

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ERNEST M. SCHWERTFEGER and DEPARTMENT OF THE NAVY,
NAVAL MEDICAL CENTER, San Diego, CA

*Docket No. 02-182; Submitted on the Record;
Issued May 12, 2003*

DECISION and ORDER

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

The issue is whether appellant sustained an injury in the performance of duty on March 26, 1996 causally related to factors of his employment.

On June 11, 1998 appellant, then a 52-year-old medical clerk, filed an occupational disease claim alleging that he sustained an injury to his lower back and legs due to sitting for long periods of time, lifting and carrying patient charts, and bending, stooping, crouching, and standing while performing his job duties. He indicated that he first became aware of his condition on March 26, 1996¹ and first became aware that it might be work related on July 30, 1997.²

A magnetic resonance imaging (MRI) report concerning appellant's lumbosacral spine dated May 16, 1997 indicated congenitally central stenosis compounded by increased epidural fat secondary to obesity and further compounded by multilevel spondylosis, a small posterior disc bulge at L1-2, a large left disc extrusion at L2-3, degenerative joint disease and a mild disc margin bulge at L3-4, degenerative joint disease and a large disc extrusion causing severe compromise of the thecal sac at L4-5, and degenerative joint disease at L5-S1.

In reports dated December 16, 1997, Dr. Theodore Georgis, Jr., a orthopedic surgeon, stated that appellant was totally disabled due to large herniated discs at L2-3 and L4-5 with

¹ The record shows that appellant stopped work on March 26, 1996 and did not return to regular work.

² The case on appeal, file number 13-1167839, has been combined with three other claims. Under file number 13-0979581, the Office accepted a back strain sustained on March 19, 1992 when appellant worked as a sales checker in a commissary. Under file number 13-1049117, the Office denied a claim for a back injury on February 18, 1994. Under file number 13-1051001, the Office accepted a temporary aggravation of degenerative disc disease on June 14, 1993, resolved as of June 28, 1994.

bilateral lumbar radiculopathy. He opined that appellant's condition was causally related to his February 18, 1994 injury.³

By decision dated October 23, 1998, the Office of Workers' Compensation Programs denied appellant's claim for an injury on March 26, 1996 on the grounds that the medical evidence of record, which did not contain a rationalized medical opinion regarding causal relationship, did not establish that his back condition was causally related to his employment.

By letter dated February 10, 1999 appellant requested a review of the written record by an Office hearing representative. He also submitted additional evidence.

A letter dated February 16, 1999 from the Office of Personnel Management indicated that appellant's application for disability retirement had been approved.

By decision dated April 21, 1999, an Office hearing representative affirmed the Office's October 23, 1998 decision on the grounds that the evidence of record failed to establish causal relationship between his back condition and factors of his employment.

By letter dated July 2, 1999, appellant requested reconsideration and submitted additional evidence.

In a report dated January 29, 1998, Dr. Mark S. Stern, a neurosurgeon, provided a history of appellant's condition and findings on examination and diagnosed multi-level spinal disease, both cervical and lumbar, with symptomatic problems at both levels. He indicated that appellant needed surgery and was temporarily disabled. He did not provide an opinion as to the cause of appellant's condition.

Appellant submitted a Social Security Administration decision dated October 1, 1998 accepting his application for disability retirement.

In a report dated May 24, 1999, Dr. Todd Burstain stated that appellant had a long history of degenerative disease of the cervical and lumbar spine. He stated:

"It is very likely given [appellant's] similar symptomatology that similar types of findings were present as early as 1992. No clear causal relationship between [appellant's] work activities and his degenerative disease of his cervical and lumbar spine can obviously be established as there is no major trauma episode to point to. However, the type of work that he did do including lifting charts weighing up to 50 pounds,⁴ working on a hard floor surface for prolonged periods of time, bending down to work at a desk and to copy charts at a copier all would surely aggravate his degenerative disease in his cervical spine as well as his lumbar spine.

