

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE W. KEMBRO, JR. and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, WHITING FIELD, Milton, FL

*Docket No. 03-366; Submitted on the Record;
Issued May 9, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability on or about June 2, 2000 causally related to an April 5, 1989 employment injury.

On April 6, 1989 appellant, then a 54-year-old planner and estimator, filed a traumatic injury claim alleging that on April 5, 1989 he slipped on a step and fell onto a concrete sidewalk, sustaining injuries to his lower back and left leg. The Office of Workers' Compensation Programs accepted appellant's claim for low back strain, lumbar strain, left hip strain and aggravation of preexisting herniated nucleus pulposus at L5-S1 levels with radiculopathy. By decision dated June 12, 2000, the Office noted that appellant recently became employed as a management assistant for the employing establishment, found that position fairly and reasonably represented his wage-earning capacity and adjusted appellant's wage-loss compensation accordingly.

On June 7, 2000 appellant filed a claim for a recurrence of disability commencing June 12, 2000. In support thereof, he submitted a June 1, 2000 progress note by Dr. Talbert, wherein he diagnosed appellant with spinal stenosis, degenerative disc changes and pars defect L5-S1. Dr. Talbert further indicated:

“In conclusion, it is my impression that work is not feasible for [appellant] due to his diabetes, cardiac condition and lower back problems. I also believe the patient would be high risk for surgery. Even with surgery, I am not sure he would be able to work in any significant capacity.”

By letter to appellant dated June 26, 2000, the Office noted that it had received appellant's claim for compensation and that, if appellant disagreed with the wage-earning capacity decision, he should follow his appeal rights. The Office also informed appellant that, if he sustained a recurrence of disability, he should file a Form CA-2a and include medical documentation to substantiate disability.

On June 27, 2000 appellant filed a claim for recurrence (Form CA-2a). He indicated that he sustained a recurrence as of June 2, 2000, noting that he was put on light duty but that as time went on, he could not sit or stand long enough without severe back pain. In support thereof, appellant submitted progress notes from Dr. Richard K. Adkins, a Board-certified anesthesiologist, which indicated that between June 23 and December 18, 2000, appellant received at least four steroid injections to alleviate pain.

On October 10, 2000 the Office referred appellant to Dr. Raymond Fletcher, a Board-certified orthopedic surgeon, for a second opinion. In a report dated October 24, 2000, Dr. Fletcher noted:

“This is a 66-year-old man with chronic lower back pain and left sciatica primarily due to injury which occurred on February 15, 1984 and April 5, 1989. The first injury resulted in a laminectomy of March 28, 1984. The second injury resulted in another laminectomy which occurred on February 28, 1990. The injury of January 3, 2002 represents an exacerbation of the previous conditions. This claimant’s physical demand characteristics of work are estimated at the ‘sedentary-light’ level with a single lifting limit of 15 pounds and a frequent lifting limit of 8 pounds.”

Dr. Fletcher noted that the injury of April 5, 1989 resulted in a recurrent disc herniation requiring surgery, that appellant continued to have a permanent impairment residual from the injury of April 5, 1989, that appellant was not able to perform the job requirements of a management assistant and that appellant was only able to perform a job in the “sedentary-light” category. On the same date, Dr. Fletcher completed a form for evaluating appellant’s work capacity. He indicated that appellant was limited to sitting, walking, standing, twisting, squatting, kneeling and climbing six hours a day. Dr. Fletcher also limited appellant to pushing, pulling and lifting no more than 15 pounds for six hours a day. In a December 13, 2000 response to a request from the Office for clarification, he indicated that the position of management assistant was apparently modified to accommodate appellant’s restrictions and that appellant was capable of performing the job duties of the management assistant as outlined in the job description.

By decision dated January 5, 2001, the Office denied appellant’s claim for recurrence, as it found that the evidence failed to establish a recurrent disability that is causally related to the original work injury of April 5, 1989.

By letter dated June 21, 2001, appellant requested reconsideration. In his letter, he indicated that he “did not get to stay at that job for long.” Appellant indicated that he was moved to the “trouble desk,” that this job required him to sit all day, which caused his back condition to worsen. He also submitted a form from the employing establishment indicating that, effective June 12, 2001, appellant was removed from working as a management assistant for the reason that he was unable to perform his duties due to medical reasons. By decision dated November 29, 2001, the Office denied modification of the January 5, 2001 decision for the reason that the evidence failed to establish a recurrence of disability causally related to the work injury of April 5, 1989.

By letter dated December 31, 2001, appellant requested reconsideration. In support thereof, appellant submitted a November 26, 2001 note by Dr. W.B. Kelley, indicating that appellant had chronic obstructive pulmonary disease, asbestosis, cardiomyopathy, recurrent atrial flutter, diabetes, gastroesophageal reflux disease, prostate cancer (status post surgery and radiation) and atherosclerotic heart disease.

Appellant also submitted an October 16, 2001 report by Dr. Michael T. Hartsfield, a Board-certified orthopedic surgeon. In this report, Dr. Hartsfield indicated that appellant appeared to be clinically totally and permanently disabled. He noted that appellant was on multiple medications, walked slowly in a stooped posture and had significant stiffness in the back in all planes. Dr. Hartsfield recommended a magnetic resonance imaging (MRI) scan which was performed on October 26, 2001. In his November 29, 2001 report, Dr. Hartsfield noted that the MRI revealed “substantial degenerative disc disease at L5-S1 with marked narrowing and Grade 1 anterior subluxation of L5 on S1 with associated bulging at L3-4 and L4-5 and what amounts to spinal stenosis.” He listed his impression as multilevel degenerative disc disease with spinal stenosis.

By decision dated February 21, 2002, the Office found that the evidence submitted in support of appellant’s application for review was insufficient to warrant modification of the prior decision.

The Board finds that the evidence fails to establish that appellant’s alleged disability commencing June 2, 2000 is causally related to his April 5, 1989 employment injury.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.¹

Causal relationship is a medical issue² and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician’s rationalized medical 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, must be one of reasonable medical certainty 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.³

¹ *Mary A. Howard*, 45 ECAB 646 (1994); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

² *Mary J. Briggs*, 37 ECAB 578 (1986).

³ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

In the instant case, appellant's general allegation that his job duties changed is insufficiently detailed to show that there was a change in the nature and extent of the light duty requirements. Furthermore, appellant has not submitted rationalized medical opinion evidence indicating a change in the nature and extent of the injury-related condition. Dr. Talbert's conclusion in his note of June 1, 2000 indicated that he did not believe that appellant could work due to diabetes, cardiac and lower back problems. He did not specifically indicate that there was a recurrence of the accepted condition or that his disability worsened. Dr. Adkins only noted that appellant received injections to alleviate pain; he also did not indicate a worsening of appellant's accepted conditions. Dr. Fletcher indicated that appellant was capable of performing the duties of the modified management assistant position. Although Dr. Hartsfield does indicate that appellant suffered from debilitating symptoms, he did not note that a recurrence occurred on or about June 2, 2000 causally related to the April 5, 1989 accepted injury. Finally, Dr. Kelley's report addresses numerous conditions not related to the April 5, 1989 injury. Accordingly, appellant has not met his burden of proof to establish a recurrence of the April 5, 1989 accepted work injury on June 2, 2000.

The decisions of the Office of Workers' Compensation Programs dated February 21, 2002 and November 29, 2001 are hereby affirmed.

Dated, Washington, DC
May 9, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member