

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEONARDO G. COBERO and U.S. POSTAL SERVICE,
BRENTWOOD POST OFFICE, Washington, DC

*Docket No. 99-2489; Submitted on the Record;
Issued June 1, 2001*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability beginning September 29, 1995 causally related to his accepted January 17, 1988 employment injury.

The Board has duly reviewed the case record and finds that appellant has failed to meet his burden of proof to establish that his recurrence of disability was causally related to his 1988 work injury.

This is the second time this case has been before the Board. Previously, the Board found that the Office of Workers' Compensation Programs acted within its discretion in refusing to reopen appellant's claim for review because his request for reconsideration was untimely filed. The Board also found that appellant's claim for a recurrence was not in posture for decision because the Office failed to provide adequate findings of fact and a clear and precise statement of the reasons for its denial of appellant's claim or an explanation of appeal rights available to appellant. Accordingly, the Board remanded the case to the Office for further consideration. The facts of the case are set out in that decision.¹

On remand, the Office advised appellant to submit factual and medical evidence supportive of his claim by letter dated January 19, 1999.

By decision dated March 2, 1999, the Office denied appellant's claim. In an April 2, 1999 letter, he requested reconsideration of the Office's decision.

In a June 23, 1999 decision, the Office denied appellant's request for modification after a merit review of the claim. The Office found that the evidence was insufficient to establish any causal relationship between appellant's claimed disability after September 1995 and the 1988 work injury.

¹ Docket No. 96-756 (issued July 23, 1998).

An employee returning to light duty or whose medical evidence shows the ability to perform light duty has the burden of proof to establish a recurrence of temporary total disability by the weight of substantial, reliable and probative evidence and to show that he or she cannot perform the light duty.² As part of his burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.³

In this case, appellant has not shown a change in the nature and extent of his limited-duty requirements. Following the January 17, 1988 employment injury, appellant returned to limited-duty work at the employing establishment on March 27, 1989 and received compensation for intermittent periods of disability through May 19, 1993. The record does not establish, nor does appellant allege, that the claimed recurrence of total disability was caused by a change in the nature or extent of the limited-duty job requirements.

Appellant has also not shown a change in the nature and extent of the injury-related condition.

In support of his claim that the accepted conditions of lumbar sprain and a herniated disc at L4-5 have materially changed or worsened since his return to limited-duty work on March 27, 1989, appellant submitted the October 2, 1995 report of Dr. Hampton J. Jackson, a Board-certified orthopedic surgeon. He noted appellant's complaints of continued back pain since his January 17, 1988 employment injury and a diagnosis of ruptured lumbar disc L4-5 with lumbar radiculopathy and damage to the lumbar nerve roots. Dr. Jackson stated that appellant's condition in 1995 remained "basically unchanged." He further stated that a ruptured lumbar disc and radiculopathy represented chronic disability and caused a permanent impairment with a patient. Dr. Jackson noted his findings on physical examination and opined:

"[T]he examination today confirms the definition of recurrence with [appellant], specifically the findings today indicate [that he] continues to suffer a disability from work due to his original injury in 1988. This disability is a result of the need [for] medical treatment for residuals of his previous condition."

Dr. Jackson did not provide sufficient medical rationale explaining how or why appellant's current back condition was caused by his January 17, 1988 employment injury. Nor did he specify what residuals appellant had from his previous injury.

Appellant also submitted Dr. Jackson's treatment notes covering August 25 through January 17, 1996. His December 7, 1985 notes revealed appellant's complaints regarding his back condition and his findings on physical examination. Dr. Jackson opined that appellant continued to suffer from residuals of his January 17, 1988 employment injury. He, however, failed to explain how or why appellant's back condition was due to his January 17, 1988 employment injury, or that his condition had in fact worsened.

² *Terry R. Hedman*, 38 ECA 222, 227 (1986).

³ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

The duty-status reports of Dr. Jackson indicated that appellant was disabled for various periods but did not provide any medical rationale explaining the causal relationship between appellant's disability and his employment injury.

In a February 16, 1999 report, Dr. Eric G. Dawson, an orthopedic surgeon, indicated that he had treated appellant for his back condition from 1993 through 1995. He noted that appellant had a disc injury at the L4-5 level with myelopathic or nerve involvement of the L5 nerve root at that same L4-5 level and instability at that level.

In a supplemental report dated March 16, 1999, Dr. Dawson stated:

“[Appellant] had a herniation of the lumbar disc. This is something that is not like a muscle strain and is not spontaneously improved. The body attempts to heal this injury basically with scar tissue but it remains a weak point and it has been our experience that a majority of patients intermittently have exacerbations related to this. This presents in a symptom fashion with pain, spasm, weakness, numbness and tingling as well as stiffness or any combination of the above.

“This has been the case for [appellant] and he, like other patients with this condition, would be anticipated to have intermittent problems for foreseeable future.”

In a progress note of the same date, Dr. Dawson noted that appellant had continued pain, spasm and stiffness to the lower back area. He referenced the March 16, 1999 report and stated “[b]asically it is anticipated the usual course of [appellant] with chronic exacerbations mainly related to pain, spasm and stiffness.”

Dr. Dawson did not provide sufficient medical rationale to support his opinion regarding the cause of appellant's current back condition. While he anticipated that appellant would have exacerbations of his condition, Dr. Dawson did not opine that appellant's claimed disability since 1995 resulted from his 1988 work injury. Nor did he state that appellant's condition had worsened as he continued to work in his limited-duty position. Further, Dr. Jackson indicated in 1995 that appellant's back condition was basically unchanged. Therefore, appellant has failed to meet his burden of proof to establish a recurrence of disability.

The June 23 and March 2, 1999 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
June 1, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member