

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLEY L. REYNOLDS and U.S. POSTAL SERVICE,
POST OFFICE, Newport News, VA

*Docket No. 00-2104; Oral Argument Held June 6, 2002;
Issued July 29, 2002*

Appearances: *Charley L. Reynolds, pro se; Julia Mankata, for the Director,
Office of Workers' Compensation Programs.*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained a recurrence of disability on April 4, 1999 causally related to his September 11, 1996 employment injury; (2) whether appellant has established that he had residuals of his September 11, 1996 injury resulting in the need for medical care after May 30, 1997; and (3) whether the Office of Workers' Compensation Programs, in its February 24, 2000 decision, properly refused to reopen appellant's case for further review of the merits of his claim.

On September 13, 1996 appellant, then a 45-year-old letter carrier, filed a claim for a back strain sustained on September 11, 1996 when he slipped while walking down steps. The Office accepted that appellant sustained a lumbar strain and a herniated disc at L4-5, for which it authorized surgery. On December 11, 1996 Dr. James F. Allen, a Board-certified neurosurgeon, performed a right L4-5 hemilaminectomy, medial facetectomy and foraminotomy, and a right L4-5 discectomy. The Office paid appellant compensation for temporary total disability until he returned to limited duty on February 7, 1997.

In a report dated May 30, 1997, Dr. Allen stated:

“[Appellant] has essentially returned to his usual level of employment as a mail carrier. He has not altered his private life-style at all; on his weekends and days off he participates in all activities as he desires and is having no back or leg discomfort. He is requiring no medications.

“IMPRESSION: Complete resolution of symptoms with no long-term sequelae.

“TREATMENT PLAN: The patient is discharged from a neurosurgical treatment and carries no restrictions from a neurosurgical standpoint.”

By decision dated August 20, 1997, the Office terminated appellant's entitlement to medical benefits effective May 30, 1997 on the basis that he no longer suffered a medical condition related to the accepted work injury.

Appellant requested a review of the written record and submitted a report from Dr. Allen dated September 5, 1997. Dr. Allen stated that appellant "would be expected to have some periodic back discomfort, having had surgery for a ruptured disc.... The patient has periodic mild back discomfort following lumbar laminectomy, which puts him at a 10 percent permanent disability rating." He stated that appellant would be seen in the future on an as needed basis.

By decision dated September 17, 1998, an Office hearing representative found that "the Office has met its burden of proof to terminate compensation benefits, as the weight of the medical evidence establishes that the claimant is no longer suffering residuals of the September 11, 1996 work injury."

On April 13, 1999 appellant filed a claim for a recurrence of disability on April 4, 1999 causally related to his September 11, 1996 employment injury. In a statement attached to his claim form, he stated that on April 4, 1999 while mowing his lawn on a riding mower he felt tingling in his back, that the pain got worse when he began raking the grass and that he went in the house to sit down for a while but was unable to sit and had to lie down.

Appellant submitted a December 3, 1998 report from Dr. Allen, who stated:

"The patient has insignificant complaints of periodic back discomfort associated with increased activity. This is not unexpected in a man his age who has had previous surgery. He has vague complaints of muscle spasm in his right leg, with no evidence to suggest an active radiculopathy.

"DISCUSSION: Overall, the patient's complaints appear to be mild and somewhat vague and suggest underlying psychosomatic complaints.

TREATMENT PLAN: (1) The patient is discharged from neurosurgical treatment."

By letter dated May 17, 1999, the Office advised appellant that it needed additional information and evidence on his claim for a recurrence of disability, including a physician's opinion, with reasons for such an opinion, as to the causal relationship between his disability and his injury. Appellant submitted a report dated April 7, 1999 from Dr. Branch Fields, a Board-certified internist, stating that appellant was having extremely severe back pain and much more right thigh pain since April 4, 1999. Dr. Fields diagnosed degenerative joint disease of the lower spine. In a note dated April 7, 1999, he stated that appellant could not work for at least one week and in an April 14, 1999 note, Dr. Fields stated that appellant could possibly return to work on May 11, 1999. In a report dated May 7, 1999, Dr. Michael F. Plott, a cardiologist, noted that appellant "had aggravated his low back pain on April 5, 1999 working in yard at home" and that he had a history of chronic low back pain since his injury at work in September 1996. Dr. Plott's impressions were history of aggravated low back pain on April 5, 1999 and history of chronic low back pain with initial injury in September 1996. He indicated that appellant could return to work, but that he must use his left leg to drive. Appellant returned to limited duty as a modified carrier on May 11, 1999.

By decision dated July 14, 1999, the Office found that appellant had not established that he continued to suffer residuals due to his September 11, 1996 employment injury and that he had not established that he sustained a recurrence of disability on April 4, 1999 causally related to his employment injury.

