

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERALD JOHNSON and U.S. POSTAL SERVICE,
POST OFFICE, Tyler, TX

*Docket No. 00-2541; Submitted on the Record;
Issued January 25, 2002*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability beginning May 22, 1996, due to his January 9, 1988 employment injury.

On January 9, 1988 appellant, then a 54-year-old carrier, injured his lower back when he fell on ice. The Office of Workers' Compensation Programs accepted that appellant sustained a lumbar strain and temporary aggravation of degenerative disc disease and a laminectomy/discectomy was performed at L1-2 on July 6, 1989.¹ Appellant did not stop work but returned to light duty.

Accompanying appellant's claim were treatment notes from Dr. Barry M. Green, a Board-certified orthopedic surgeon, dated from January 27 to September 26, 1988. Dr. Green indicated that appellant reinjured² his back on January 9, 1988 while at work and was experiencing lumbar pain. He diagnosed appellant with degenerative disc disease of the lumbar spine.

Appellant continued to submit treatment notes from Dr. Green indicating that he remained disabled and under treatment for lumbar strain and temporary aggravation of degenerative disc disease.

On July 6, 1989 appellant underwent an L1-2 laminectomy with bilateral discectomy, which was performed by Dr. Freddie L. Contreras, a Board-certified neurologist. The diagnosis was a centrally herniated disc at L1-2. Appellant continued to experience lumbar pain after surgery.

¹ The record indicated that appellant had been previously diagnosed with spondylolisthesis at L2-3, which was a nonwork-related condition.

² The record indicated that appellant filed a claim for a back injury sustained on September 4, 1984. Appellant's claim was accepted for lumbar-sacral strain. This claim is not before the Board at this time.

Appellant submitted treatment notes from Dr. Warren D. Long, a Board-certified orthopedist, dated from July 1992 to January 15, 1993, which noted appellant's symptoms of cervical pain. Dr. Long recommended a myelogram to rule out a herniated cervical disc. His January 5, 1993 report noted the results of the myelogram, which revealed a central bulging disc at L3-4 and a cervical central defect at C6-7. Dr. Long recommended an anterior cervical fusion.

Thereafter, in the course of developing the claim, the Office referred appellant to several second opinion physicians and also to an impartial medical examiner to determine the appropriateness of an anterior cervical fusion.

In a decision dated January 3, 1994, the Office denied appellant's request for surgery on the grounds that the evidence failed to demonstrate that the claimed condition was causally related to appellant's accepted employment injuries.

In a letter dated January 19, 1994, appellant requested a hearing before an Office hearing representative.

In a decision dated July 11, 1994, the hearing representative remanded the case for further development of the medical evidence. The hearing representative specifically indicated that the Office should obtain clarification from the second opinion physician with regard to whether appellant's neck condition and requested surgery was causally related to appellant's employment injuries of January 9, 1988.

In a decision dated November 2, 1994, the Office denied appellant's claim on the grounds that the weight of the medical evidence did not establish that appellant's cervical condition and requested surgery was causally related to the accepted injury of January 9, 1988.

The employing establishment offered appellant a modified-duty position commencing November 11, 1995, which complied with the medical restrictions set forth by his treating physicians. Appellant returned to work two hours per day, five days a week.

On May 31, 1996 appellant filed a CA-2a, notice of recurrence of disability. He indicated that he sustained a recurrence on May 22, 1996 noting that he had experienced headaches, muscle spasms, cramping and back pain since the employment-related injury of January 9, 1988. Appellant stopped work on May 31, 1996.³

By letter dated July 10, 1996, the Office informed appellant that he must provide a statement regarding any possible change in his light-duty job such that appellant would be unable to perform these duties and a narrative report from a physician, which describes objective findings, which show that appellant's condition prohibits appellant from performing the light-duty job.