³ As noted above, the Office did not accept appellant's claim for an injury on February 18, 1994.

⁴ The job description for a medical clerk indicates that the job is primarily sedentary with some reaching, walking, sitting, standing, bending, and lifting less than 10 pounds.

"Whether or not any of these activities or the accumulation of these activities can be definitely said to have worsened [appellant's] condition is of course impossible to say, however, it is more than likely reasonable that these types of activities further aggravated his chronic condition."

By decision dated August 6, 1999, the Office denied modification of its denial of appellant's claim on the grounds that the evidence of record was not sufficient to warrant modification.

By letter dated July 17, 2000, appellant requested reconsideration and submitted additional evidence.

In a report dated December 16, 1997, Dr. John M. Seelig, a Board-certified neurosurgeon, provided a history of appellant's condition and findings on examination. He diagnosed multiple level cervical spondylosis, disc protrusions at C3-4, 4-5, 5-6, and 6-7, central canal and bilateral foraminal stenosis at C3-7, bilateral carpal tunnel syndrome, and cervical radiculopathies. Dr. Seelig indicated that appellant was temporarily totally disabled. He did not provide an opinion as to the cause of appellant's condition.

In a report dated March 17, 1998, Dr. Seelig stated that appellant's job as a medical clerk involved repetitive motions of his neck, arms, hands, and fingers. He noted that appellant had been injured in an automobile accident in 1985 and experienced neck pain that resolved. Dr. Seelig stated that appellant had a worsening of his cervical problem following an injury in February 1996. He stated:

"I would state that [appellant] has aggravation of his cervical disc disease which began in 1985, and now has been aggravated by the years of working as a medical clerk in a very busy clinic, according to [appellant] in our conversation.

"Causation of the cervical problem appears to be initially related to [appellant's] car accident. I would attribute 50 [percent] related to his car accident in terms of apportionment and 50 [percent] due to his accumulated aggravated condition as a medical clerk in a very busy clinic. The repeated motions of his hands, arms and neck are absolutely necessary in his line of work."

In a report dated October 27, 2000, Dr. Robert Moore, a Board-certified neurologist and an Office referral physician, provided a history appellant's condition, a review of the medical records, and findings on examination. He diagnosed bilateral carpal tunnel syndrome, status post surgery, lumbar spondylosis with associated L4-5 disc herniation, cervical spondylosis, and probable meralgia paresthetica. Dr. Moore stated:

"I do not find evidence of a work injury that would have led to the development of spondylitic changes as have been seen on [appellant's] MRI [magnetic resonance imaging] scan. In this regard, the spondylitic changes noted would have occurred over a lifetime....It does not appear that reference was made to any problems with the neck until [appellant] had been off work for nearly a year. I do not feel that prolonged sitting over a several year period of time as a medical clerk could have in any way resulted in any significant aggravation of his pre-existing

cervical spondylosis. It is felt that any future diagnostic testing or treatment of [appellant's] cervical spondylosis should be done on a non-industrial basis, as it is unrelated to his work."

In a report dated November 2, 2000, Dr. Thomas R. Dorsey, a Board-certified orthopedic surgeon and an Office referral physician, provided a history of appellant's condition, a review of the medical records, and findings on examination. He diagnosed status post bilateral carpal tunnel releases with overall good clinical result, right lateral epicondylitis, bilateral upper extremity thoracic outlet syndrome, bilateral upper extremity cubital tunnel syndrome, probable cervical spinal stenosis, lumbar spinal stenosis, and obesity. Dr. Dorsey stated:

"[Appellant's] obesity has a significant effect on his medical condition, specifically with regard to his low back condition. Because of his obesity, there is a significant mechanical load on his lumbar spine which results in back pain. In terms of causation, in my opinion, [appellant's] obesity, over the number of years, has resulted in the degeneration of his lumbar spine and continues to exacerbate his back on the basis of increased load of the muscles.

