

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD E. KRAMER and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Philadelphia, PA

Docket No. 01-1801; Submitted on the Record;
Issued March 4, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant had any disability on or after April 9, 1999 causally related to his February 25, 1999 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing.

On February 25, 1999 appellant, then a 46-year-old maintenance mechanic, sustained back contusions¹ in the performance of duty when he slipped on a wet floor and fell.

In narrative and form reports dated April 19, 1999, Dr. Laura E. Ross, appellant's attending orthopedic surgeon, provided a history of appellant's condition and findings on examination. She diagnosed lumbar degenerative disc disease, lumbar and cervical strains/sprains with radiculopathy, a herniated disc at L4-5 and indicated that appellant was totally disabled. Dr. Ross indicated that the conditions were causally related to appellant's employment. She noted that appellant's back injury sustained in an October 1998 motor vehicle accident had resolved.²

In reports dated May 20 to October 7, 1999, Dr. Ross indicated that appellant was disabled due to back pain.

In a report dated September 18, 1999, Dr. Frank A. Mattei, a Board-certified orthopedist and Office referral physician, provided a history of appellant's condition, findings on examination, a review of the medical evidence and diagnosed degenerative arthritic changes with

¹ Although the condition noted on one of the hospital emergency room discharge instruction was back contusions, a second set of emergency room discharge instructions provided a diagnosis of musculoskeletal strain. The Office accepted back contusions.

² In her narrative report, Dr. Ross indicated that appellant's motor vehicle accident occurred in 1989 but in her form report she gave the correct year as 1998.

possible disc disease affecting the cervical and lumbosacral spine and arthritic changes of the thoracic spine. He stated:

"After a careful review of the ... medical documentation, the history given, and my objective, orthopedic evaluation, it is my medical opinion ... that [appellant] may have sustained a temporary exacerbation of his preexisting conditions, confirmed by x-ray and MRI [magnetic resonance imaging] studies, of degenerative changes of his spinal column and of his left knee joint and shoulder joints, which would have responded to conservative care within a six-week period. However, it was noted that he did have a motor vehicle accident in October 1998, for which he was still being treated for the head, back, neck and legs at the time of his fall on [February 25, 1999].

"[T]he extent of his work-related injury of [February 25, 1999] was minor, and more of an exacerbation of his preexisting conditions which predated his [employment injury]."

* * *

"It is my medical opinion [that] there is no relationship to his present condition and his injuries on [February 25, 1999]."

By decision dated November 23, 1999, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that he was disabled on and after April 9, 1999 due to his February 25, 1999 employment injury.³

By letter dated February 18, 2000, appellant requested reconsideration and submitted additional evidence.

In a report dated January 12, 2000, Dr. Ross stated that she first examined appellant on April 19, 1999 for neck pain with radiation to the left trapezius and shoulder and arm paresthesias. She noted that appellant was injured in a motor vehicle accident in October 1998 resulting in neck and back injuries. Dr. Ross diagnosed cervical and lumbar sprain and strain, right S1 radiculopathy, left C6 radiculopathy, and a left knee and left shoulder sprain and strain. She indicated that a February 25, 1999 MRI scan revealed a disc herniation at L4-5, an MRI of the cervical spine revealed bony degenerative changes, an electromyogram (EMG) and nerve conduction studies on April 22, 1999 revealed L5 and S1 nerve root irritation as well as chronic lumbar and cervical muscular strain. Dr. Ross stated that x-rays revealed degenerative changes in the left shoulder acromioclavicular joint. She indicated that on January 12, 2000 appellant demonstrated continued pain in his neck, low back, left shoulder, and left knee and right leg relating to his February 25, 1999 employment injury. Dr. Ross stated:

"I feel [appellant's] symptoms and findings noted on his studies such as EMG, nerve conduction studies, MRIs and x-rays, along with his history, indicate his

³ The choice of the date of April 9, 1999 was explained by the Office as the date that Dr. Mattei opined that appellant's employment injury had resolved, six weeks after the February 25, 1999 employment injury.

injuries are related to the accident which occurred on February 25, 1999. In my professional opinion, there exists direct causal relationship between [appellant's] present physical condition and injuries and his occupation and work-related accident of February 25, 1999. Also, pertaining to his preexisting condition, the accident on February 25, 1999, aggravated and exacerbated this condition.”

By decision dated March 3, 2000, the Office denied modification of its November 23, 1999 decision.

By letter dated May 30, 2000, appellant requested an oral hearing.

By decision dated July 18, 2000, the Office denied appellant's request for an oral hearing on the grounds that he was not entitled to a hearing as a matter of right as he had previously requested reconsideration and on the grounds that the issue in the case could be resolved through a request for reconsideration and the submission of additional evidence.

By letter dated January 8, 2001, appellant requested reconsideration.

By decision dated March 2, 2001, the Office denied modification of its March 3, 2000 decision.

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

In narrative and form reports dated April 19, 1999, Dr. Ross, appellant's attending orthopedic surgeon, provided a history of appellant's condition, findings on examination, and diagnosed lumbar degenerative disc disease, lumbar and cervical strains/sprains with radiculopathy, and a herniated disc at L4-5. She indicated that the conditions were causally related to appellant's employment and that he was totally disabled. Dr. Ross noted that appellant's back injury sustained in an October 1998 motor vehicle accident had resolved.

