

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES D. MATTHEWS and DEPARTMENT OF THE AIR FORCE,
AIR TRAINING COMMAND, LACKLAND AIR FORCE BASE, TX

*Docket No. 00-2549; Submitted on the Record;
Issued June 21, 2001*

DECISION and ORDER

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

The issue is whether appellant is entitled to wage-loss compensation due to disability for work after October 25, 1999, causally related to his June 4, 1999 accepted employment injury.

On June 7, 1999 appellant, then a 55-year-old electronics mechanic, filed a claim for traumatic injury alleging that on June 4, 1999 he injured his back while in the performance of duty.

In a duty status report dated June 4, 1999, Dr. Shawn M. Varney, appellant's treating physician with a specialty in general surgery, stated that appellant sustained an acute mechanical low back pain and that he was released to return to full duty on June 6, 1999.

In a medical report dated June 17, 1999, Dr. Brian P. O'Connor, Board-certified in orthopedic surgery, examined appellant that day and related that appellant had low back pain and that he has had "episodes in the past, last one in 1992."

In a medical report dated June 21, 1999, Dr. O'Connor stated that appellant sustained "an acute exacerbation of back pain," and restricted him to working "half days for 3 weeks" with no heavy lifting.

In a duty status report dated July 28, 1999, Dr. O'Connor stated that based on his June 17, 1999 examination appellant was permanently disabled as a result of his June 4, 1999 work-related injury from activities which would exert pressure on his hips or lower back. However, Dr. O'Connor also noted that appellant could work a full workday with restrictions from July 12, 1999, noting that he was partially disabled from that time.

On October 8, 1999 appellant filed a claim for compensation for wage-loss commencing on October 25, 1999. Appellant checked a box indicating that he would be placed on a leave-without-pay status effective October 25, 1999.

On November 9, 1999 the Office of Workers' Compensation Programs notified appellant that his claim for left low back spasm had been accepted. However, the Office stated that based on medical evidence his medical condition had ceased no later than June 6, 1999, at which time he was released to return to full duty and that, therefore, his claim for compensation "cannot be processed." The Office advised appellant to submit treatment records from June 4, 1999 in order to determine his eligibility for compensation.

In a medical report dated November 17, 1999, Dr. O'Connor noted appellant's history of injury including his June 1999 incident. He also noted that appellant "has had several episodes of this type of pain; the last major one being in 1992 and minor pains from that date to this one," and found that appellant had degenerative disc disease of the lumbar spine, acute exacerbation and discogenic pain. Dr. O'Connor released appellant to sedentary-type work with a restriction against repetitive lifting and bending of the lumbar spine. He stated that appellant's period of disability was from June 14 to September 17, 1999.

In a letter received by the Office on December 13, 1999, the employing establishment notified the Office that it had provided appellant with a light-duty position until October 1, 1999, at which time the employing establishment no longer had light-duty work available for appellant to perform. Appellant was placed on leave without pay effective October 25, 1999.

By letter dated February 3, 2000, the Office advised appellant to submit a medical report from his attending physician that provides an opinion, with medical rationale, as to the relationship between his disability from October 25, 1999 and his June 4, 1999 work-related injury.

In a medical report dated March 16, 2000, Dr. O'Connor stated that diagnostic data revealed multiple levels of degenerative disc space narrowing and marginal osteophyte formation. He noted results from a March 27, 1999 magnetic resonance imaging (MRI) scan, which revealed multiple degenerative disc disease with a broad disc bulge at L4 and L5.¹ Dr. O'Connor then added:

"The question to be answered is the relationship of his claim for disability from October 25, 1999 to the present and the contribution of the injury sustained on June 4, 1999. The initial injury was lifting mobility cases weighing 15 to 20 pounds. The examination, plain films and subsequent MRI scan of the lumbar spine are consistent with degenerative disease. The natural history of this disease is one of wear and tear based upon activity level; genetics, body habitus and mechanics and other factors. Obviously, [appellant] did not develop degenerative disc disease from the injury on June 4, 1999, but surely the activity at the time exacerbated his condition. This certainly may have been the offending incident that permanently pushed him closer to a level of disability."

¹ A review of the record failed to disclose a March 27, 1999 MRI scan. However, a June 14, 1999 MRI scan of the lumbar spine revealed moderate marked anterior spurs at L1-2 and L4-5 with mild disc narrowing at the same levels.

In a medical report dated April 13, 2000, Dr. O'Connor stated that appellant could work a full day with a restriction against lifting more than 10 pounds. He based his restrictions on appellant's right shoulder impingement aggravated by overhead activity, neck stiffness and degenerative changes in the cervical spine.

By decision dated June 5, 2000, the Office denied appellant's claim on the grounds that the evidence of record failed to show that he sustained a condition or disability on or after October 25, 1999 causally related to his June 4, 1999 work-related injury.

The Board finds that appellant has not established that he is entitled to continuing compensation after October 25, 1999 as a result of his June 4, 1999 work-related injury.

When 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.²

In the instant case, appellant sustained an injury on June 4, 1999, which was accepted by the Office for low back spasms. The record establishes that appellant returned to light-duty work following his injury based on the physical limitations imposed by his attending physician. Dr. O'Connor noted that appellant could continue to work eight hours a day subject to specified physical limitations. Although he imputed some degree of causation between appellant's work-related injury and his disability to perform his job without restrictions, Dr. O'Connor did not provide a rationalized medical opinion supporting his conclusion.³

To the contrary, Dr. O'Connor noted that appellant had prior episodes of back pain based on a preexisting degenerative disc disease.

Further, appellant did not establish that his light-duty position had changed to his detriment, rather the employing establishment was unable to provide a light-duty position that was consistent with his restrictions.

As part of his burden of proof to establish a recurrence of total disability due to the June 4, 1999 employment injury, appellant must show there was a change in the nature and extent of his injury-related condition or a change in the nature and extent of the light-duty job he was required to perform. Appellant has not alleged that he was unable to continue in his light-duty employment due to changes in the assigned light-duty work. Rather, the employing establishment was unable to provide appellant a full-time, light-duty position after October 1, 1999 and, on October 25, 1999, placed him in a leave-without-pay status. The issue on appeal,

² *Cloteal Thomas*, 43 ECAB 1093 (1992); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

³ Dr. O'Connor opined, in his March 16, 2000 report, that appellant's June 4, 1999 injury exacerbated his preexisting degenerative disc disease condition.

therefore, is whether appellant has demonstrated a change in the nature of his employment-related conditions, accepted by the Office for low back pain.

Disability under the Federal Employees' Compensation Act generally means the inability to earn the wage the employee was receiving at the time of injury.⁴ The determination of whether an employee is physically capable of performing a modified position is a medical question that must be resolved by competent medical evidence.⁵

As the medical evidence of record fails to establish that appellant's accepted injury-related condition caused disability commencing October 25, 1999, he has failed to establish his claim for a recurrence of total disability causally related to the June 4, 1999 employment injury which would entitle him to wage-loss compensation.

The June 5, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
June 21, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

⁴ *Donald Johnson*, 44 ECAB 540 (1993); *Elden H. Tietze*, 2 ECAB 38 (1948).

⁵ *Edward P. Carroll*, 44 ECAB 331 (1992). Every injury does not necessarily cause disability for employment. Whether a particular injury causes an employee disability for employment is a medical issue to be resolved by competent medical evidence. *Donald Johnson*, *supra* note 4.