* * *

"In my opinion, [appellant's] work activities as a cashier are consistent with the causation of carpal tunnel syndrome and cubital tunnel syndrome. They are not consistent with lumbar spinal degeneration or cervical spinal degeneration, because the latter two are not considered to be repetitive stress conditions. These similar comments would apply to his position as a medical clerk.

"With regard to specific traumatic injuries, I do not believe that the episode of March 9 [sic, 19], 1992 was a specific traumatic injury which would have had any residual. I do not believe the specific event of June 14, 1993 would have any residual. I do not believe the episode of February 18, 1994 would have residual.

* * *

"With regard to the cervical and low back condition, I do not believe that [appellant] has any industrial condition regarding those areas, for the reasons given above.

"The position of medical clerk is reviewed. The work seems to be primarily sedentary in nature. Based on work-related residuals only, in my opinion, [appellant] is capable of doing this job."

By decision dated November 24, 2000, the Office denied modification of its prior decision.

By letter dated February 19, 2001, appellant requested reconsideration and submitted additional evidence.

In a report dated December 19, 2000, Dr. Mark N. Sadoff, a Board-certified neurologist, stated that appellant had provided him with some medical records and asked him to comment on the etiology of his low back problems. He stated:

"[Appellant] states that his first injury occurred in 1974 and included symptoms of low back sprain/strain which had gradually resolved. He was re-injured in 1980 while at work. In 1985, he suffered a neck injury in an automobile accident. By 1986 he had noted fairly good recovery. While working at Camp Pendleton he recalls dates of injury of March 1992, June 1993, February 1994 through March 1996 with chronic lumbosacral and cervical problems. He felt that after March 1996 his symptoms never healed. He has mainly hand and cervical complaints but continues to have some low back symptoms. After 1992, he indicates that he was not supposed to do any bending, stooping or other activity which could aggravate his low back pain but notes that his job requirements did include these activities. He feels that his job duties contributed to the persistence and perhaps the aggravation of his low back problems. He would have to lift 25-50 pounds at a time while working with bundles of heavy medical records....

* * *

"In my review of his medical records, it would seem medically probable, in my opinion, that [appellant's] work as a medical records clerk did aggravate and accelerate [appellant's] underlying problems with cervical and lumbosacral spondylosis."

Dr. Sadoff did not provide any findings on examination.

By decision dated March 26, 2001, the Office denied modification of its prior decision.⁵

The Board finds that appellant has failed to establish that he sustained an injury on March 26, 1996 causally related to factors of his employment.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁶ The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a

⁵ The record contains additional evidence which was not before the Office at the time it issued its March 26, 2001 decision. The Board has no jurisdiction to review this evidence for the first time on appeal. See 20 C.F.R. § 501.2(c); *Robert D. Clark* 48 ECAB 422, 428 (1997).

⁶ See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁷ must be one of reasonable medical certainty,⁸ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹ The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.¹⁰

In a report dated October 27, 2000, Dr. Moore, a Board-certified neurologist and an Office referral physician, provided a history of appellant's condition, a review of the medical records, and findings on examination and opined that appellant's back problems were not work related.

In a report dated November 2, 2000, Dr. Dorsey, a Board-certified orthopedic surgeon and an Office referral physician, provided a history of appellant's condition, a review of the medical records, and findings on examination and stated that appellant had no work-related back condition.

In reports dated December 16, 1997, Dr. Georgis, Jr., a orthopedic surgeon, stated that appellant was totally disabled due to large herniated discs at L2-3 and L4-5 with bilateral lumbar radiculopathy. He opined that appellant's condition was causally related to his February 18, 1994 injury. However, Dr. Georgis did not provide any medical rationale explaining how appellant's back condition was causally related to specific employment factors. Furthermore, the February 18, 1994 is not an accepted employment injury. Therefore, this report is insufficient to establish that appellant sustained a work-related back condition.

