U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FERNANDO ORTIZ and U.S. POSTAL SERVICE,
POST OFFICE, San Juan, PR

Docket No. 02-578; Submitted on the Record;
Issued August 8, 2002

DECISION and ORDER

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

The issue is whether appellant has established that he sustained a recurrence of disability commencing January 4, 1996, causally related to his September 10, 1992 employment injury.

This is appellant's second appeal before the Board. In the prior appeal the Board reversed a March 3, 1997 wage-earning capacity determination.[1] The facts and circumstances of the case are delineated in the prior decision and are hereby incorporated by reference.[2]

On February 7, 2000 appellant filed a claim for a recurrence of disability commencing January 4, 1996, causally related to his September 10, 1992 lumbosacral strain injury.[3]

By decision dated February 24, 2000, the Office of Workers' Compensation Programs denied appellant's claim for a recurrence of disability commencing January 9, 1996 finding that appellant had failed to demonstrate a change in the nature or extent of his injury-related disability or a change in the nature or extent of his light-duty job requirements. The Office noted that appellant's treating physician, Dr. Luis E. Faura Clavell, a general practitioner, had provided an October 23, 1995 attending physician's medical report stating that appellant should be placed on permanent limited duty with physical activity restrictions for four hours per day and that he reiterated this opinion on a Forms CA-17 dated November 13 and 15, 1995. The Office indicated that in a January 9, 1996 narrative medical report, Dr. Clavell recommended that appellant retire from the employing establishment due to the effects of the medication he was

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[1] Docket No. 97-2632 (issued December 28, 1999). The Board found that the wage-earning capacity determination based upon actual wages was flawed, as appellant had ceased all work on January 9, 1996. However, no recurrence of disability was claimed at that time.

[2] Appellant's claim was accepted for lumbosacral strain occurring on September 10, 1992. A June 18, 1995 recurrence of disability was also accepted.

[3] Although appellant alleged on the claim form that his recurrence of disability commenced January 4, 1996, he apparently did not stop work until January 9, 1996.

taking for uncontrolled arterial hypertension, herniated nucleus pulposii at L4-5 and L5-S1 and severe depression. It also noted that a January 9, 1996 Form CA-17 from Dr. Clavell stated only that retirement was recommended "due to worsening of his conditions with no surgical or conservative treatment." The Office noted that Forms CA-17, duty status reports, dated February 6 and March 25, 1996 submitted from Dr. Clavell stated only that appellant was "totally and permanently disabled." Finally, the Office noted that in a June 3, 1996 OWCP-5c work capacities evaluation Dr. Clavell stated, "[Appellant] cannot and will not work ever again" and cited to spinal problems, cardiac and hypertensive problems and severe anxiety and depression.

The Office noted that appellant was advised by letter dated January 19, 2000 of the deficiencies in the evidence of record in establishing a recurrence claim and was afforded the opportunity to provide clarifying, supporting evidence to establish a recurrence claim. It concluded that none of the medical evidence of record established that on or around January 4 or 9, 1996 appellant experienced a change in the nature or extent of his injury-related disability or a change in the nature or extent of his light-duty job requirements, such that a recurrence of injury-related disability was not established.

By letter dated March 8, 2000, appellant requested an oral hearing. In support appellant submitted three Form CA-17s dated June 15, August 15 and December 11, 2000 which merely indicated that appellant "is totally and permanently disabled to perform any job duties anymore."

A hearing was held on March 29, 2001 at which appellant testified that he was sent home from the employing establishment on January 9, 1996. In support he submitted a March 9, 2000 narrative report from Dr. Clavell which noted:

> "[Appellant] was evaluated [o]n January 9, 1996. After his recurrence of January 4[,] 1996, he complained of neck pains, back pains, low back pains and hands numbness, with severe hip and leg pains. Was seen by neurosurgeon Dr. Cesar Zapater who did not recommend operation. He was also suffering arterial hypertension and heart problems. On exam[ination] he had severe limited [lumbosacral range-of-motion] and limited cervical motion. Tender neck and dorsal back; with severe D-L and L-S paraspinals and [bilateral] sciatic pathways. With weakness at lowers more than uppers and sensory dysesthesias on both lower extremities.... Along 1996/1997/1998/1999 his conditions severely deteriorated up to a point that [he] was hardly able to ambulate besides that his arterial hypertension and cardiac problems persisted before [his] January 4, 1996 recurrence he started with low back pains problem in 1992 developed at work...."

Dr. Clavell diagnosed "moderate size herniated disc L4-5 centrally and to the right of the midline, small herniated disc at L5-S1 and to the left [and] dessicated disc L4-5 and L5-S1." After further diagnostic work-up, L4 and 5 radiculopathies, mild left peroneal neuropathy and left tarsal tunnel syndrome were also diagnosed. Dr. Clavell noted that "[o]n April 26, 1996 I recommended retirement from work due to [the severity] of his conditions." He concluded that appellant remained "and will continue to be permanently and totally disabled to perform any job duties since 1996, [these] conditions are severe, chronic, progressive and totally disabling."

The employing establishment submitted a January 3, 1996 statement at the hearing which indicated that appellant had been on limited duty for over three years with no change in his condition according to the medical documentation, that his hours were reduced to four per day, that his shift was changed and that the latest medical report stated that he was depressed and might turn aggressive. Medical notes from Dr. Clavell dated in December 1995 were also submitted which discussed appellant's recent depression, anxiety, alcohol use and preferred hours of work.

In a January 19, 1996 functional capacity testing report, appellant's strength was noted to be at 38 percent impairment with a 34-pound lifting limit noted.

In an April 27, 2001 statement, the employing establishment indicated that appellant was working four hours per day with activity restrictions and breaks as needed as a stock room clerk. It noted that around January 9 or 10, 1996 appellant reported that he was not feeling well, that he went to the medical unit and that he had not worked since. The employing establishment indicated that appellant underwent a physical capacity test, but that he continued to be absent from work, that subsequent attempts to contact appellant failed and that his position was subsequently abolished and he was converted to an unassigned junior mechanic. It noted that in 2001 appellant filed a Form CA-2a claiming a recurrence of disability and that all efforts had been made to bring him back to work, but were unsuccessful.

By decision dated June 14, 2001, the hearing representative affirmed the Office's February 24, 2000 decision finding that appellant had failed to establish that he sustained a recurrence of disability commencing January 4, 1996, causally related to his September 10, 1992 employment injury.

The Board finds that appellant has failed to establish that he sustained a recurrence of disability commencing January 4, 1996, causally related to his September 10, 1992 employment injury.

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 reliable, probative and substantial evidence and to show that he cannot perform the light duty.[4] As part of his burden, the employee must show a change in the nature or extent of the injury-related conditions or a change in the nature or extent of the light-duty requirements.[5]

In this case, appellant returned to limited duty following both his September 10, 1992 lumbosacral strain injury and his June 18, 1995 recurrence of disability. At the time he claimed a second recurrence of disability commencing January 4, 1996 he was working for four hours per day sedentary duty with activity restrictions. However, appellant failed to submit any factual evidence demonstrating a change in the nature or extent of his light-duty job requirements or any medical evidence demonstrating a change in the nature or extent of his injury-related condition.

[4] *See Carlos A. Marrero*, 50 ECAB 117 (1998); *Terry R. Hedman*, 38 ECAB 222 (1986).

[5] *Id.*

No factual evidence regarding appellant's light-duty job assignment was submitted to the record at all and the only medical evidence submitted to the record consisted of incomplete Forms CA-17 stating the conclusion that appellant was totally disabled. As these reports lacked any findings upon physical examination, medical narrative or discussion of appellant's condition, or of its cause, they are merely conclusory and are, therefore, of diminished probative value.[6] Moreover, absent both factual and medical specifics, these reports do not establish a worsening of his injury-related condition or a change in his light-duty job requirements. Therefore, these reports are insufficient to establish a recurrence of disability.

As nothing else was submitted, appellant has failed to establish his January 4, 1996 recurrence claim.

Accordingly, the decision of the Office of Workers' Compensation Programs dated June 14, 2001 is hereby affirmed.

Dated, Washington, DC
August 8, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[6] *See William C. Thomas*, 45 ECAB 591 (1994); *Leon Harris Ford*, 31 ECAB 514 (1980).