In a report dated January 12, 2000, Dr. Ross diagnosed cervical and lumbar sprain and strain, right S1 radiculopathy, left C6 radiculopathy, and a left knee and left shoulder sprain and strain. She indicated that a February 25, 1999 MRI scan revealed a disc herniation at L4-5, an MRI of the cervical spine revealed bony degenerative changes, an electromyogram (EMG) and nerve conduction studies on April 22, 1999 revealed L5 and S1 nerve root irritation as well as chronic lumbar and cervical muscular strain, and x-rays revealed degenerative changes in the left shoulder acromioclavicular joint. She indicated that on January 12, 2000 appellant demonstrated continued pain in his neck, low back, left shoulder, and left knee and right leg relating to his February 25, 1999 employment injury. Dr. Ross stated:

“I feel [appellant's] symptoms and findings noted on his studies such as EMG, nerve conduction studies, MRIs and x-rays, along with his history, indicate his injuries are related to the accident which occurred on February 25, 1999. In my professional opinion, there exists direct causal relationship between [appellant's] present physical condition and injuries and his occupation and work-related accident of February 25, 1999. Also, pertaining to his preexisting condition, the accident on February 25, 1999, aggravated and exacerbated this condition.”

Thus, Dr. Ross opined, based on her examinations of appellant and the results of diagnostic tests, that appellant had continued medical problems and disability causally related to his February 25, 1999 employment injury.

In a report dated September 18, 1999, Dr. Mattei, a Board-certified orthopedist and Office referral physician, provided a history of appellant's condition, findings on examination, a review of the medical evidence and diagnosed degenerative arthritic changes with possible disc disease affecting the cervical and lumbosacral spine and arthritic changes of the thoracic spine. He stated:

“After a careful review of the ... medical documentation, the history given, and my objective, orthopedic evaluation, it is my medical opinion ... that [appellant] may have sustained a temporary exacerbation of his preexisting conditions, confirmed by x-ray and MRI studies, of degenerative changes of his spinal column and of his left knee joint and shoulder joints, which would have responded to conservative care within a six-week period. However, it was noted that he did have a motor vehicle accident in October 1998, for which he was still being treated for the head, back, neck and legs at the time of his fall on [February 25, 1999].

“[T]he extent of his work-related injury of [February 25, 1999] was minor, and more of an exacerbation of his preexisting conditions which predated his [employment injury].”

* * *

“It is my medical opinion [that] there is no relationship to his present condition and his injuries on [February 25, 1999].”

Dr. Mattei opined that appellant's continued back problems were not causally related to his February 25, 1999 employment injury. However, he indicated that the employment injury did aggravate his preexisting back conditions and did not sufficiently explain his opinion that the aggravation ended within six weeks of the February 25, 1999 employment injury.

The reports of Drs. Ross and Mattei, while not sufficiently rationalized to establish that appellant had continued back problems caused or aggravated by his February 25, 1999 employment injury, are sufficient to require that the case be remanded for further development of the claim.⁴

The Board further finds that the Office properly denied appellant's request for a hearing.

The Federal Employees' Compensation Act at section 8124(b)(1), concerning a claimant's entitlement to a hearing before an Office representative, provides in pertinent part: “Before review under section 8128(a) of this title, a claimant for compensation not satisfied with

⁴ See *John J. Carbone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.”⁵

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.⁶ Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right to a hearing,⁷ when the request is made after the 30-day period for requesting a hearing,⁸ and when the request is for a second hearing on the same issue.⁹ The Office’s procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.¹⁰

In the present case, appellant’s hearing request was made after he had requested reconsideration in connection with his claim and thus appellant was not entitled to a hearing as a matter of right. On February 8, 2000 appellant had requested reconsideration of the Office’s November 23, 1999 decision. Therefore, appellant was not entitled to a hearing as a matter of right because he made his hearing request after he had requested reconsideration.

While the Office also has the discretionary power to grant a hearing when a claimant is not entitled to a hearing as a matter of right, the Office, in its July 18, 2000 decision, properly exercised its discretion by stating that it had considered the reconsideration request in relation to the issue involved and denied appellant’s hearing request on the basis that the issue in the case could be resolved by submitting additional evidence to establish that his disability on and after April 9, 1999 was causally related to his February 25, 1999 employment injury. In this case, the evidence of record does not indicate that the Office’s denial of appellant’s hearing request constituted an abuse of discretion.

⁵ 5 U.S.C. § 8124(b)(1).

⁶ See *Henry Moreno*, 39 ECAB 475, 482 (1988).

⁷ See *Rudolf Bermann*, 26 ECAB 354, 360 (1975).

⁸ See *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

⁹ See *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

¹⁰ See *Stephen C. Belcher*, 42 ECAB 696, 701-02 (1991).

The decisions of the Office of Workers' Compensation Programs dated March 2, 2001 and July 18, 2000 are set aside and the case is remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
March 4, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member