In a report dated December 16, 1997, Dr. Seelig, a Board-certified neurosurgeon, provided a history of appellant's condition and findings on examination. He diagnosed multiple level cervical spondylosis, disc protrusions at C3-4, 4-5, 5-6, and 6-7, central canal and bilateral foraminal stenosis at C3-7, bilateral carpal tunnel syndrome, and cervical radiculopathies. However, he did not provide an opinion as to the cause of appellant's back condition. In a report dated March 17, 1998, Dr. Seelig stated that appellant's back condition had been aggravated by his job as a medical clerk. However, he did not explain, with reference to specific employment factors, how appellant's back condition was causally related to his job. Therefore, these reports are not sufficient to discharge appellant's burden of proof.

⁷ See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁸ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁹ See *James D. Carter, Jr.*, 43 ECAB 113, 123 (1991); *George A. Ross*, 43 ECAB 346, 351 (1991).

¹⁰ See *Manuel Garcia*, 37 ECAB 767, 773 (1986); *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

In a report dated January 29, 1998, Dr. Stern, a neurosurgeon, provided a history of appellant's condition and findings on examination and diagnosed multi-level spinal disease, both cervical and lumbar, with symptomatic problems at both levels. He indicated that appellant needed surgery and was temporarily disabled. However, he did not provide an opinion as to the cause of appellant's condition. Therefore, this report is not sufficient to discharge appellant's burden of proof.

In a report dated May 24, 1999, Dr. Todd Burstain stated that no clear causal relationship between appellant's work activities and his degenerative disease of his cervical and lumbar spine could be established but the type of work that he performed could aggravate his back condition. He indicated that appellant's job included lifting charts weighing up to 50 pounds, working on a hard floor surface for prolonged periods of time, bending down to work at a desk and to copy charts at a copier. However, his opinion is not based on a complete and accurate factual background. The job description for appellant's job indicates that there is no lifting over 10 pounds and that the job is primarily sedentary. Therefore, Dr. Burstain's opinion as to causal relationship is of diminished probative value and is not sufficient to establish that appellant's back condition was causally related to factors of his employment.

In a report dated December 19, 2000, Dr. Sadoff, a Board-certified neurologist, stated that he had reviewed some medical records appellant gave him. It does not appear that he conducted a physical examination. He indicated that appellant's job required lifting 25-50 pounds of medical records and that his back condition was aggravated and accelerated by his job. However, as noted above, appellant's job description indicated that he was not required to lift over 10 pounds. Dr. Sadoff did not provide sufficient medical rationale explaining how appellant's back condition was aggravated by his employment. Therefore, this report is not sufficient to establish that appellant's back condition was caused or aggravated by his employment.

Appellant submitted evidence showing that the Office of Personnel Management approved his application for disability retirement. However, approval of a disability claim by another federal agency under its rules and regulations is not determinative of a claimant's entitlement to compensation under the Federal Employees' Compensation Act (the Act).¹¹

Appellant also submitted a Social Security Administration decision dated October 1, 1998 accepting his application for disability retirement. However, a decision of an administrative law judge finding that appellant was disabled under the Social Security Act is not dispositive in this case because, as noted above, entitlement to benefits under one act does not establish entitlement to benefits under the Act. The Social Security Act and the Act have different standards of medical proof on the question of disability. Therefore, disability under one statute does not establish disability under the other statute. Furthermore, under the Act, for a disability determination, appellant's injury or occupational disease must be shown to be causally related to an accepted injury or factors of his federal employment. Under the Social Security Act,

¹¹ See *Daniel Deparini*, 44 ECAB 657, 659-60 (1993); *Hazelee K. Anderson*, 37 ECAB 277, 282-83 (1986).

conditions that are not employment-related may be taken into consideration in rendering a disability determination.¹²

The decisions of the Office of Workers' Compensation Programs dated March 26, 2001 and November 24, 2000 are affirmed.

Dated, Washington, DC
May 12, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹² *Id.*