

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of RUDY R. ORSABA and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Fresno, CA

*Docket No. 03-843; Submitted on the Record;  
Issued November 5, 2003*

---

DECISION and ORDER

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

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability from October 1, 2000 to May 31, 2001, due to his June 4, 1984 accepted employment injuries.

On June 5, 1984 appellant, then a 35-year-old desk clerk, filed a notice of traumatic injury alleging that on June 4, 1984 he was loading a trailer, when the trailer tilted and threw him against some boxes where he was pinned for 30 minutes. Appellant claimed that during the incident he injured his neck, right calf, both forearms and suffered from blurred vision. The Office of Workers' Compensation Programs accepted his claim for a cervical strain, right calf strain and a herniated disc at levels L4-5.<sup>1</sup> Appellant received compensation benefits for intermittent periods of disability. He also underwent a lumbar laminectomy with discectomy for his back condition in October 1987 and returned to work in July 1988.

On October 23, 1996 the Office awarded appellant a three percent permanent impairment for the right lower extremity. Appellant disagreed with the Office's decision and appealed to the Board.<sup>2</sup>

Appellant left the employing establishment on January 3, 1997 on disability retirement.

The Office requested that appellant's treating physician, general practitioner Dr. Eric N. Sorensen, submit a detailed narrative report regarding appellant's condition.

In a form report dated December 1, 2000, Dr. Sorensen diagnosed appellant with back pain and checked "yes" that he was able to perform his usual work. In a duty-status report dated

---

<sup>1</sup> This decision is not found in the record.

<sup>2</sup> In a decision issued on August 3, 1999, the Board held that appellant had no more than a three percent permanent impairment of the right lower extremity and affirmed the Office's October 23, 1996 decision.

December 11, 2000, Dr. Sorensen indicated that appellant could work four hours per day with restrictions. He also stated that appellant had reached maximum medical improvement and did not anticipate that he would be able to work more than four hours per day. Dr. Sorensen did not provide a medical narrative report regarding appellant's condition as requested by the Office.

A magnetic resonance imaging scan of the lumbar spine performed on June 28, 2001 showed fusion of L4-5, extensive osteoarthritis of the lower lumbar facets and neural foraminal stenosis at L4-5 and to a lesser degree at L5-S1.

On January 1, 2001 appellant filed a claim for compensation (Form CA-7) claiming that he was disabled from October 1, 2000 to May 31, 2001, due to the accepted employment injuries.

The Office referred appellant to a Board-certified orthopedic surgeon, Dr. Kenneth Lay, for a second opinion examination regarding appellant's condition.<sup>3</sup>

In a report dated December 4, 2001, Dr. Lay stated that he examined appellant and the medical evidence of record and diagnosed chronic low back strain, postback surgery, with "considerable psychophysiologic overlay." He stated: "The current diagnosed condition is not connected to his injury. It is noted that Dr. Thorp, a treating physician, found [appellant] to have completely recovered and released him for full employment with prophylactic work restrictions, as summarized in the entry from February 2, 1988." Dr. Lay noted: "There are no injury-related factors of disability." He also stated: "[Appellant] was employed as a sedentary desk worker and I believe that he is able to return to that employment, as this job would fall within his current limitations regarding his prophylactic restrictions. He is able to work full time, in my view." Dr. Lay also opined:

"It would be my view that [appellant's] current disability would be related to a degenerative condition, more likely than not a degenerative arthritis, which would have been a contributing factor to the disc injury, for which he had the surgery, as well as his progression of degenerative arthritis since the surgery in 1987, which would be expected as a result of the degenerative arthritis. This was underlying both the need for surgery and the disc herniation."

In a work-capacity evaluation dated December 7, 2001, Dr. Lay stated that appellant could work eight hours per day with restrictions.

In a second opinion report dated December 20, 2001, Dr. Wang indicated that he examined appellant and the medical evidence of record and diagnosed "post industrial injury of June 4, 1984 with an enlarged herniated disc at L4-5, postlumbar discectomy and laminectomy at

---

<sup>3</sup> Appellant did not keep his first scheduled appointment with Dr. Lay. On October 9, 2001 the Office issued a notice of proposed suspension of compensation since appellant failed to keep the scheduled second opinion medical examination. The record also indicates that appellant did not keep a second opinion scheduled appointment with a Board-certified psychiatrist and neurologist, Dr. Shen Ye Wang. On November 27, 2001 the Office issued a second notice of proposed suspension of compensation since appellant did not keep the scheduled appointment with Dr. Wang.

L4-5 in October 1987 and chronic residual low back pain syndrome with radiation of pain to the lower extremities, mostly on the right side.” Dr. Lay also stated, in pertinent part:

“I believe [appellant] reached maximum medical improvement in October of 1989 and was able to work full time as a file clerk at the Internal Revenue Service at that time. Since then there have been no acute changes, therefore, there is no need to make any changes in his work status, based on Dr. Sorenson’s December 11, 2000 report. [Appellant] retired voluntarily on January 3, 1997. I do not believe there are any further changes in his disability or work status since his retirement of January 3, 1997.

