

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLYDE WAYNE BEAL and DEPARTMENT OF THE NAVY
MARINE CORPS STATIONS BASE, Barstow, CA

*Docket No. 03-2091; Submitted on the Record;
Issued November 13, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability for the period commencing April 25, 2002.

On March 22, 1990 appellant, then a 36-year-old heavy mobile equipment mechanic, filed a traumatic injury claim alleging that he sustained a low back strain and herniated L4-5 disc in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for low back strain and herniated L4-5 disc. Appellant returned to limited duty on March 30, 1990 and returned to regular duty on May 7, 1990.¹ On June 3, 1992 he filed a claim for recurrence of disability which the Office subsequently determined should be treated as a new occupational disease claim.

In a February 5, 1993 report, Dr. Rama T. Pathi, a Board-certified orthopedic surgeon, diagnosed lumbosacral myofascial sprain and opined that it was the result of a March 22, 1990 work injury.² In a March 9, 1993 report, Dr. Pathi specifically noted that appellant's back pain was not caused by sitting in his automobile and was the result of his work-related injury of March 22, 1990.

The Office subsequently authorized a lumbar laminectomy and discectomy on April 22, 1993. On August 26, 1993 appellant's treating physician, Dr. Wilbur C. Sanford, a Board-certified neurological surgeon, opined that appellant was permanent and stationary and imposed permanent work restrictions of no heavy lifting, repeated bending or stooping. The employing establishment subsequently offered appellant a position in compliance with his physical restrictions as a laborer leader, which he accepted on January 30, 2000.³

¹ Appellant also had a second claim which was accepted for a groin strain. On July 9, 1992 appellant aggravated a prior injury and was placed on light duty through July 21, 1992.

² He opined that the recent vacation in which appellant sat in his car was not directly related to his increased pain.

³ The duties of that position required that appellant assist with directing and coordinating the efforts of a group of

In a June 13, 2001 disability certificate, Dr. Kevin A. Smith, a Board-certified family practitioner, indicated that appellant was being treated for a herniated disc and acute exacerbation of low back pain. He indicated that appellant could return to work, but should avoid any bending, climbing, stooping, crawling, prolonged sitting or standing and indicated that his recommendations were in effect through July 9, 2001. Dr. Smith further indicated that appellant was not able to return to his position as a laborer leader or function as a laborer when released from care.

In a November 12, 2001 report, Dr. Sanford opined that appellant had primary symptoms of myofascial pain and had reinjured his back.⁴ He indicated that appellant should avoid bending, stooping, crawling, prolonged standing and climbing of ladders. Dr. Sanford stated that, if appellant was not able to avoid those activities, he should be retrained for a new job or have his job significantly modified. The employing establishment responded by letter dated January 28, 2002 that these restrictions could be accommodated. However, on March 22, 2002 appellant filed a Form CA-7, for wage loss from February 25, 2002 and continuing.

In an April 12, 2002 decision, the Office determined that appellant's position as a laborer leader with wages of \$758.14 a week fairly and reasonably represented his wage-earning capacity.

On April 29, 2002 appellant filed a Form CA-7, claim for compensation, requesting compensation for the period April 25 to June 1, 2002.⁵ He provided an April 25, 2002 disability slip from Dr. Stephen W. Roberts, an emergency medicine physician, who indicated that appellant was off work until he was reevaluated on June 1, 2002.

By letter dated June 4, 2002, the Office advised appellant of the additional factual and medical information necessary to support his claim.⁶

In reports dating from April 5 to October 15, 2002, Dr. Roberts indicated that appellant was temporarily and totally disabled and would need knee surgery. In an April 25, 2002 report, Dr. Roberts noted subjective complaints of low back pain and recurrent leg pain and diagnosed a herniated nucleus pulposus at L4-5 and L5-S1.⁷ In his June 4, 2002 report, he specified that appellant had pain in the right leg including numbness and tingling and in his June 19, 2002 report, he noted: "bilateral knee pain" and opined that appellant would need surgery. In his July 10, 2002 progress report, Dr. Roberts made subjective complaints of left knee pain and low

laborers in the cleaning of inside and outside areas, sweeping trash and shoveling sand and performing custodial work. Appellant was occasionally required to operate gas/diesel powered sweepers.

⁴ Dr. Sanford indicated that appellant fell and injured himself while on modified duty.

⁵ In the remarks section it was noted that appellant was currently off due to stress, claim number 92311-13-2047220, for date of injury, February 6, 2002.

⁶ The Office noted that it appeared that appellant was claiming a recurrence of disability after returning to light duty.