By letter dated January 18, 2000, appellant requested reconsideration and submitted additional evidence. In a report dated June 15, 1999, Dr. Fields listed an impression of “Lumbar pinched nerve at L4-5 level or L5-S1 or L3-4 causing right sciatica (due to prior work injury).” A magnetic resonance imaging (MRI) scan on April 16, 1999 showed residual bulging of the disc at L4-5 with scar tissue in that area and mild bulging of the disc at L5-S1. A lumbar myelogram on November 3, 1999 showed disc space narrowing at L4-5 resulting in bilateral nerve root sleeve defects at L4-5 and deviation of the descending nerve roots. A December 26, 1999 report from Dr. Allen indicated that appellant underwent a posterior lumbar laminectomy with interbody fusion on December 1, 1999.

By decision dated February 24, 2000, the Office found that appellant’s request for reconsideration had not raised substantive legal questions nor included new and relevant evidence, and was therefore insufficient to warrant review of its prior decisions.

The Board finds that appellant has not established that he sustained a recurrence of disability beginning April 4, 1999.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.¹ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

Appellant filed a claim for a recurrence of disability occurring on April 4, 1999 due to his September 11, 1996 employment injury. However, he did not submit rationalized medical evidence based on a complete and accurate history, showing that his disability beginning that date was causally related to his September 11, 1996 employment injury. Dr. Fields, in an April 7, 1999 report, noted that appellant had had severe back pain since April 4, 1999, but did not attribute appellant’s condition to his September 11, 1996 employment injury, instead diagnosing degenerative joint disease of the lower spine. In a report dated May 7, 1999, Dr. Plott noted that appellant aggravated his low back pain on April 4, 1999³ working in his yard at home, but did not attribute appellant’s disability beginning on April 4, 1999 to his September 11, 1996 employment injury. As appellant did not submit rationalized medical

¹ *John E. Blount*, 30 ECAB 1374 (1974).

² *Frances B. Evans*, 32 ECAB 60 (1980).

³ Dr. Plott indicated that this event occurred on April 5, 1999 rather than April 4, 1999, but this minor error is inconsequential.

evidence that his disability beginning April 4, 1999 was causally related to his September 11, 1996 employment injury, he did not meet his burden of proof.

The Board also finds that appellant has not established that his need for medical treatment after May 30, 1997, the date the Office terminated his entitlement to medical benefits, was causally related to his September 11, 1996 employment injury.

The Office properly terminated appellant's entitlement to medical benefits on May 30, 1997, based on a May 30, 1997 report from Dr. Allen discharging appellant from his care on the basis that appellant had complete resolution of his symptoms, no restrictions for work and no need for medications. Although a September 5, 1997 report from Dr. Allen indicated that appellant could expect to have periodic back discomfort, given that he had had surgery for a ruptured disc, this report did not indicate that appellant needed further medical treatment for residuals of his September 11, 1996 employment injury. As the Office properly terminated appellant's compensation for medical benefits, the burden of proof shifted to appellant to show that he needed further medical treatment for the effects of the September 11, 1996 employment injury.⁴

Appellant has not met this burden of proof. Dr. Allen examined appellant on December 3, 1998 but again discharged him from treatment and suggested his vague complaints were psychosomatic. As noted above, the reports from Drs. Fields and Plott in April and May 1999 did not attribute appellant's condition at that time to his September 11, 1996 employment injury.

The Board further finds that the Office improperly refused to reopen appellant's case for further review of the merits of his claim.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the

⁴ See *George Servetas*, 43 ECAB 424 (1992).

merits of the claim. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁵

Most of the evidence, such as the results of diagnostic testing and the report of surgery on December 1, 1999, was not relevant to the issue in this case, as it does not address whether appellant's condition or disability are causally related to his September 11, 1996 employment injury. However, the June 25, 1999 report from Dr. Fields stated that appellant's pinched nerve of the lumbar spine causing right sciatica was due to his prior work injury. As no physician had previously stated that appellant's condition after the Office terminated his compensation for medical benefits was related to his employment injury, this new evidence was relevant and sufficient to require reopening of appellant's case for further review of the merits of his claim. Although this report did not contain rationale, the requirement for reopening a claim for merit review does not include the requirement that a claimant submit all evidence necessary to discharge his or her burden of proof. Instead, the requirement pertaining to the submission of evidence in support of a request for reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by the Office.⁶

The decision of the Office of Workers' Compensation Programs dated July 14, 1999 is affirmed. The decision of the Office dated February 24, 2000 is reversed and the case remanded to the Office for issuance of a decision on the merits of appellant's claim for medical benefits after May 30, 1997.

Dated, Washington, DC
July 29, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

⁶ *Kenneth R. Mroczkowski*, 40 ECAB 733 (1989).