

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANDREW CHIRAMONTE and U.S. POSTAL SERVICE,
NEW JERSEY BULK MAIL CENTER, Jersey City, NJ

*Docket No. 02-0807; Submitted on the Record;
Issued December 4, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he sustained a recurrence of disability on and after May 8, 2000, causally related to an accepted July 5, 1998 lumbar injury.

The Office of Workers' Compensation Programs accepted that on July 5, 1998 appellant, then a 46-year-old tractor trailer operator, sustained a lumbar strain in the performance of duty when he opened a stuck tractor trailer door. Appellant stopped work on July 6, 1998 and returned to light-duty work on July 28, 1998.

A July 16, 1998 lumbar magnetic resonance imaging (MRI) scan showed L3-4 and L4-5 disc protrusions causing "moderate to severe spinal stenosis in conjunction with facet hypertrophy," L5-S1 disc protrusion causing moderate spinal stenosis and "bilateral neuroforaminal narrowing from L3 to S1.

In reports from July 22 to August 31, 1998 reports, Dr. Carl F. Mercurio, an attending Board-certified orthopedic surgeon, provided a history of injury and diagnosed a possible herniated lumbar disc and chronic pain syndrome. Dr. Mercurio released appellant to light-duty work effective July 27, 1998 and to full duty on August 7, 1998.

In an October 6, 1998 report, Dr. Mercurio noted that September 4, 1998 electromyography (EMG) and nerve conduction velocity (NCV) studies demonstrated a "marked conduction defect in all the nerves, particularly the left peroneal nerves indicating a moderate to severe neuropathy" secondary to diabetes mellitus. Dr. Mercurio provided "working diagnos[e]s" of "resolving sciatica," and "resolving soft tissue injuries of the lumbar sacral spine." Dr. Mercurio opined that the "work[-]related injury ... [was] at maximum medical improvement," and appellant could return to work.¹

¹ The Office approved epidural steroid injections as of October 20, 1998.

In a November 2, 1998 report, Dr. Kent S. Lerner, an attending Board-certified orthopedic surgeon, provided a history of injury and treatment and noted that appellant walked “with a foot drop gait on the left side” and was “unable to heel walk on the left side.” Dr. Lerner found “marked restriction of forward flexion,” bilaterally diminished ankle jerk reflexes and “[m]arked weakness of dorsiflexion on the left side.” He diagnosed “[m]ulti-level degenerative disc disease and disc protrusion with spinal stenosis at L3-4 and L4-5,” left foot drop and diabetes mellitus. Dr. Lerner submitted periodic notes through February 10, 1999. In a September 1, 1999 report, he newly observed “symmetrical loss of knee jerks and ankle jerks.”

A September 7, 1999 MRI scan showed a right paracentral disc herniation at L5-S1.

In a September 18, 1999 report, Dr. John J. Vaccaro, an attending Board-certified neurologist and psychiatrist, provided a history of injury and treatment, noted abnormal findings on neurologic examination and diagnosed either a diabetic sciatic neuropathy or “a lumbar radiculopathy without nerve root compression also due to diabetes.”

September 22, 1999 NCV and EMG studies showed “a left sciatic mononeuropathy” without “evidence of a left lumbosacral radiculopathy.”

In reports from October 25, 1999 to April 14, 2000, Dr. Vaccaro diagnosed sciatic neuropathy without lumbar radiculopathy, with objective weakness in the left leg, a left foot drop, diminished reflexes and wasting of the left calf.

An April 20, 2000 MRI scan showed a “large inferiorly extruded left paracentral disc herniation at L5-S1 causing significant encroachment [at the] left descending S1 nerve root and severe spinal stenosis,” and moderate degenerative stenosis at L3-4 and L4-5.

On May 14, 2000 appellant filed a claim alleging that he sustained a recurrence of disability commencing May 8, 2000, while on light duty.² He attributed the claimed recurrence of disability to his weekly duty of opening from 700 to 900 trailer doors on and prior to July 5, 2000.³ Appellant submitted additional medical evidence.

In May 31 and June 9, 2000 reports, Dr. Harold A. Hess, an attending Board-certified neurosurgeon, provided a history of the July 5, 1998 injury and subsequent treatment. Dr. Hess reviewed electrodiagnostic and imaging studies showing a large herniated disc at L4-5 and L5-S1 with secondary stenosis. He also diagnosed “[s]evere diabetic neuropathy,” “[e]xogenous obesity and anxiety-depression features.”

