U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HARRY B. STEINBERG and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

Docket No. 03-61; Submitted on the Record;
Issued March 7, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant established that he sustained a low back injury in the performance of duty on October 28, 1999.

On October 28, 1999 appellant, then a 48-year-old mailhandler, filed a notice of traumatic injury alleging that he sustained injuries to his lower back and right leg while bending to pick up mail from the floor.[1] He stopped work on October 28, 1999 and has not returned.

Appellant initially sought treatment on October 28, 1999 at Frankford Hospital. Medical records state as follows: "48-[year]-old wh… male with history of back problems since 1986. Back to work three weeks. Felt pain in back with bending. Lasted one hour and now is at baseline. Sent here due to long-standing numbness of right leg." Findings under neurological examination were listed as unremarkable. Appellant was noted as complaining of "decreased sensation of the right leg diffusely." The diagnosis was chronic back pain syndrome. Another page of notes from this visit states that "tonight [appellant] squatted to pick up a piece of mail felt the right leg go out with a spasm and worse numbness than before. Can[no]t bear full weight on right."

On November 1, 1999 appellant was seen by Dr. Cotler, the orthopedic surgeon, who had been treating appellant for his 1986 back injury claim. In an office note, Dr. Cotler reported that appellant "states he was bending down to pick up some mail and heard a crack with extreme shooting pain in his back and numbness in his right leg." He also noted: "[Appellant] was rather depressed and feels he is no good. He feels there is something moving in his back. He will have frequent spasms and wonders if it is scar tissue." Dr. Cotler indicated that x-rays "suggest a

[1] The record indicates that appellant sustained an L5-S1 lumbar back injury at work on June 4, 1986 which was accepted by the Office of Workers' Compensation Programs. Appellant underwent three surgeries and received compensation for a long period of disability. He had just returned to limited duty, working four hours per day on October 8, 1999. Appellant was receiving compensation for partial disability due to his June 4, 1986 work injury at the time of the alleged employment injury of October 28, 1999.

fresh fracture of L2" although he was not sure of the age of the fracture.[2] He concluded that he "[m]ust consider [the fracture to be] fresh until proven otherwise" Dr. Cotler indicated that appellant was going to provide copies of his old x-rays for review.

In a Form CA-20 attending physician's report dated December 15, 1999, Dr. Cotler noted under history of injury that appellant had been picking up mail when he experienced lower back and right leg pain. The diagnosis was listed as a fracture at L2. He check marked the box indicating there was a causal relationship between the diagnosed condition and appellant's employment. Dr. Cotler advised that appellant was disabled from "November 1, 1999 to present."

An x-ray of the lumbar spine dated December 30, 1999 revealed no significant change from the November 1, 1999 x-ray. Posterior cervical fusion of L4-S1 was again noted. A compression fracture at L2 was also noted.

In a report dated December 30, 1999, Dr. Cotler reported that appellant was being treated for "an L2 fracture that occurred at the end of October 1999." He stated: "Evidently, [appellant] was bending over to pick up some pieces of mail and had a cracking sensation in his back and shooting pain with numbness in his right leg.... I felt it was a fresh flexion compression fracture of L2 and he is in a Knight-Taylor brace." Dr. Cotler's physical examination of December 30, 1999 revealed "an affected gait," no tenderness and decreased L5-S1 sensation. He apparently reviewed a new x-ray noting that the "L2 is healing pretty well." Dr. Cotler advised that appellant would return for assessment in six weeks and he could probably consider returning to gainful employment.

In a January 20, 2000 decision, the Office denied compensation on the grounds that the evidence was insufficient to support that appellant's claimed medical condition was causally related to the October 28, 1999 employment incident.

Appellant requested an oral hearing, which was held on November 7, 2000.

In conjunction with his hearing request, appellant submitted a July 10, 2000 report from Dr. Cotler, noting that the physician had reviewed x-rays dated June 30, 1993, showing no L2 fracture. Dr. Cotler then advised that an August 1993 x-ray did show an L2 fracture but that a computerized tomography (CT) scan of December 30, 1999 demonstrated the L2 fracture to be well healed. He opined that appellant was capable of light work four hours daily.

The record contains a copy of a lumbar spine x-ray dated November 21, 1997 indicating a healed old superior end-plate compression fracture of L2.

In a decision dated February 12, 2001, an Office hearing representative affirmed the Office's January 20, 2000 decision.

[2] A copy of the x-ray report dated November 1, 1999 states: "Status post laminectomy of L4-5 with posterior fusion of L4 through S1 with rod and transpedicular screw placement. There is approximately 18 millimeter of anterior listesis of L5 on S1."

By letter dated July 22, 2001, appellant requested reconsideration and submitted additional evidence from Dr. Peterson, a Board-certified physician in physical medicine and rehabilitation.

In a November 16, 2000 report, Dr. Peterson noted that appellant was seen for an initial consultation. She noted a history of the employment incident on October 28, 1999 in which the claimant "was picking mail up off the floor and his back popped." Dr. Peterson had reviewed Dr. Cotler's office notes suggesting that appellant may have sustained a new L2 fracture. She reviewed an x-ray dated November 1, 1999 and opined that it showed an abnormality in the L2 vertebral body consistent with injury. After noting that she did not have older films for comparison, Dr. Peterson concluded that appellant "appears to have sustained an acute injury to his low back in the setting of his episode of October 1999." She recommended physical therapy and prescribed Lidoderm patches for pain.

In an April 4, 2001 report, Dr. Peterson noted that appellant was picking mail up off the floor on October 28, 1999 when he felt his back pop. She reported physical findings and stated as follows:

> "Within a reasonable degree of medical certainty, I believe he had an aggravation of chronic low back pain and lumbar radiculopathy secondary to his involvement in his work-related incident. He tells me that prior to this he had leg numbness, but not leg pain. Following this episode he had right leg numbness as well as right leg pain. He had a history of prior spinal instrumentation with fusion and had a significant decrease in his ability to enjoy his life and pursue vocational activities."

In a decision dated October 23, 2001, the Office denied modification.

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

To determine whether a federal employee has sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed, and the employment event, incident or exposure, the employee must submit rationalized medical opinion, based on a complete factual and medical background, supporting such a causal relationship.[3]

Appellant contends that he was injured at work on October 31, 1999 when he bent down to pick up a piece of mail and felt a pop in his back. He has submitted reports from Dr. Cotler indicating the physician's belief that appellant sustained a new fracture at L2 as a result of that employment incident. X-ray reports note that appellant had a healed L2 fracture as of

[3] *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

November 21, 1997. Appellant has a prior history of a work-related L5-S1 lumbar injury with lumbar laminectomy. He was working four hours per day and receiving compensation for partial disability at the time of the alleged October 28, 1999 work injury. Dr. Cotler reported that a November 1, 1999 x-ray showed a new fracture at L2 which the physician causally related to the October 28, 1999 bending incident. Although Dr. Cotler's report is not sufficiently reasoned to carry appellant's burden of proof, it stands as an uncontradicted opinion on causal relationship.[4] While appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[5] The uncontroverted inference created by Dr. Cotler's opinion requires the Office to further develop the issue of whether appellant sustained a low back injury in the performance of duty on October 28, 1999 as alleged.

The decision of the Office of Workers' Compensation Programs dated October 23, 2001 is hereby vacated and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
March 7, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[4] Contrary to the Office hearing representative's finding, Dr. Cotler has also specifically offered the diagnosis of injury as a L2 fracture.

[5] *Mark A. Cacchione*, 46 ECAB 148 (1994).