U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELIO P. REYES and U.S. POSTAL SERVICE,
POST OFFICE, Flushing, NY

Docket No. 01-599; Submitted on the Record;
Issued October 22, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on and after December 11, 1997 due to his September 13, 1990 employment injury.

On September 13, 1990 appellant, then a 36-year-old letter carrier, filed a claim for compensation benefits alleging that he sustained an injury to his lower back when stepping onto a platform from his mail truck. The Office of Workers' Compensation Programs accepted that appellant sustained an employment-related low back strain and paid him appropriate compensation benefits. Appellant did not stop work but returned to a limited-duty position and resumed his regular duties as a letter carrier after March 1992.

Accompanying appellant's claim was an x-ray report of the sacrum and coccyx dated October 2, 1990 and a report from Dr. Louis J. Lombardi, a Board-certified orthopedist, dated October 26, 1990. The x-ray report was unremarkable. The report from Dr. Lombardi noted a history of appellant's injury and treatment beginning October 2, 1990. He noted that appellant was being treated for low back pain radiating down his right side, which was a result of an employment-related injury.

On December 11, 1997 the appellant filed a Form CA-2a, notice of recurrence of disability. Appellant indicated a recurrence of chronic back pain due to employment-related injuries sustained in September 1990. Appellant did not stop work. He indicated that his recurrence of symptoms began on December 11, 1997.

In support of his claim, appellant submitted a duty status report dated December 16, 1997 and an attending physicians report dated December 16, 1997.[1] The duty status report from December 16, 1997, indicated that appellant experienced pain in the lower back area, which

[1] The doctors signature was illegible.

developed gradually over the past two years, but had worsened since appellant's weight gain. The note indicated appellant could return to work but with restrictions on lifting/carrying and bending. The attending physician's report noted appellant developed low back pain gradually for two years, which had worsened due to weight gain of 25 pounds. He diagnosed appellant with subjective symptoms of right lumbar sacral area; 25 pounds weight gain; and low back pain. Appellant could return to work light duty with restrictions on bending and lifting.

By letter dated May 24, 1998, the Office requested detailed factual and medical evidence from the appellant from December 11, 1997 to the present, stating that the information submitted was insufficient to establish a recurrence on the above date.

In response to the Offices request appellant submitted several duty status reports prepared by Dr. Robert Holtzman, a Board-certified neurologist, dated January to July 1998, two attending physicians reports from Dr. Holtzman dated March 12 and August 6, 1998 and a June 23, 1998 report from Dr. Holtzman's office. The duty status reports prepared by Dr. Holtzman diagnosed appellant with left spondylolisthesis. The attending physician's report from him dated March 12, 1998 noted appellant's prior injury of September 1990 and diagnosed appellant with spondylolisthesis. He indicated with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity and noted appellant's prior injury of September 1990. The attending physicians report of August 6, 1998 noted a history of appellant's original injury in September 1990 and indicated that appellant experienced a recurrence of pain at work on December 11, 1997. Dr. Holtzman diagnosed appellant with a Grade I spondylolisthesis based on physical examination. He noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. The June 23, 1998 report from Dr. Holtzman's office noted that appellant had been treated since January 22, 1998 for a reinjury of his prior back condition of September 13, 1990. The report noted appellant's symptomology of low back pain with episodes of radiating pain down the leg. Appellant was diagnosed with Grade I-II lumbar spondylolisthesis, however, a formal diagnosis could not be made without diagnostic studies.

By decision dated November 9, 1998, the Office denied appellant's claim for recurrence of disability on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on or after December 11, 1997, which was causally related to the accepted employment injury sustained September 13, 1990.

Appellant requested an oral hearing before an Office hearing representative, which was held May 27, 1999. At the hearing, appellant noted that after his injury on September 13, 1990 he returned to light duty and then resumed his full time duties. He noted that although he resumed full-time work he never felt 100 percent. Appellant also discussed a 1995 employment injury, in which he fell into a pothole while delivering mail.[2] He noted that after the 1995 injury pain started coming back little by little until he finally stopped work completely due to the pain.

Appellant submitted a thoracic myelogram dated January 28, 1999, a March 15, 1999 magnetic resonance imaging (MRI) scan and a note from Dr. Holtzman dated April 20, 1999.

[2] The Office accepted this claim for a right ankle sprain under claim number A2-702867. Appellant returned to regular duty November 25, 1995. However, this claim is not before the Board at this time.

The thoracic myelogram revealed a Grade I spondylolisthesis at L5-S1. The MRI revealed a C4-5 central disc herniation producing central canal stenosis with impingement upon the ventral spinal cord; and C3-4, C5-6 and C6-7 posteriorly bulging discs leading to a mild degree of canal stenosis. The note from Dr. Holtzman indicated appellant was under his care since January 22, 1998 for cervical and lumbar radiculopathies. He noted that surgery was being contemplated and that appellant remained disabled.

By decision dated August 9, 1999, the Office hearing representative affirmed the November 9, 1998 decision, on the grounds that appellant did not submit sufficient medical evidence to establish a causal relationship between his claimed recurrence of disability and his September 13, 1990 employment injury.

