepted this claim for cervical subluxation and strain. Appellant stopped work on January 22, 1996 and returned to modified duties on February 8, 1996. On February 28, 1996 he returned to regular duty.

On September 25, 1997 appellant filed a claim for wage-loss compensation from February 18 to June 6, 1997. He also requested to repurchase leave for this period.

In support of his claim, appellant submitted medical evidence from Dr. Geeta S. Vora, a chiropractor; Dr. Douglas D. Swanson, an internist; and Dr. Sharmishtha Raikar, Board-certified in internal medicine.

Dr. Vora's progress notes indicated that appellant had an exacerbation of his condition on February 17, 1997, but had responded satisfactorily and could return to work on February 24, 1997. Dr. Swanson's progress notes from February to June 1997 noted appellant's complaints of neck pain and diagnosed degenerative cervical disc disease, aggravated by lifting.

¹ Appellant filed a CA-7 form on May 7, 1996 requesting wage-loss compensation from January 22 to February 8, 1996.

He indicated that appellant was totally disabled from February 18 to June 9, 1997. In a report dated July 25, 1997, Dr. Raikar noted appellant's history of neck pain and diagnosed degenerative cervical disc disease. He indicated with a checkmark "yes," that appellant's condition was aggravated by lifting and neck movements at work. Dr. Raikar opined that appellant was totally disabled from February 18 to June 9, 1997.

By letter dated October 27, 1997, the Office requested additional factual and medical evidence from appellant and advised him of the type of medical evidence needed to establish this claim.

In response, appellant noted that he was working his regular duties prior to stopping work on February 17, 1997. He indicated that his employment duties led to the aggravation of his degenerative disc condition and ultimately to his disability from February 18 to June 9, 1997. Dr. Raikar noted that on February 19, 1997 appellant experienced radicular symptoms going to the left arm. He indicated that appellant was advised to return to restricted duty on May 22, 1997 and to regular duty on July 21, 1997.

In a decision dated April 30, 1998, the Office denied appellant's claim, finding that the evidence was not sufficient to establish that the claimed period of disability was causally related to appellant's accepted injuries of October 2, 1995 and January 16, 1996.

By letter dated May 21, 1998, appellant requested a hearing.

By decision dated September 25, 1998, the Office hearing representative vacated the April 30, 1998 decision and remanded the case for further development of the medical evidence.

On November 9, 1998 the Office referred appellant for a second opinion to Dr. Michael D. Smith, a Board-certified orthopedic surgeon. The Office provided Dr. Smith with appellant's medical records, a statement of accepted facts and a detailed description of appellant's employment duties.

In a report dated November 9, 1998, Dr. Smith reviewed the records provided to him, performed a physical examination of appellant and cervical degenerative disc disease with several cervical sprain/strain syndromes. Dr. Smith noted that the sprain/strain syndromes characteristically resolve within six weeks. He stated that he "cannot surmise a legitimate explanation for the four months of time off work. There was no substantial change in the severity of his underlying cervical degenerative disc disease nor any permanency or any increased impairment as a consequence of the sprain/strain syndrome." Dr. Smith noted that appellant's disc disease predated the injury and was not the result of employment activities. He further indicated that appellant did not require further diagnostic or therapeutic interventions to manage his condition.

In a letter dated January 12, 1999, the Office requested clarification from Dr. Smith on the causal relationship of appellant's preexisting condition and his employment disability from February 18 to June 6, 1997.

In a supplemental report dated January 14, 1999, Dr. Smith noted that cervical sprain/strains generally take 6 weeks to resolve but with preexisting degenerative changes can

take up to 12 weeks. However, he indicated there was a complete resolution of the injury of October 2, 1995 and, therefore, the injury was not causally related to the disability in 1997. Dr. Smith concluded that appellant did not sustain an ongoing disability related to the injury of October 2, 1995. Furthermore, he noted that appellant's ongoing disability was related to mild cervical degenerative disc disease, a permanent condition.

The Office requested additional clarification from Dr. Smith regarding his opinion on the causal relationship of appellant's January 16, 1996 injury and his employment disability from February 18 to June 6, 1997.

Dr. Smith submitted a supplemental report dated January 25, 1999 and noted that appellant's injury on January 16, 1996 was a temporary aggravation of a preexisting condition. He noted that the consequences of the injuries of October 2, 1995 and the exacerbation on January 16, 1996 would have subsided no more than three months after the onset of the symptoms. Dr. Smith stated that the work factors did not cause the disability from February 18 to June 6, 1997. He concluded that "the ill effects of the work-related condition clearly would have subsided by that time" and that the "cause of the disability is unclear, it was clearly not related to the above[-]mentioned injuries in question."

