

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEVEN T. WOLFRAM and U.S. POSTAL SERVICE,
POST OFFICE, Pittsburgh, PA

*Docket No. 01-680; Submitted on the Record;
Issued August 5, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained recurrences of disability on February 18, 1999 and January 27, 2000 causally related to his November 14, 1995 employment injury; and (2) whether the Office properly denied appellant's request for a hearing.

On November 14, 1995 appellant, then a 40-year-old letter carrier, sustained a lumbar strain in the performance of duty following a motor vehicle accident. He returned to full duty on November 22, 1997.

On March 11, 1999 appellant filed a claim for a recurrence of disability on February 18, 1999.

By decision dated June 14, 2000, the Office of Workers' Compensation Programs denied appellant's claims for recurrences of disability on February 18, 1999 and January 27, 2000.

In an undated letter received by the Office on August 25, 2000, appellant requested an oral hearing.

By decision dated October 15, 2000, the Office denied appellant's request for a hearing on the grounds that his request was untimely and the issue involved in the case could be resolved through the submission of additional evidence and a request for reconsideration.¹

The Board finds that appellant failed to establish that he sustained recurrences of disability on February 18, 1999 and January 27, 2000 causally related to his November 14, 1995 employment injury.

¹ The record contains additional evidence that was not before the Office at the time it issued its October 15 and June 14, 2000 decisions. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.² This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.³ Where no such rationale is present, medical evidence is of diminished probative value.⁴

In a fitness-for-duty examination dated October 3, 1997, Dr. Victoria M. Langa, an attending physician, provided a history of appellant's condition and findings on examination and found him capable of performing his usual work without restrictions.

In a disability certificate dated February 18, 1999, Dr. Scott P. Carnivale, an attending physician, indicated that appellant was disabled from February 19 to 21, 1999 following an epidural steroid injection on February 17, 1999. However, he did not provide any rationalized medical opinion explaining how appellant's disability was causally related to his November 14, 1995 employment injury. Therefore, this disability certificate is not sufficient to establish that appellant sustained a recurrence of disability on February 18, 1999 causally related to his 1995 employment injury.

In a report dated April 1, 1999, Dr. Arthur H. Palmer, a neurosurgeon, stated that appellant had experienced left lower extremity radicular pain since 1996 but his pain had worsened during the past seven months. Dr. Palmer stated that a magnetic resonance imaging (MRI) scan revealed a herniated disc at L4-5. He provided findings on examination and recommended surgery. However, Dr. Palmer did not provide a rationalized medical opinion explaining how appellant's herniated disc was causally related to his November 14, 1995 employment injury. Therefore, this report is not sufficient to discharge appellant's burden of proof.

In a report dated April 23, 1999, Dr. Carnivale stated that he had treated appellant for lower back pain since March 1, 1996 following his November 14, 1995 employment injury. He stated that a January 14, 1999 MRI scan revealed a central herniated disc at L4-5. However, Dr. Carnivale did not explain how appellant's herniated disc was related to his November 14, 1995 employment injury. Absent such medical rationale, this report is not sufficient to establish that appellant sustained a work-related recurrence of disability.

In a report dated August 11, 1999, Dr. Stephen R. Bailey, a Board-certified orthopedic surgeon and an Office referral physician, provided a history of appellant's condition, a review of

² See *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

³ See *Mary S. Brock*, 40 ECAB 461, 471 (1989); *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁴ See *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

the medical reports and diagnostic tests, and physical findings on examination. Dr. Bailey stated:

“[Appellant’s] imaging studies failed to reveal any disc pathology which can be related to left low back, left buttock or radiating left leg pain or numbness, into the left foot. [Appellant] had two MRIs and a CT [computerized tomography]/myelogram, all of which were negative with respect to neurologic impairment. Lumbar disc findings noted at L4-5 are not traumatic in nature, and represent a condition related to the normal aging process.”

* * *

“Based upon my physical examination of [August 11, 1999], I find no objective evidence to substantiate [appellant’s] subjective complaints. Although on repeated straight leg raising in both seated and supine positions, he does complain of pain in his left leg and numbness in his left toes, I find no relationship between these complaints and the findings on his MRI, for the reasons noted above. Therefore, I have no explanation for his complaints, in that I can find no pathophysiologic mechanism in his lumbar spine to explain them.

“Based on the result of my examination of [August 11, 1999] and on a thorough review of [appellant’s] record, it is my opinion that he does not require any surgery on his lumbar spine, since there is no pathophysiologic process noted on three imaging studies. Further, it is my opinion that [appellant] is capable of resuming the full duties of his usual work....

“[H]e has no [work] limitations.”

As Dr. Bailey indicated that appellant was able to perform full duties, this report does not discharge appellant’s burden of proof to establish that he sustained a work-related recurrence of disability.

In a report dated May 10, 2000, Dr. Palmer diagnosed L5 radiculopathy due to a combination of lateral recess stenosis and disc herniation at L4-5. He indicated that appellant was totally disabled from January 27⁵ to May 9, 2000 but was able to perform limited-duty work as of May 10, 2000. However, because Dr. Palmer did not provide a rationalized medical opinion explaining how appellant’s disability was causally related to his November 14, 1995 employment injury, this report is not sufficient to establish that appellant sustained a recurrence of disability on January 27, 2000 causally related to his November 14, 1995 employment injury.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant’s claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to

⁵ On January 27, 2000 appellant underwent back surgery consisting of lumbar laminectomy and discectomy at L4-5. The operative report indicates that a protruding disc, not a herniated disc, was found at L4-5.

establish causal relationship.⁶ Appellant failed to submit rationalized medical evidence establishing that his claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied his claim for compensation.

The Board further finds that the Office properly denied appellant's request for a hearing.

Section 8124(b) of the Act provides that, before review under section 8128(a), a claimant for compensation who is not satisfied with a decision of the Secretary is entitled to a hearing on his claim on a request made within 30 days after the date of issuance of the decision before a representative of the Secretary.⁷ As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.⁸ As appellant's undated request for a hearing was received by the Office on August 25, 2000, more than 30 days after the Office's June 14, 2000 decision, appellant was not entitled to a hearing as a matter of right. The Office then exercised its discretion and determined that the issue in the case could be resolved through a request for reconsideration and the submission of additional evidence. The Board finds no evidence to indicate that the Office abused its discretion in denying appellant's untimely request for a hearing.

The decisions of the Office of Workers' Compensation Programs dated October 15 and June 14, 2000 are affirmed.

Dated, Washington, DC
August 5, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

⁷ See 5 U.S.C. § 8124(a).

⁸ See *Charles J. Prudencio*, 41 ECAB 499, 501 (1990); see also 20 C.F.R. § 10.616(a).