

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TYRONE D. BAILEY and DEPARTMENT OF THE ARMY,
Fort Meade, MD

*Docket No. 01-506; Submitted on the Record;
Issued April 3, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that his degenerative disc disease or disc herniation were causally related to his accepted employment injuries.

On April 3, 1995 appellant, then a 41-year-old computer operator, filed a traumatic injury claim for severe back pain sustained on March 23, 1995 while lifting and carry heavy boxes up two flights of stairs.¹ The Office of Workers' Compensation Programs accepted the claim for a lumbar strain.

On February 21, 1996 appellant filed a traumatic injury claim alleging that his back pain was due to his tripping over cables which caused him to fall forward.² The Office accepted the claim for a lumbar strain.

On July 30, 1996 appellant filed a traumatic injury claim alleging that his lower back pain was due to his repetitive lifting of computer equipment on June 12, 1996.³ The Office accepted the claim for a lumbosacral sprain by decision dated February 2, 1998.⁴ Appellant stopped work on June 17, 1996 and has not returned to work.⁵

¹ This was assigned claim number 25-0464805.

² This was assigned claim number 25-0483268.

³ This was assigned claim number 25-0492626. On February 2, 1998 the Office consolidated appellant's three claims under claim number 25-0464805.

⁴ In accepting appellant's claim for low back sprain, the Office noted various diagnoses by appellant's "many physicians" and advised him to "submit further medical evidence with rationale explaining his current diagnoses and there (sic) relationship to his work factors."

⁵ Appellant was terminated from his employment effective January 3, 1998.

Appellant submitted a claim for compensation (Form CA-7) dated June 12, 1999 for the period June 17, 1996 through January 1, 1998.

In a report dated October 28, 1996, Dr. Manuel DeLeos, an attending physician, diagnosed chronic low back pain with radiculopathy.

In reports dated November 26 and December 23, 1996 and January 23, 1997, Dr. Kevin E. McGovern, an attending Board-certified orthopedic surgeon, diagnosed lumbar strain with radiculopathy. Dr. McGovern noted that appellant had three work injuries to his back and attributed his lumbar radiculopathy and chronic low back pain to his work injuries.

In a January 8, 1997 report, Dr. Charles J. Lancelotta, Jr., an attending Board-certified neurologist, noted that appellant had injured his back at work in June 1995, February and June 1996 and that he “developed a recurrent episode of back pain” subsequent to the moving of computers in June 1996. Dr. Lancelotta reviewed x-rays which he indicated “were not dramatically abnormal” and a May 1995 magnetic resonance imaging test “showed evidence of some degenerative disc disease but no definite disc herniations.”

In a January 27, 1997 report, Dr. Lancelotta, stated that appellant had a moderate central disc protrusion at L5-S1 based upon the computerized axial tomography scan. He, in a February 10, 1997 report, diagnosed a moderate disc herniation at L5 based upon a review of x-ray interpretations which he opined could be the cause of appellants symptoms.

Appellant has submitted various reports from Dr. Charles M. Narrow, an attending Board-certified physiatrist, for the period July 15, 1997 through March 1, 2000 diagnosing discogenic pain, degenerative disc disease, work dysfunction, sensory radiculopathy, at L5-S1 on the right side and facet generated pain. In a report dated August 6, 1997, Dr. Narrow noted that appellant had no significant back problem prior to his June 12, 1996 injury while carrying computer equipment up stairs and that subsequent to the injury “he had back pain which would not abate.” Dr. Narrow opined that appellant had a flare-up of degenerative disease due to his June 12, 1996 injury. In a report dated March 3, 1998, Dr. Narrow diagnosed multilevel degenerative disc disease with right lumbar radiculitis and no radiculopathy. He opined that appellant was “[s]tatus post work-related incident that initiated all the patient’s current pain complaints of degenerative disc disease at multiple lumbar levels.” Dr. Narrow, in a January 4, 1999 report diagnosed chronic lumbar radiculitis due to appellant’s 1995 and 1996 lifting injuries and “degenerative disc disease activated by reported previous accidents.”

By letter dated August 14, 1998, the Office acknowledged receipt of appellant’s request for compensation and advised him that the Office had not accepted that his degenerative disc disease was causally related to his accepted employment injury. The Office informed appellant that the evidence submitted failed to support that he was totally disabled due to his accepted condition. Lastly, the Office advised appellant as to the type of medical information required to support that he continued to be totally disabled due to his accepted employment injury.

In a letter dated December 21, 1998, the Office informed appellant that his claims have been accepted for lower back injuries and noted that no compensation is due for the period June 12 through July 31, 1996 as this should have been paid as continuation of pay.

