U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEVEN LAMPFIELD and DEPARTMENT OF THE NAVY
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

Docket No. 00-745; Submitted on the Record;
Issued May 8, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained a recurrence of disability commencing June 13, 1999.

On July 24, 1991 appellant, then a 33-year-old cement worker, injured his left knee and low back when his left foot caught in a hole in a steel plate causing him to trip and fall. He stopped work on July 25, 1991. Appellant received continuation of pay through September 7, 1991.

On September 10, 1991 the Office of Workers' Compensation Programs accepted appellant's claim for left knee and low back strain. On that same date, the Office authorized the payment of medical benefits and compensation for temporary total disability commencing September 8, 1991.

An October 4, 1991 initial work restriction evaluation from Dr. Edward R. Moss, a general practitioner, indicated that appellant could do light duty 4 hours a day with a 0 to 10-pound lifting restriction, no bending, squatting, climbing, kneeling, twisting or standing and a hand restriction.

In a November 5, 1991 disability certificate, Dr. Moss indicated that appellant was under his care since the work-related injury of July 24, 1991 and had an injury consistent with low back derangement which did not show continuous improvement. He indicated that, in his opinion, "the patient is not able to return to work in the foreseeable future."

In a letter dated November 19, 1991, the Office informed appellant that he had been placed on the periodic rolls, effective October 20, 1991.

On January 8, 1992 the Office referred appellant for a second opinion with Dr. Marie Hatam, a Board-certified orthopedist.

In a January 17, 1992 disability certificate, Dr. Moss indicated that, as a result of the July 24, 1991 work-related injury, appellant remained disabled with a low back injury and degeneration of the knees and polyneuropathy of both hands. He indicated that it was doubtful that the patient would demonstrate any improvement and would not be likely to return to his previous work. Dr. Moss recommended vocational retraining in a less physically demanding type of job.

In a February 7, 1992 report, Dr. Hatam evaluated appellant.[1] She noted appellant's history of injury and noted that, when appellant fell forward, he injured his hands, knees and lower back. Dr. Hatam also noted that appellant indicated that the diagnostic tests performed by Dr. Tourlette, a rheumatologist, showed that he had degenerative arthritis in his wrists, back and knees. Dr. Hatam noted appellant's present complaints, which consisted of pain in the back with occasional radiation into the left thigh. She also indicated that appellant had numbness in both hands in the ulnar two fingers, which appellant admitted had been going on for years since he started working as a cement worker. Dr. Hatam noted that his hands were swollen and appellant noted that swelling and tightness in his hands occurred even before his fall of July 24, 1991, especially when jack hammering in the past. She indicated that appellant had minimal lumbar lordosis, which was fairly straightened and she observed that appellant held his back slightly bent to the right and palpation of his back produced a tenderness in his lumbar spine but no definite spasm was noted.

Dr. Hatam indicated that there was no gluteal tenderness however lateral side bending to the right caused him some discomfort but bending to the left was not uncomfortable. She diagnosed chronic back pain secondary to strain and fall and ruled out arthritis with bilateral knee pain with no etiology. Dr. Hatam indicated that the right knee at this time had tendinitis. She also noted that the hands had bilateral ulnar nerve neuritis, intermittent presently quiescent, unknown etiology. Additionally, Dr. Hatam indicated that appellant had work and nonwork-related symptoms and signs. She indicated that the work-related injuries maybe the contusion that he had in his knees. Dr. Hatam indicated that the left one seems to have resolved and the right one continued to bother him. She asserted that the tendinitis may be directly related to the contusion he had from his fall but since appellant had a work-up for possible inflammatory disease she did not have those results and could not make a definite statement that he did not have preexisting or underlying problems such as rheumatoid arthritis, Reieter's disease or any inflammatory process that may be causing his right knee pain. Dr. Hatam also stated that, as far as his back, she did not have the medicals to support a diagnosis of degenerative arthritis. She indicated that, at this time, she felt that most of his complaints since he was neurologically intact were due to his injuries of November and July 1991. In addition, she stated that, as far as appellant's wrist and hand symptoms, she did not think they were directly related to the work injuries without any documentation to support them. Dr. Hatam recommended work hardening and back reconditioning and retraining for a less strenuous type of work.

[1] Dr. Hatam noted appellant's prior work injury, which occurred in November 1990 when he was shoveling concrete, bent over and suddenly felt pain in his lower back.

On September 9, 1993 an Office rehabilitation specialist authorized appellant to undergo vocational training as a part of his vocational rehabilitation effort with a goal of returning to work in a sedentary position.

In an April 20, 1994 letter, the Office requested additional information from Dr. Moss. Specifically, the Office requested a history of injury; findings and results of x-rays and laboratory tests, and diagnosis; the clinical course of the condition to date; a reasoned opinion regarding the relationship of the findings to the injury/employment-related condition as claimed; the dates of examination and or treatment and details of treatment provided, the date of maximum improvement from the effects of the injury was reached or is expected to be reached and details of any work restriction.

On August 2, 1996 appellant was referred to the assisted reemployment program by the vocational rehabilitation specialist.

Appellant subsequently retained an offer of employment with the Philadelphia Council of the Blind on February 21, 1997 and a copy of the job analysis for the "clerk-typist" position was sent to Dr. Moss, appellant's attending physician, for approval.

In a February 5, 1997 report, Dr. Moss indicated that he had reviewed the general requirements for the position and approved appellant's return to work, after which appellant started work on February 6, 1997.

On February 17, 1997 the Office agreed to reimburse appellant's employer, the Pennsylvania Council of the Blind, for a sliding percentage of his salary for the next 18 months.

On August 11, 1998 the Office closed appellant's successful vocational rehabilitation effort upon the expiration of the 18-month assisted reemployment period.

On June 28, 1999 appellant called the Office to inform them that he had lost his position.

In a July 4, 1999 letter, appellant responded to the Office's request for additional information by indicating that he had experienced pain due to his injury that forced him to take time off from work and requested that his compensation for temporary total disability be reinstated.

In a July 20, 1999 letter, the Office informed appellant of the differences between a new injury and a recurrence of disability and requested that he clarify whether he was claiming a new injury or a recurrence due to his accepted July 24, 1991 injuries.

On August 18, 1999 appellant filed a notice of recurrence of disability alleging that, on June 13, 1999, he had a recurrence of his July 24, 1991 injuries.[2]

In an August 31, 1999 letter, the Office requested that appellant submit the factual and medical evidence necessary to support his recurrence claim.

[2] Appellant wrote in "chronic injury"; however, he filled out the claim for a recurrence.

In response, appellant submitted a September 29, 1999 statement from the Philadelphia Council of the Blind in which his supervisor stated that appellant "was let go because of excessive absenteeism. He missed many days of work calling in sick or reporting late. Since work was piling up, it was necessary to replace him with another employee." Appellant also submitted an attending physician's report dated October 14, 1999 from Dr. Neil P. Glickman, his new attending osteopath. Dr. Glickman checked the box "yes" that inquired as to whether or not he believed the condition was caused or aggravated by an employment activity. He stated no bending, lifting or sitting and indicated that appellant would never be able to do anything but sedentary office work. In an undated report which was received by the Office on October 27, 1999, Dr. Glickman indicated that appellant was first seen by him on December 15, 1997 for treatment of injuries sustained in a work-related accident on July 24, 1991. He noted that appellant fell injuring his low back knees and hands. Dr. Glickman diagnosed chronic low back pain, chronic lumbosacral sprain/strain and myofascitis, degenerative arthritis of the knees, hands and spine, and anxiety reaction with panic attacks (post-traumatic). He indicated that these diagnoses were causally related to the accepted July 24, 1991 incident and concluded that appellant was totally disabled until he returned to sedentary work in 1997. Dr. Glickman added that appellant will never return to full employment.

In a November 8, 1999 decision, the Office rejected appellant's recurrence claim on the grounds that the evidence of file failed to establish a recurrence of total disability. The Office found that appellant failed to demonstrate either a change in the requirements of his "clerk-typist" position or a change in the nature and extent of his accepted conditions.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability commencing June 13, 1999.

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.[3] As part of this burden, appellant must furnish rationalized medical opinion evidence based on a complete and accurate factual and medical history, showing a causal relationship between the claimed recurrence of disability and an accepted employment injury.[4] Causal relationship and disability are medical issues that must be resolved by competent medical evidence.[5]

In this case, the Office accepted that appellant sustained left knee and low back sprains in the performance of duty on July 24, 1991. Appellant returned to work in a light-duty position with the Philadelphia Council of the Blind on February 6, 1997. He filed a notice of recurrence

[3] *Richard E. Konnen*, 47 ECAB 388 (1996);*Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[4] *Armando Colon*, 41 ECAB 563 (1990).

[5] *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990); *Ausberto Guzman*, 25 ECAB 362 (1974).

of disability commencing June 13, 1999. The Office requested that appellant provide medical evidence that would establish a causal relationship between his current conditions and his present disability. Appellant did not submit any reasoned medical evidence explaining how his present condition was causally related to his July 24, 1991 employment injury. In fact, he did not present any evidence that he could not perform his light-duty position. Appellant did not submit a medical report in which his treating physician explained why his claimed continuing condition would be related to the July 24, 1991 accepted injury. Dr. Glickman diagnosed chronic low back pain, chronic lumbosacral sprain/strain, myofascitis, degenerative arthritis of the hands, knees and spines and anxiety reaction with panic attacks. He stated that these conditions were causally related to the accepted July 24, 1991 injury and concluded that appellant was totally disabled until he returned to sedentary work in 1997 after which time he indicated that appellant would never return to full employment. Dr. Glickman did not fully address how appellant could not perform his light-duty position. In the October 14, 1999 attending physician's report, he merely checked the box "yes" indicating the condition was caused or aggravated by an employment activity. However, the Board had held that checking of the box "yes" that a disability is causally related to employment is insufficient, without further explanation or rationale, to establish causal relationship.[6] Dr. Glickman did not provide any explanation that the present conditions or disability in 1999 were causally related to the accepted July 24, 1991 employment injury. Additionally, he did not explain how myofascitis, degenerative arthritis of the knees, hands and spines and anxiety reaction with panic attacks were related to the initial injury, which the Office only accepted for left knee and low back strain. Dr. Glickman did not acknowledge appellant's prior 1990 work injury or distinguish between appellant's preexisting conditions. He did not offer a rationalized medical opinion in his report to show how appellant's employment caused or aggravated his condition.[7]

Appellant has not provided any medical reports, based on objective findings, which establish that there has been a change in the nature and extent of his condition such that he can no longer perform his light-duty job and he has provided no evidence to establish that there has been a change in the nature and extent of his light-duty job requirements. On August 31, 1999 the Office advised appellant of the type of medical and factual evidence needed to establish his claim for a recurrence of disability, however, appellant has not submitted such evidence.[8]

The decision of the Office of Workers' Compensation Programs dated November 18, 1999 is hereby affirmed.

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[6] *Barbara J. Williams*, 40 ECAB 649 (1989).

[7] The opinion of the physician must be based upon a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion. *See James Mack*, 43 ECAB 321 (1991).

[8] Following the issuance of the Office's November 8, 1999 decision, the appellant submitted additional evidence. However, the Board may not consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from seeking to have the Office consider such evidence pursuant to a reconsideration request filed with the Office.

Dated, Washington, DC
May 8, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member