

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES O'DRAIN and U.S. POSTAL SERVICE,
HALMESBURG CARRIER UNIT, Philadelphia, PA

*Docket No. 03-680; Submitted on the Record;
Issued April 25, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on June 24, 2000 causally related to his March 16, 1994 employment injury.

On March 17, 1994 appellant, then a 48-year-old letter carrier, filed a notice of traumatic injury alleging that on March 16, 1994 he was "reaching for package in trunk of car" and he injured his back. The Office of Workers' Compensation Programs accepted that appellant sustained an employment-related cervical and thoracic sprain and paid him appropriate compensation benefits. Appellant was intermittently off work and returned to light duty on November 7, 1994.

By decision dated June 11, 1996, the Office denied further compensation benefits on the basis that the effects of the March 16, 1994 injury had resolved. According to the record, appellant returned to full duty.

On July 25, 2000 appellant filed a Form CA-2a, notice of recurrence of disability. He stated that in June 2000 he developed a weakness of his right leg and "a nervous condition while trying to sleep." Appellant stopped work on June 24, 2000 and has not returned. He indicated that his recurrence of symptoms began on June 24, 2000 and were due to the employment-related injuries sustained on March 16, 1994. He stated: "My cervical problem symptoms are the same as 1994 but with more severity and the medical [physicians] tell me that this is from my original injury on March 16, 1994. Also my cervical condition never went away. I just tolerated the best I could."

By letter dated September 15, 2000, the Office requested detailed factual and medical evidence, stating that the information submitted was insufficient to establish a recurrence on the above date.

By decision dated November 15, 2000, 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 June 24, 2000, which was causally related to the accepted employment injury sustained on March 16, 1994.

Appellant requested an oral hearing before an Office hearing representative, which he later changed to a request for an examination of the written record.

In a report dated September 1, 2000, Dr. Mario J. Arena, a Board-certified orthopedic surgeon, indicated that appellant had complaints of neck pain, right arm pain and right leg weakness. Dr. Arena noted that he had treated appellant in the past for cervical spinal stenosis with radiculopathy and that appellant did well overall until June 2000, "when he noted a jerking motion in all his extremities when lying down in the evening prior sleep." He also noted that appellant had been dragging his right leg. He diagnosed appellant with cervical spinal stenosis with myeloradiculopathy. He opined: "[Appellant's] current condition of cervical spine stenosis with myeloradiculopathy represents a progression of his cervical spine condition as noted by me in my initial evaluation of [appellant] on May 20, 1994 and is all related to his original injury at work on March 16, 1994."¹

A magnetic resonance imaging scan of the cervical spine performed on September 8, 2000 indicated severe spinal stenosis.

Dr. Arena stated that appellant underwent surgery on October 3, 2000 and reported overall right arm improvement with no significant change in right leg coordination problems, although he noted some decreased sensation in appellant's right lateral thigh region.

In a report dated January 24, 2001, Dr. Arena indicated that appellant's fusion was progressing well and that he had improvement in the control of his right leg. He stated:

"In summary, [appellant] has had ongoing symptomatic cervical spinal stenosis with radiculopathy since the time of his injury at work in March 1994 and, although he improved sufficiently to return to work by early 1996, after a series of epidural steroid injections and physical therapy, he never became 100 percent asymptomatic, never experiencing a complete resolution of his problem. The significant worsening of his condition over the spring and summer of the year 2000, including development of spinal cord compression, represents a continuation of his ongoing problems, which are all causally related to his work injury of 1994...."

By decision dated October 22, 2001, the Office hearing representative vacated the November 15, 2000 decision, finding that Dr. Arena's January 24, 2001 report warranted further development of the medical evidence. The case was remanded to the Office.

¹ Appellant submitted numerous medical records from 1994 through 1996; however, the Board will only address those records, which are relevant to the June 24, 2000 claim for recurrence of disability.

The Office referred appellant to Dr. Steven Valentino for a second opinion examination to determine whether appellant's cervical condition requiring discectomy/fusion surgery in October 2000 was causally related to the March 16, 1994 employment injury.

By report dated December 19, 2001, Dr. Valentino indicated that he examined appellant and the medical evidence and stated:

"The medical records and review of radiologic studies indicate [he] did sustain a work[-]related injury on March 16, 1994. This injury was a cervical and thoracic strain. Various records also indicate that this injury may have also exacerbated underlying spinal stenosis as radicular symptoms were suggested. At any rate, he was treated appropriately and did have resolution of his symptoms with a full return to work.

"The records indicate he was doing well until midyear of 2000 when he complained of myelopathic symptoms, which were not previously noted. These findings bear no causal connection to the work injury of March 16, 1994 from which he recovered. As such, the need for surgical intervention in the form of decompression and fusion, although reasonable and necessary, cannot be apportioned to the work injury of March 16, 1994 from which he recovered...."

Dr. Valentino found that appellant was capable of working a light-duty, full-time position.

By decision dated January 4, 2002, the Office found that the weight of the medical evidence established that appellant had no residual condition or disability causally related to the March 16, 1994 work injury and denied his claim for recurrence.

Appellant disagreed with the Office's decision and requested a review of the written record.

By decision dated April 23, 2002, the Office hearing representative affirmed the January 4, 2002 decision.

The Board finds that this case is not in posture for a decision due to a conflict in the medical evidence.

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which he claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

² *Carmen Gould*, 50 ECAB 504 (1999).

In the present case, appellant submitted evidence from his treating physician, Dr. Arena, who had treated appellant since 1994 for his back condition. He diagnosed appellant with severe spinal stenosis with myeloradiculopathy, which he opined was a progression of appellant's cervical spine condition as he noted in his initial evaluation of appellant in 1994. He stated that, although appellant improved sufficiently to return to work in 1996, he never experienced a complete resolution of his problems. Dr. Arena opined that the worsening of appellant's condition in 2000 and his current symptoms were all causally related to the original work injury on March 16, 1994. On the other hand, the Office referral physician, Dr. Valentino, opined that appellant's myelopathic symptoms were not related to the original work injury and would have occurred whether appellant had been involved in the March 16, 1994 employment injury or not. He stated that appellant's current cervical condition, as well as the need for decompression surgery and fusion, could not be attributed to the original employment injury. He opined that appellant had no continuing residuals from the incident on March 16, 1994 and that his symptoms had resolved when he return to full-time work. Accordingly, there exists a conflict in the medical evidence.

Section 8123(a) of the Federal Employees' Compensation Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.³ Accordingly, the case will be remanded to the Office for resolution of the conflict. On remand, the Office should refer appellant, along with a statement of accepted facts and the medical records, to an appropriate specialist for an impartial evaluation and report including a rationalized opinion as to whether appellant continues to suffer residuals of the March 16, 1994 accepted employment injury. After such further development as the Office deems necessary, it should issue an appropriate decision.

³ *Jose Hernandez*, 47 ECAB 288 (1996).

The decision of the Office of Workers' Compensation Programs dated April 23, 2002 is hereby set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, DC
April 25, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member