In a November 5, 1999 report, Dr. Albert Folgueras, a second opinion Board-certified orthopedic surgeon, diagnosed obesity, lumbar spondylosis secondary to genetic factors and the aging process, and “[appellant] has basically subjective complaints with clinical objective findings except for the obesity.” Dr. Folgueras concluded that appellant was capable of performing his job and that he could not “find medical justification for his prolonged absenteeism.” Dr. Folgueras also opined that there was no medical relationship between appellant’s current condition and his accepted employment injuries.

In a November 3, 1999 report, Dr. Charles M. Narrow diagnosed degenerative disc disease at L5-S1.

In a January 27, 2000 report, Dr. Narrow diagnosed “[d]iscogenic pain proven by discography at L4-5 and L5-S1.

In a March 1, 2000 letter, Dr. Narrow informed Dr. Mary Rifino that appellant was “being discharged from this office secondary to multiple missed appointments as well as atypical behavior.” Dr. Narrow indicated that he suspected that appellant had “a pattern of desire for narcotics and his functional situation is worsening.” He reported appellant had “no difficulty getting up and out of a chair and walking and has normal flexibility when arguing with my nurse.”

In a March 1, 2000 follow-up report, Dr. Narrow diagnosed L4-5 and L5-S1 discogenic pain, behavioral pain syndrome with psychiatric overlay of unknown type and work dysfunction. He indicated that “at this point, the patient has become mainly a narcotic-seeking individual.”

By decision dated August 28, 2000, the Office found the medical evidence of record insufficient to establish that his degenerative disc disease or disc herniation were causally related to his accepted employment injuries. The Office also found the medical evidence insufficient to establish that appellant has any continuing disability due to his accepted employment injuries of March 23, 1995, February 21 and June 12, 1996.

The Board finds that appellant has not established that his degenerative disc disease or disc herniation were causally related to his accepted employment injuries.

A claimant seeking benefits under the Federal Employees’ Compensation Act⁶ has the burden of proof to establish the essential elements of his claim by the weight of the evidence, including that he sustained an injury in the performance of duty and that any specific condition or disability for work, for which he claims compensation is causally related to that employment injury.⁷

The Office accepted only that appellant sustained lumbar strain injuries in the performance of duty on March 23, 1995, February 21 and June 12, 1996. Appellant contends that the foregoing injuries aggravated his degenerative joint disease and caused a disc herniation

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

resulting in his disability for work. It is appellant's burden of proof to establish that disc herniation and aggravation of degenerative joint disease for which he seeks medical benefits and the disability for which he seeks monetary benefits are causally related to the accepted employment injuries.

Appellant has not supported his claim with medical opinion evidence showing that his accepted employment injuries aggravated his degenerative joint disease or caused a disc herniation resulting in his disability for work. Although the record contains medical evidence diagnosing degenerative disc disease or disc herniation, appellant has failed to submit a well-reasoned medical narrative describing the incidents that occurred on March 25, 1995, February 21 and June 12, 1996 and explaining, from a medical perspective, how these incidents caused or aggravated appellant's diagnosed conditions of degenerative disc disease and disc herniation. Dr. Narrow opined that appellant's degenerative disc disease had been activated by his three accepted employment injuries. However, it is not sufficient for a physician to state, without supporting rationale, that the diagnosed condition or disability is related to the employment injuries. To be of probative value to appellant, Dr. Narrow must provide a history of injury consistent with appellants account of his employment injury and provide an opinion supporting causal relationship which is based on a complete and accurate factual and medical background and which explains, in medical terms, how the diagnosed condition and resulting disability are causally related to the employment injury.⁸ Such a medical explanation is necessary to establish the critical element of causal relationship and thereby establish appellant's entitlement monetary benefits beginning for the period June 17, 1996 through January 1, 1998.

Regarding the medical opinions, Drs. DeLeos and McGovern, the Board finds these reports are also insufficient to support appellant's burden that his degenerative disc disease and disc herniation were employment related as neither physician diagnosed disc herniation or degenerative disc disease due to his employment injuries. Dr. Lancelotta's opinion is also insufficient to meet appellant's burden. While Dr. Lancelotta noted objective evidence supporting "some degenerative disc disease but no definite disc herniations," he provided no opinion as to the cause of appellant's degenerative disc disease or whether his employment injuries had aggravated this condition. Thus, Dr. Lancelotta's reports are of little probative value and are not sufficient to establish appellant's claim. The weight of the medical evidence is with Dr. Folgueras who opined that there was no medical relationship between appellant's condition and employment injuries. Having failed to submit such a well-reasoned medical opinion, appellant has not discharged his burden of proof.

⁸ See *Michael Stockert*, 39 ECAB 1186 (1985).

The August 28, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 3, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member