² In an August 29, 2000 letter, the Office advised appellant of the type of medical and factual evidence needed to establish his claim. The Office noted that, as appellant was on light duty at the time of the alleged recurrence of disability, he had to show either a change in the nature and extent of his light-duty job requirements, or in the nature and extent of his accepted condition.

³ In August 8 and October 25, 2000 letters, the employing establishment controverted appellant’s claim, contending that his symptoms were due to diabetic neuropathy and not the accepted lumbar strain.

In a June 9, 2000 report, Dr. Hess diagnosed “[l]umbar stenosis and left L4-5 disc herniation” by MRI scan and CT studies, requiring decompressive lumbar laminectomies and L4-5 discectomy.”

On June 13, 2000 Dr. Hess performed decompressive lumbar laminectomies at L3, L4, L5 and S1 to correct diagnosed moderate to severe spinal stenosis.

In a July 5, 2000 report, Dr. Hess opined that appellant’s lumbar condition on and after May 8, 2000 including a herniated L4-5 disc and stenosis at L3-4 and L4-5, was causally related to the accepted July 5, 1998 lumbar strain. He held appellant off work until August 24, 2000.

In a September 11, 2000 report, Dr. Vaccaro reviewed his treatment of appellant over the past year, noting that appellant’s left lower extremity symptoms worsened in March 2000, with an L5-S1 disc herniation demonstrated by the April 20, 2000 MRI scan. Dr. Vaccaro noted that appellant’s pain improved greatly following the June 2000 lumbar laminectomies, although he still walked with a cane and had absent lower extremity reflexes.

By decision dated February 23, 2001, the Office denied appellant’s claim for recurrence of disability on the grounds that causal relationship was not established. The Office found that appellant had not established either a change in the nature and extent of his condition or in his light-duty position.

Appellant disagreed with this decision and in a February 26, 2001 letter, requested an oral hearing before a representative of the Office’s Branch of Hearings and Review, held June 27, 2001.

At the hearing, appellant described his duties of having to lift open and pull close 700 to 900 trailer doors once a week to verify their contents and that he did not perform those duties after July 5, 1998. Appellant noted that the doors were often misaligned and difficult to open.⁴ He submitted additional evidence.⁵

In a February 28, 2001 report, Dr. Hess opined that the July 5, 1998 injury caused appellant’s back and “leg pain as well as his foot drop,” as his “back pain started immediately following” the July 5, 1998 injury. Dr. Hess explained that, “[a]lthough lumbar stenosis is a degenerative process that probably predates his injury, it is my opinion that the injury exacerbated his condition.” He noted that the left foot drop was permanent.

In an April 3, 2001 report, Dr. Hess stated that appellant’s back pain was continuous and progressive since July 5, 1998 and that appellant “made no specific mention” of a May 2000 recurrence of disability. Dr. Hess explained that, although appellant did have an underlying

⁴ Appellant’s account of events was confirmed by the testimony of Charles Nesheiwat, one of his coworkers.

⁵ Following the hearing, the employing establishment submitted a July 20, 2001 letter, alleging that appellant informed Lorraine Moir, a human resource specialist, that he had fallen at home in May 2000 and that she did not refer appellant to Dr. Mercurio. Accompanying a July 31, 2000 letter, appellant’s attorney representative submitted correspondence to and from the employing establishment dated throughout 1999 to 2001, demonstrating that Dr. Mercurio performed fitness-for-duty examinations for the employing establishment.

diabetic neuropathy, he also had severe lumbar stenosis. Regarding causal relationship, Dr. Hess stated that although appellant's "diabetic neuropathy contributed to his symptoms ... the lumbar stenosis exacerbated by [appellant's] work-related injury was the cause of [appellant's] back and left leg pain." He noted that appellant stated in July and August 2000 postsurgical visits that his lumbar pain had resolved.⁶

In an August 31, 2001 letter, Dr. Hess opined that the June 13, 2000 lumbar surgery and subsequent period of disability were "directly related to his work injury on July 5, 1998."

By decision dated and finalized September 20, 2001, the Office hearing representative affirmed the February 23, 2001 decision, finding that appellant submitted insufficient medical evidence to establish causal relationship.⁷ The hearing representative found that Dr. Hess did not provide sufficient medical rationale explaining the pathophysiologic link between the accepted July 5, 1998 lumbar strain and the claimed recurrence of disability.

The Board finds that the case is not in posture for a decision.

