U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD MOENTMANN and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, MO

Docket No. 00-1273; Submitted on the Record;
Issued May 29, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established that he has disability causally related to his accepted December 1, 1980 employment injury.

The Board has duly reviewed the case record in this appeal and finds that this case is not in posture for decision due to an unresolved conflict in the medical opinion evidence.

On December 1, 1980 appellant, then a 29-year-old mailhandler, filed a traumatic injury claim alleging that on that date he injured the left side and small of his back while lifting a small box out of a hamper.

The Office of Workers' Compensation Programs accepted appellant's claim for lumbosacral strain and left inguinal hernia with surgery.

On March 18, 1986 appellant filed a claim alleging that he sustained a recurrence of disability on March 10, 1986 when he stopped work.

By decision dated July 21, 1986, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability beginning March 10, 1986. In an October 30, 1998 letter, appellant requested reconsideration of the Office's decision. By decision dated November 9, 1998, the Office denied modification.

In a January 29, 1999 letter, appellant again requested reconsideration and submitted a May 18, 1999 medical report from Dr. Bruce Schlafly, a Board-certified orthopedic surgeon, who opined that appellant's current back condition was caused by his December 1, 1980 employment injury.

Based on Dr. Schlafly's opinion, the Office referred appellant, a statement of accepted facts, a list of specific questions and the medical record to Dr. Jerome G. Piontek, a Board-certified orthopedic surgeon, for an examination.

Dr. Piontek submitted a November 17, 1999 medical report, finding that appellant's current back condition was not caused by his December 1, 1980 employment injury.

In a December 2, 1999 decision, the Office denied modification of its prior decision.

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.[1] 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.[2]

Section 8123(a) of the Federal Employees' Compensation Act[3] provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."[4] When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence.[5]

In this case, the record shows that following the December 1, 1980 employment injury appellant returned to limited-duty work at the employing establishment on May 16, 1983 with subsequent absences due to periods of total disability. 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.

In his May 18, 1999 report, Dr. Schlafly, appellant's treating physician, stated that he agreed with the diagnosis of Dr. Suseela Samudrala, a Board-certified physiatrist, noted that appellant not only had degenerative joint disease of the lumbar spine and chronic low back pain, but also probable left L5 radiculopathy. Dr. Schlafly recommended that due to appellant's inability to stand and walk in a normal fashion, he should undergo further evaluation with electrical studies and a lumbar myelogram with computerized tomography scan to determine whether surgical treatment was required for decompression of the left L5 nerve root. Dr. Schlafly opined that appellant should continue with work restrictions and stated that the "need for these restrictions results from the work injury of December 1, 1980 that caused lumbosacral strain with left L5 radiculopathy, which continues to be [appellant's] diagnosis."

[1] *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[2] *Daniel Deparini*, 44 ECAB 657, 659 (1993).

[3] 5 U.S.C. § 8101 *et seq*.

[4] 5 U.S.C. § 8123(a).

[5] *William C. Bush*, 40 ECAB 1064, 1975 (1989).

In his November 17, 1999 report, Dr. Piontek, the Office second opinion physician, stated:

> "Presently, there are no objective clinical findings suggestive of a radiculopathy and no objective findings to support that [appellant's] December 1, 1980 lumbar strain is still active. With regard to his injury of December 1, 1980, he is capable of working his date-of-injury job as a mailhandler."

Presently, no further medical treatment is required. At this point, I can no longer relate discomfort which he has in his left sacroiliac joint to his injury of December 1, 1980."

The Board finds that there is a conflict in the medical evidence between appellant's treating physician, Dr. Schlafly and the Office physician, Dr. Piontek, on whether he has disability causally related to his December 1, 1980 employment injury. Consequently, the case should be referred to an impartial medical specialist to resolve the conflict in the medical opinion evidence.

On remand, the Office should refer appellant, along with the case file and the statement of accepted facts, to an appropriate specialist for an impartial medical evaluation and rationalized opinion on whether appellant sustained a recurrence of disability commencing March 10, 1986 causally related to his December 1, 1980 employment injury. After such further development as the Office deems necessary, the Office should issue a *de novo* decision regarding appellant's claim.

The December 2, 1999 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further consideration consistent with this decision.

Dated, Washington, DC
May 29, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member