On July 31, 2000 appellant through his attorney requested reconsideration of the decision dated August 9, 1999. Appellant submitted a notice of recurrence of disability dated May 6, 1998,[3] a duplicate copy of Dr. Holtzman's June 23, 1998 report and a new report dated August 7, 2000 from Dr. Holtzman. Dr. Holtzman's August 7, 2000 report noted the history of appellant's treatment dating back to 1991. He submitted a summary of his notes, indicating that he treated appellant approximately five times in 1991 and 1992; and then six years later in 1998. Dr. Holtzman did not submit his contemporaneous treatment notes from these office visits. He indicated treating appellant on January 22, 1998 for symptoms including low back pain and leg pain. Dr. Holtzman's physical examination revealed normal cervical and thoracic range of motion, however, lumbar range of motion was limited in forward bending with extension and lateral bending with rotation. Dr. Holtzman diagnosed appellant with Grade I spondylolisthesis at L5-S1 and a degenerative disc at L4-5. He noted that, on two occasions, September 13, 1990 and September 22, 1995 appellant suffered accidental injuries, which produced an exacerbation of his underlying condition and "probably contributed to the disc herniation at L4-5." Dr. Hotzmanr further noted that the exacerbation of appellant's underlying condition of degenerative disc at L4-5 and his new condition of disc herniation at L4-5 were directly related to the accident of September 13, 1990. Dr. Holtzman stated "the accident of September 13, 1990 is the competent producing cause of [appellant] lumbar spine symptoms…."

In a decision dated October 5, 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence of record is insufficient to warrant modification of the prior decision.

The Board finds that the evidence fails to establish that appellant sustained a recurrence of disability on or after December 11, 1997 as a result of his September 13, 1990 employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.[4] This burden

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[3] The Board does not have jurisdiction over this claim for recurrence in the present appeal as the Office has not rendered a decision on this matter. *See* 20 C.F.R. § 501.2(c).

[4] *Robert H. St. Onge,* 43 ECAB 1169 (1992).

includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.[5] Moreover, the physician's conclusion must be supported by sound medical reasoning.[6]

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[7] In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.[8] While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[9]

The Office accepts that appellant sustained a low back strain on September 13, 1990. The medical record lacks a well-reasoned narrative from appellant's physician relating appellant's claimed recurrent condition, beginning December 11, 1997, to the September 13, 1990 employment injury. Reports from Dr. Holtzman's provide some support for causal relationship but are insufficient to establish the claim. He noted appellant had been treated since January 22, 1998 for a reinjury of his September 13, 1990 back condition. The reports noted appellant's symptomology and diagnosed Grade I-II lumbar spondylolisthesis and a degenerative disc at L4-5. Dr. Holtzman noted that the exacerbation of appellant's underlying condition of degenerative disc disease at L4-5 and his new condition of disc herniation at L4-5 were related to the accident of September 13, 1990. However, he provided no medical reasoning or rationale to support such opinion. Dr. Holtzman made no attempt to explain how a low back strain would cause or aggravate any of the other diagnosed conditions. There is no "bridging evidence" which would relate the spondylolisthesis at L5-S1, disc herniation and disc degeneration at L4-5 to the accepted low back strain. That is, he did not explain, how, over seven years following the accepted low back strain, it was exacerbated by appellant's employment factors to result in a Grade I spondylolisthesis at L5-S1 and a degenerative disc at L4-5. The Office never accepted that appellant sustained a Grade I spondylolisthesis at L5-S1 and a degenerative disc at L4-5 as a result of his September 13, 1990 work injury and there is no medical rationalized evidence to

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[5] Section 10.121(b) of the Code of Federal Regulations provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a detailed medical report. The physicians report should include the dates of examination and treatment, the history given by the employee, the findings, the results of x-ray and laboratory tests, the diagnosis, the course of treatment, the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions and the prognosis. 20 C.F.R. § 10.121(b).

[6] *See Robert H. St. Onge, supra* note 4.

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship,* Chapter 2.805.2 (June 1995).

[8] For the importance of bridging information in establishing a claim for a recurrence of disability, s*ee Robert H. St. Onge, supra* note 4; *Shirloyn J. Holmes,* 39 ECAB 938 (1988); *Richard McBride,* 37 ECAB 748 (1986).

[9] *See Morris Scanlon,* 11 ECAB 384, 385 (1960).

support such a conclusion.[10] The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.[11]

Dr. Holtzman also noted that the September 13, 1990 incident "probably contributed to the disc herniation at L4-5." However, the Board notes that, without any further explanation or rationale for the conclusion reached, such report is insufficient to establish a causal relationship.[12] Instead, he couched his opinion in speculative terms and Dr. Holtzman did not reference any particular employment factors as causing appellant's condition.[13] Therefore, this report is insufficient to meet appellant's burden of proof.

Other medical reports submitted by appellant did not specifically address causal relationship between his accepted condition and his claimed recurrence of disability or conditions.

For these reasons, appellant has not met his burden of proof in establishing that he sustained a recurrence of disability or a medical condition beginning December 11, 1997 causally related to his accepted September 13, 1990 employment injury.

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[10] For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship. *Alice J. Tysinger*, 51 ECAB ___ (Docket No. 98-2423, issued August 29, 2000).

[11] *See Theron J. Barham,* 34 ECAB 1070 (1983). Likewise reports in which Dr. Holtzman supported causal relationship by checking a box "yes," without providing medical reasoning supporting the opinion are insufficient to establish the claim. *See Alberta S. Williamson*, 47 ECAB 569 (1996).

[12] *Lucrecia M. Nielson,* 41 ECAB 583, 594 (1991).

[13] *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).

The October 5, 2000 decision of the Office of Worker' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 22, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member