Thereafter, appellant submitted treatment notes from Dr. Jeffrey DeHaan, a Board-certified orthopedic surgeon, dated May 31 to July 9, 1996. Dr. DeHaan's May 31, 1996 note

³ The record indicates that appellant underwent a left open carpal tunnel release on June 20, 1996. However, this condition has not been accepted by the Office nor is it before the Board at this time.

indicated that appellant had chronic cervical and lumbar problems. He noted appellant's gross weakness in the upper and lower extremities with marked limitation of strength and weakness in the left arm. He further noted that appellant's condition was permanent and that he would not be able to return to work. Dr. DeHaan's indicated that appellant's lower back condition was at a "standstill." His June 18, 1996 note also indicated that appellant's lumbar spine problems have not changed. Dr. DeHaan noted that appellant was still unable to work because of the significant stenosis in the lumbar levels. Dr. DeHaan's July 9, 1996 note, indicated that appellant's back problems were "*status quo*." He further indicated that there was nothing more that he could do for him at this time. Dr. DeHaan noted appellant's physical examination was unchanged at this time.

In a decision dated August 22, 1996, the Office denied appellant's claim for recurrence of disability on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on or about May 22, 1996, which was causally related to the accepted employment injury sustained January 1, 1988.

Appellant requested reconsideration and submitted treatment notes from Dr. DeHaan. Dr. DeHaan's August 22, 1996 note indicated that appellant was being treated for low back pain. He indicated that appellant was unable to do his job because his duties required sitting and twisting motion, which caused his spinal stenosis and degenerative arthritis to flare up. Dr. DeHaan's September 5, 1996 notes, indicated that appellant was under work restrictions of intermittent sitting, standing or walking for two hours a day with no bending, stooping, squatting, climbing, kneeling or twisting. Dr. DeHaan noted that appellant was not being allowed to move around during his tour of duty. He indicated that appellant could not bend and twist as was being required of him in his light-duty position. Dr. DeHaan's October 8, 1996 notes indicated that appellant was still experiencing cervical and low back pain, however, he was at a "stable *status quo* level." Dr. DeHaan noted that appellant was able to cope with his low back pain better since he was not working. His December 17, 1996 note indicated that appellant was experiencing persistent lumbar symptoms and recommended a magnetic resonance imaging scan. Dr. DeHaan's December 31, 1996 note indicated that appellant was seen for a follow up on his cervical and lumbar problems. Dr. DeHaan noted that surgical intervention for appellant's neck condition was being evaluated as an option.

By decision dated December 22, 1997, the Office affirmed its decision dated August 22, 1996.

In a letter dated December 14, 1998, appellant requested reconsideration and submitted treatment notes from Dr. DeHaan and three witness statements. Dr. DeHaan's treatment notes from January 1997 to November 1998 documented appellant's lower extremity symptomatology. He noted that appellant continued to have significant cervical and lumbar pain. The witness statements documented appellant's complaints of numbness and pain in his back,

neck, arm, shoulder and elbow when appellant was performing his labeling duties and noted that appellant would have to take breaks to get relief. DiAnne S. Barfield's statement indicated that appellant was provided with breaks so that he could stretch and walk around.⁴

By decision dated January 7, 1999, the Office affirmed its decision dated December 22, 1997.

In a letter dated January 4, 2000, appellant requested reconsideration. Appellant submitted treatment notes from Dr. DeHaan dated January 7, 1999 to March 17, 2000. In his January 7, 1999 report, Dr. DeHaan indicated that appellant had current objective findings of severe spinal stenosis of the lumbar spine. He noted the effects of appellant's work injury had not ceased, but persisted and cause appellant constant pain. Dr. DeHaan noted that appellant could not walk because of the neurogenic claudication and was showing signs of wasting of the upper and lower extremities. He indicated that appellant could not perform any work at this time due to the severe nature of his orthopedic problem. Dr. DeHaan's July 19, 1999 and March 17, 2000 reports, indicated that appellant had significant pathology of the neck and lower back, which precluded him from walking or standing for any length of time. Dr. DeHaan noted that appellant's injuries were permanent and that he should not return to work.