In a decision dated January 27, 1999, the Office denied appellant's claim, finding that the evidence was not sufficient to establish that the claimed period of disability was causally related to appellant's accepted injuries of October 2, 1995 and January 16, 1996.

By letter dated February 18, 1999, appellant requested a hearing before an Office hearing representative. The hearing was held on September 21, 1999.

In a decision dated December 15, 1999, the hearing representative affirmed the decision of the Office dated January 27, 1999 on the grounds that the evidence was not sufficient to establish that the claimed period of disability was causally related to appellant's accepted injuries of October 2, 1995 and January 16, 1996.

The Board finds that appellant has failed to establish that his condition during the claimed period of disability is causally related to the accepted 1995 and 1996 employment injuries.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the period of claimed disability was caused or adversely affected by the employment injury. As part of this burden, he must submit rationalized medical opinion evidence based on a complete factual and medical background showing a causal relationship between his disability and the federal employment. The fact that the condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.²

In this case, the Office accepted appellant's claims for cervical subluxation and cervical strain. However, the medical evidence submitted in support of the wage-loss compensation claim for disability for the period beginning February 18 to June 6, 1997 is insufficient to

² See *Nicolea Bruso*, 33 ECAB 1138 (1982).

establish an aggravation of appellant's medical condition. Appellant's treating physician Dr. Swanson, in progress notes from February to June 1997 noted that appellant was experiencing pain in the left side of his neck and left shoulder during this period. He further indicated, in an undated medical form, that appellant's degenerative cervical disc disease was aggravated by lifting and appellant was totally disabled from February 18 to June 6, 1997. Even though Dr. Swanson noted that appellant's condition was aggravated by lifting, he neither indicated that the lifting occurred at work nor did he provide any further explanation or rationale for the conclusion reached. Therefore, such notes are insufficient to establish a causal relationship.³ Instead, he couched his opinion in speculative terms and he did not reference any particular employment factors as causing appellant's condition.⁴ Therefore, this report is insufficient to meet appellant's burden of proof.

Other reports from Drs. Raikar and Vora indicate appellant's disability status but they did not attempt to explain the relationship between the claimed period of disability and the October 2, 1995 and January 16, 1996 work injuries.

The report which provides the most support for causal relationship between appellant's employment and the diagnosed condition is Dr. Raikar's report dated July 25, 1997 in which she diagnosed degenerative cervical disc disease and indicated with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity and noted that appellant's condition was aggravated by lifting and neck movements at work. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship. Therefore, this report is insufficient to meet appellant's burden of proof.

Dr. Smith's report of November 9, 1998 indicated that appellant had cervical degenerative disc disease with several sprain/strain syndromes. He indicated that the sprain/strain syndromes characteristically resolve within six weeks. Dr. Smith further indicated that he could not surmise a legitimate explanation for appellant taking four months off work. He noted there was no substantial change in the severity of appellant's underlying cervical degenerative disease nor any permanence or any increased impairment as a consequence of the sprain/strain syndrome.

Dr. Smith submitted a supplemental report dated January 14, 1999, whereby he clarified the basis of his opinion on causal relationship of appellant's preexisting condition and his employment disability during the period January 18 to June 6, 1997. He found that there was a complete resolution of the injury of October 2, 1995 and therefore the injury was not causally related to the claimed disability period.

³ *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

⁴ See *Leonard J. O'Keefe*, 14 ECAB 42, 28 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

Dr. Smith submitted an additional report of January 25, 1999, which addressed the causal relationship of appellant's injury of January 16, 1996 and his employment disability from February 18 to June 6, 1997. He indicated that the consequences of the injuries of October 2, 1996 and the exacerbation on January 16, 1996 would have subsided no more than three months after the onset of symptoms. Dr. Smith noted that the work factors did not cause the disability from February 18 to June 6, 1997 and that the ill effects of the work-related condition would have subsided by that time. He further noted that the cause of the disability is unclear; however, it was clearly not related to the injuries of October 2, 1995 and January 16, 1996. The Board notes that Dr. Smith had specific knowledge of appellant's employment factors and provided medical rationale for his opinion that appellant's disability from February 18 to June 6, 1997 was not causally related to work factors employment-related injuries of October 2, 1995 and January 16, 1996. The Board finds that Dr. Smith's reports represent the weight of the evidence.

The remainder of the medical evidence fails to provide a specific opinion on the causal relationship between the occupational exposure and appellant's diagnosed condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

The decision of the Office of Workers' Compensation Programs dated March 22, 1999 is hereby affirmed.

Dated, Washington, DC
June 14, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member