When a claimant who is on light-duty alleges a recurrence of disability, he must show either a change in the nature and extent of the light-duty job requirements, or in the extent of the work-related injury or condition.⁸ To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled him for work on and after the date of the alleged recurrence of disability.⁹

In this case, the Office accepted that appellant sustained a lumbar strain on July 5, 1998 when he opened a tractor trailer door. He was placed in a light-duty position beginning July 28, 1998. Appellant reported an increase in lumbar pain on or about May 8, 2000, such that he no longer felt able to work at his light-duty position. In order to prevail in the claim for recurrence of disability, appellant must establish that his condition on and after May 8, 2000 was due to the accepted July 5, 1998 lumbar strain and its sequelae and that his lumbar condition disabled him for work on and after that date.

Appellant submitted several reports from Dr. Hess, an attending Board-certified neurosurgeon, consistently opining that appellant's spinal conditions and need for lumbar surgery were related, in part, to the accepted July 5, 1998 lumbar strain. He was aware of the

⁶ A June 1, 2001 lumbar myelogram and CT showed L2-3 central stenosis the mild hypertrophy of the ligaments, a bulging L3-4 disc with spinal stenosis, "severe compromise" of the L4-5 disc space with central spinal stenosis and hypertrophy of the ligamentum flavum and L5 nerve root compression and a herniated and possibly extruded L5-S1 disc.

⁷ Following issuance of the Office's decision dated and finalized September 20, 2001, appellant submitted additional medical and factual evidence. The Board may not consider evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c).

⁸ *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁹ *James H. Botts*, 50 ECAB 265 (1999).

July 5, 1998 injury, providing a history of injury and subsequent treatment in reports dated May 31 and June 9, 2000. In reports through July 5, 2000, Dr. Hess diagnosed severe diabetic neuropathy, a left L4-5 disc herniation and lumbar stenosis from L3-S1. He performed decompressive lumbar laminectomies on June 13, 2000.

While the Office has not accepted a disc herniation, lumbar stenosis or diabetic neuropathy as work related, it is important to note that a claimant is not required to prove that work factors were the sole cause of a condition or disability. Any demonstrable contribution to the claimed condition by accepted factors of a claimant's federal employment is sufficient for the claimant to prevail.¹⁰ As applied to this case, appellant submitted several reports from Dr. Hess consistently expressing his support for causal relationship between the accepted July 5, 1998 lumbar strain and appellant's ongoing spinal condition. In a July 5, 2000 report, Dr. Hess stated that the herniated L4-5 disc and spinal stenosis from L3-5 were both causally related to the July 5, 1998 lumbar strain. In February 28 and April 3, 2001 reports, he stated that the July 5, 1998 injury caused appellant's lumbar pain, left lower extremity pain and left foot drop by aggravating his preexisting, degenerative spinal stenosis. In an August 31, 2001 letter, Dr. Hess stated that the July 5, 1998 lumbar strain precipitated the need for the L3-S1 decompressive laminectomies.

In addition to Dr. Hess' consistent support for causal relationship, appellant also submitted evidence regarding a worsening of his condition on or around May 8, 2000 leading to the claimed recurrence of disability. Dr. Vaccaro, an attending Board-certified neurologist, stated that, in a September 11, 2000 report, appellant's left lower extremity symptoms worsened in March 2000. Coupled with Dr. Hess' opinion, Dr. Vaccaro's observations of a worsening of appellant's condition also supports appellant's claim for a May 8, 2000 recurrence of disability.

The Board finds that the reports of Drs. Hess and Vaccaro are sufficient to warrant further development of the medical evidence by the Office.¹¹ Therefore, the case shall be remanded to the Office for further development. On remand, the Office shall prepare a detailed statement of accepted facts. The Office shall then refer this statement, appellant and the complete medical record to an appropriate Board-certified specialist or specialists to obtain a well-rationalized opinion regarding any causal relationship between the claimed recurrence of disability beginning May 8, 2000 and the accepted June 5, 1998 lumbar strain and its sequelae. The Office shall also conduct appropriate development to determine whether the June 5, 1998 lumbar strain caused the diagnosed lumbar radiculopathy, a lumbar disc herniation, or any temporary or permanent aggravation of diabetic sciatic neuropathy. Following this and all other development the Office deems necessary, the Office shall issue an appropriate decision in the case.

The decision of the Office of Workers' Compensation Programs dated and finalized September 20, 2001 is hereby set aside and the case remanded to the Office for further development consistent with this decision and order.

¹⁰ *Beth P. Chaput*, 37 ECAB 158 (1985).

¹¹ *John J. Carlone*, 41 ECAB 354 (1989).

Dated, Washington, DC
December 4, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member