By decision dated June 23, 2000, the Office affirmed its decision dated January 7, 1999.

The Board finds that the evidence fails to establish that appellant sustained a recurrence of disability beginning on May 22, 1996 as a result of his January 9, 1988 employment injury.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁵

Appellant has not submitted sufficient evidence to support a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁶ On July 10, 1996 the Office advised appellant of the type of medical evidence needed to establish his claim.

Appellant submitted several reports from Dr. DeHaan dated May 31 to July 9, 1996. Dr. DeHaan's May 31, 1996 note indicated that appellant had chronic cervical and lumbar

⁴ In a July 14, 1999 decision, the Office made a preliminary determination that appellant was overpaid benefits in the amount of \$4,061.74. In a decision dated October 4, 1999, the Office determined that the circumstances of appellant's case warranted waiver of the recovery of the overpayment.

⁵ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁶ Appellant testified at the October 26, 1999 hearing that he had not experienced a change in the nature and extent of his limited duties.

problems. He noted objective findings of gross weakness in the upper and lower extremities with marked limitation of strength and weakness in the left arm. Dr. DeHaan further noted that appellant's condition was permanent and that he would not return to work. Dr. DeHaan indicated that appellant's lower back was at a "standstill." His June 18, 1996 note indicated that appellant's lumbar spine problems had not changed and that appellant was still unable to work because of the significant stenosis in the lumbar levels. Dr. DeHaan's July 9, 1996 note indicated that appellant's back problems were "*status quo*" and indicated that there was nothing that he could do for him at this time. However, none of Dr. DeHaan's reports, most contemporaneous with the recurrence of injury noted a specific date of a recurrence of disability nor did he note a particular change in the nature of appellant's physical condition, arising from the employment injury, which prevented appellant from performing his light-duty position. Rather these notes indicated that appellant's lumbar condition was unchanged and remained at a "standstill." These notes are vague regarding the time of the onset of the claimed recurrence of disability and are unrationalized regarding how the 1988 employment injury would have caused a particular period of disability beginning in May 1996.⁷ Dr. DeHaan neither addressed whether appellant was totally disabled due to his work injury on or after May 22, 1996 nor does he offer any reasoned support for causal relationship of the claimed condition or disability to the accepted work-related injury of January 9, 1988.

Other reports from Dr. DeHaan provided no specific opinion on causal relationship between conditions diagnosed and appellant's claimed recurrence of total disability. For example in his August 22 and October 8, 1996 reports, Dr. DeHann diagnosed appellant with spinal stenosis and cervical pain; however, Dr. DeHaan did not explain, how, over eight years following the accepted lumbar strain and temporary aggravation of degenerative disc disease, appellant's condition was exacerbated by appellant's employment factors to result in a totally disabling condition, for the claimed period. Further, the Office never accepted that appellant sustained spinal stenosis or a cervical condition as a result of his January 9, 1988, work injury and there is no medical evidence to support such a conclusion. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.⁸

Dr. DeHaan's September 5, 1996 note indicated that appellant was under work restrictions of intermittent sitting, standing or walking for two hours a day with no bending, stooping, squatting, climbing, kneeling or twisting but he noted that appellant was not being allowed to move around because of the constant sitting, twisting, crouching and bending that he was required to do in his light-duty position. However, there is no credible evidence which substantiates this allegation or indicates that appellant experienced a change in the nature and extent of the light-duty requirements. Rather, witness statements submitted by appellant, including Ms. Barfield's statement, indicated that appellant was provided with breaks so that he could stretch and walk around.

Appellant has not met his burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-

⁷ See *Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

⁸ See *Theron J. Barham*, *supra* note 7.

duty requirements, which would prohibit him from performing the light-duty position he assumed after he returned to work.

The June 23, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 25, 2002

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member