“[Appellant’s] condition requires that he should be considered permanently precluded from heavy work activities in the open labor market. I believe that [appellant] was able to perform his usual and customary work at the time of his retirement.”

By decision dated March 6, 2002, the Office denied appellant’s claim for compensation for the period October 1, 2000 to May 31, 2001, since the weight of the medical evidence did not support that he was disabled during that time.

Appellant disagreed with the Office’s decision and requested an oral hearing. At the hearing held on July 25, 2002, appellant claimed that he never fully recovered from his original employment injuries and was still receiving ongoing medical care.<sup>4</sup> Appellant also claimed that he was disabled from the time he retired in 1997 through the present, due to the original work injuries. However, appellant acknowledged that he did not seek medical treatment from October 1, 2000 to May 31, 2001 and did not have a medical report, stating that he was disabled during this time. The Office hearing representative requested that appellant submit a physician’s narrative report within 30 days to support his claimed period of disability. Appellant did not submit any additional medical evidence.

By decision dated November 14, 2002, the Office hearing representative affirmed the March 6, 2002 decision, finding that the evidence did not demonstrate a change in the nature and extent of appellant’s job requirements and the medical evidence did not show a change in the nature and extent of his employment-related condition at the time of his retirement, or at the time of his claimed recurrence of disability on October 1, 2000.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability from October 1, 2000 to May 31, 2001, due to his June 4, 1984 accepted employment injuries.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial,

---

<sup>4</sup> It is unclear from the record exactly why appellant is claiming disability from October 1, 2000 to May 31, 2001, when he retired in 1997. When asked about it at the hearing, he claimed that the local district office told him to file a claim for this period. Since appellant retired under Office of Personal Management disability in 1997, the Board is assuming that he is claiming medical benefits only.

reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.<sup>5</sup> This burden includes the necessity of furnishing 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 rationale.<sup>6</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>7</sup>

In this case, the Office accepted appellant's claim for a cervical strain, right calf strain and a herniated disc at levels L4-5. Appellant claimed that he never fully recovered from his conditions and had continuing residuals of the accepted employment injuries from October 1, 2000 to May 31, 2001. However, appellant did not submit the requisite medical evidence to establish that he was disabled from October 1, 2000 to May 31, 2001 due to these injuries. In fact, the physicians of record indicate that at the time of appellant's disability retirement on January 3, 1997, he was capable of performing his regular-duty position for eight hours per day.

Appellant's treating physician, Dr. Sorensen, first indicated on December 1, 2000 that appellant was able to perform his usual work. He later stated that appellant could work four hours per day with restrictions. At no time did Dr. Sorensen indicate that appellant was disabled and he also did not mention the claimed period of disability from October 1, 2000 to May 31, 2001.

Second opinion physician Dr. Lay found that appellant's current condition was not connected to his work-related injuries. He agreed with a previous treating physician of record that appellant could return to full-duty work with restrictions in 1988. Dr. Lay opined that appellant's current condition was a degenerative condition, specifically degenerative arthritis. He noted that the degenerative arthritis was the underlying factor in appellant's need for back surgery in 1987 and the disc herniation. In a work capacity evaluation Dr. Lay also stated that appellant could work eight hours per day.

Dr. Wang opined that appellant had reached maximum medical improvement in October 1989 and also found that he was able to perform his usual and customary work with certain restrictions at the time of his retirement on January 3, 1997.

Appellant acknowledged at the oral hearing on July 25, 2002 that he had not seen a physician during the claimed period of disability from October 1, 2000 to May 31, 2001 and that he did not have a physician's medical report indicating, that he was disabled during this time. The Office hearing representative informed appellant that he would keep the record open for an additional 30 days so that appellant could submit a physician's narrative report, regarding his alleged period of disability. Appellant did not submit any additional medical evidence.

It is especially important in this case for appellant to submit a physician's rationalized medical opinion establishing that he was disabled from October 1, 2000 to May 31, 2001 and

---

<sup>5</sup> *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

<sup>6</sup> *Mary S. Brock*, 40 ECAB 461, 471-72 (1989).

<sup>7</sup> *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

that this period of disability was causally related to the original work injuries, since the alleged period of disability is more than 16 years after the employment incident. Appellant did not submit any medical evidence stating that he was disabled during this time, nor did he submit any medical evidence indicating that he was disabled at the time of his retirement in January 1997. Appellant also did not submit any rationalized medical opinion evidence relating his current degenerative condition to factors of his employment or relating the condition to the original employment injuries.

Appellant did not submit rationalized medical evidence establishing that he was disabled from October 1, 2000 to May 31, 2001 and that the disability was related to the original employment injuries. Therefore, appellant has not established that he sustained a recurrence of disability.

Accordingly, the November 14 and March 6, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
November 5, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member