

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DARNELL J. NELSON and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Seattle, WA

*Docket No. 01-2266; Submitted on the Record;
Issued December 18, 2002*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant's disability on or after January 29, 2001, is causally related to his January 4, 2000 employment injury.

The Office of Workers' Compensation Programs accepted that appellant, a 48-year-old estate and gift tax attorney, sustained a lumbosacral strain, lumbar disc displacement at L5-S1, and thoracic/lumbosacral radiculitis in the performance of duty on January 4, 2000.¹ Following his injury, appellant was released to resume his regular, full-time duties effective March 18, 2000. The only noted restriction was that he should limit sitting to no more than 1½ hours before taking a break.

On February 5, 2001 appellant filed a claim for compensation (Form CA-7) for lost wages beginning January 29, 2001.

In a decision dated April 9, 2001, the Office denied appellant's claim for compensation. The Office found that the evidence was insufficient to establish that appellant suffered a recurrence of disability causally related to his accepted employment injury.

On April 26, 2001 appellant requested reconsideration and he submitted additional evidence. By decision dated June 5, 2001, the Office denied modification of the prior decision dated April 9, 2001.

The Board has duly reviewed the case record on appeal and finds that the case is not in posture for a decision.

¹ Appellant sustained a prior employment-related injury on February 3, 1997, which the Office accepted for cervical strain, left trapezius strain and lumbosacral strain.

A claimant seeking compensation under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work for which he claims compensation is causally related to the employment injury.³

A recurrence of disability is defined as the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁴

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.⁵ This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.⁶

Appellant contends that his current claim for compensation should not be considered a recurrence of disability because, despite the fact that he was able to resume his regular full-time duties, he never fully recovered from his January 4, 2000 employment injury. Appellant further contends that he was able to perform his duties because he regularly worked from his home, which allowed him to “work on healing [his] discs by laying flat, making use of ice packs ... and [performing] physical therapy exercises.” He further indicated that his pain began to increase in early December 2000 and he developed an inability to sit during the workday. The onset of his increased discomfort reportedly coincided with his return to an office environment for a full workday.

When appellant's then-treating physician, Dr. David J. Musnick, released him to return to his regular, full-time duties effective March 18, 2000, he noted that appellant should limit sitting to no more than 1½ hours before taking a break.

Appellant's current treating physician, Dr. Davis C. Pitt, an osteopath, first examined him on January 24, 2001 and reported subjective complaints of back pain and an L5-S1 disc problem. He also reported a history of motor vehicle accidents in February 1997 and a more recently on December 22, 2000. Dr. Pitt noted that appellant sustained a twisting injury on January 4, 2000. He reported an increase of pain over the past 7 to 10 days that interfered with appellant's sleep. Dr. Pitt also reported that appellant was limping by noon because of increasing pain. Appellant

² 5 U.S.C. §§ 8101-8193.

³ *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁴ 20 C.F.R. § 10.5(x) (1999).

⁵ 20 C.F.R. § 10.104(b) (1999); *Helen K. Holt*, 50 ECAB 279, 382 (1999); *Carmen Gould*, 50 ECAB 504 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁶ See *Helen K. Holt*, *supra* note 5.

also reportedly complained of tingling in his right foot and an aching, cramping pain in the leg and thigh. His symptoms were noted to increase with sitting or driving. Dr. Pitt diagnosed low-back pain and right lower limb radicular symptoms, likely S1 and also a right L5-S1 disc. He recommended physical therapy, epidural steroid injection and limited work for one month.

In response to the Office's February 22, 2001 letter, Dr. Pitt submitted an April 16, 2001 report, wherein he stated that it was more probable than not that appellant's present injury was due to the incident on January 4, 2000. He also noted appellant's recent motor vehicle accident and stated that the current symptoms were clearly described by appellant as due to the injury on January 4, 2000. Additionally, Dr. Pitt stated that appellant's ongoing disc problems were evident on a recent magnetic resonance imaging (MRI) scan obtained April 7, 2001.

In essence, the same L5-S1 disc protrusion the Office accepted as due to appellant's January 4, 2000 employment injury was confirmed by the April 7, 2001 MRI obtained by Dr. Pitt. The Office, however, questioned the reliability of Dr. Pitt's opinion based on his presumed lack of knowledge regarding the effects of appellant's recent return to an office environment.

The Office also surmised that appellant's December 22, 2000 motor vehicle accident possibly represented an intervening cause for his current condition. However, Dr. Musnick examined appellant on January 19, 2001 and noted that he had discussed the December 22, 2000 accident with appellant 10 days prior. He diagnosed right shoulder sprain, left sternoclavicular sprain and cervical sprain. Dr. Musnick did not diagnose a low back condition associated with appellant's December 22, 2000 motor vehicle accident.

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁷ Although Dr. Pitt's reports do not contain sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that his claimed disability is causally related to his January 4, 2000 employment injury, they raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.⁸

On remand, the Office should refer appellant, the case record, and a statement of accepted facts to an appropriate medical specialist for an evaluation and a rationalized medical opinion on whether appellant's claimed disability is causally related to the accepted employment injury. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

⁷ *William J. Cantrell*, 34 ECAB 1223 (1983).

⁸ *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

The June 5 and April 9, 2001 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further action consistent with this opinion.

Dated, Washington, DC
December 18, 2002

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member