⁷ The handwriting was difficult to decipher, however, this appears to be the diagnosis.

back pain and objective findings of a positive McMurray's sign and an altered gait and noted the left knee. In a July 10, 2002 report, he indicated that there was a tear of the meniscus of appellant's left knee that would require surgical intervention. Dr. Roberts noted marked lumbar spasm from L1 to S1, with a 60 percent decrease in the range of motion of his lumbar spine and indicated that appellant walked with a limp and altered gait. He indicated that appellant was able to stand for 30 minutes and then required 30 to 60 minutes off his feet to recover. Dr. Roberts indicated that appellant could sit for about 60 minutes and then required 60 minutes of recumbency to control his pain. He concluded that appellant was unemployable and opined that his prognosis was poor. In an August 22, 2002 report, Dr. Roberts expanded his diagnosis to include internal derangement of the right and left knees.⁸

On September 9, 2002 Dr. Rajiv Puri, a Board-certified orthopedic surgeon, diagnosed degenerative joint disease in both knees and a herniated nucleus pulposus (HNP) at L4-5 and obesity. In an October 16, 2002 report, he diagnosed a HNP at L5-S2 and tendinitis of the right shoulder.

The Office also received several diagnostic reports including a September 13, 2002 report of the cervical and thoracic spine, in which, Dr. Thomas DeWind, a Board-certified diagnostic radiologist, diagnosed supraspinatus tendinitis, greatest on the left. Additionally, an October 14, 2002 magnetic resonance imaging (MRI) scan of the lumbar spine was received from Dr. N.J. Reddy, a Board-certified diagnostic radiologist, who diagnosed a disc herniation on the right at the L5-S1 level.

In a March 19, 2003 report, Dr. Roberts noted appellant's history of injury and treatment and diagnosed acute lumbosacral sprain/strain syndrome, acute post-traumatic disc herniation at L4-5, internal derangement of the left knee and a contusion/sprain to the right elbow. He indicated that appellant was in need of surgical intervention to his lumbosacral spine, but his obesity must be dealt with prior to surgery. Dr. Roberts indicated that appellant was precluded from semi-sedentary work, although he opined that appellant could work approximately one half of the time in a sitting position and approximately one half of the time in a standing or walking position with minimal demands for physical effort whether standing, walking or sitting. He noted that appellant should be allowed to change posture at will and he was precluded from climbing, as well as kneeling, crouching and other activities of comparable effort. Dr. Roberts also described the requirements for sitting and standing and advised a 30- to 60-minute period of recumbency during a typical eight-hour period. He advised that all of appellant's injuries occurred during the scope of employment and that he was discharged from his care as permanent and stationary.

In a July 11, 2003 decision, the Office denied appellant's claim for compensation from April 25, 2002 and continuing on the grounds that he had not established a change in his job duties or an objective worsening of his condition to support a recurrence of total disability as of that date.

⁸ The record also contains a November 13, 2002 report, in which Dr. Roberts provided documentation concerning his examination of appellant on October 15, 2002.

The Board finds that appellant has not established that he sustained a recurrence of disability for the period April 25, 2002 to the present.

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 establishes that the employee 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 to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.⁹

Causal relationship is a medical issue¹⁰ and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. This consists of 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.¹¹ The physician's opinion 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.¹²

The record contains no such medical opinion. Appellant has not submitted a medical opinion which contains a rationalized, probative report which relates his disability for work for the period April 25, 2002 and continuing to his accepted employment injury. For this reason, he has not discharged his burden of proof to establish his claim that he sustained a recurrence of disability as a result of his accepted employment injury.

Appellant submitted numerous reports from Dr. Roberts, who provided disability certificates dating from April 25 to March 19, 2003. In these certificates, he indicated that appellant was temporarily and totally disabled. He originally diagnosed paralumbar spasm and decreased range of motion of the lumbosacral spine and subsequently diagnosed a herniated disc at L4-5 and L5-S1 and later added internal derangement of the right and left knees and then diagnosed degenerative joint disease in both knees. Although Dr. Roberts provided several diagnoses, some of which were not accepted by the Office including the L5-S1 herniation and internal derangement of both knees, he offered no opinion to explain how appellant's condition had worsened as a result of the accepted employment injury or that appellant's light-duty requirements had changed. Additionally, Dr. Roberts offered no opinion with respect to the time frame for the claimed periods that appellant alleged that he was unable to work. He provided no rationalized medical opinion explaining how these conditions resulted in disability for appellant's employment.¹³

⁹ *Richard E. Konnen*, 47 ECAB 388 (1996); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

¹⁰ *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

¹¹ *Duane B. Harris*, 49 ECAB 170, 173 (1997).

¹² *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

¹³ *See Michael E. Smith*, 50 ECAB 313, 316 n.8 (1999); *Carolyn F. Allen*, 47 ECAB 240, 244-45 (1995).

Dr. Puri also provided a diagnosis of degenerative joint disease in both knees and a herniation at L5-S2, which were not accepted conditions. He offered no explanation as to how these were related to appellant's accepted condition. Dr. Puri offered no opinion causally relating or explaining how appellant's accepted condition had worsened or that his light-duty requirements had changed. His reports were, therefore, of no probative value.

The Office also received several diagnostic reports from Drs. DeWind and Reddy, however, neither physician offered an opinion with respect to changes in the nature of the conditions of appellant's light-duty requirements or suggested that his condition had worsened.

The Board finds that none of the reports submitted by appellant contained a rationalized opinion to explain why he could no longer perform the duties of his light-duty position.¹⁴ As appellant has not submitted any medical evidence showing that he was disabled for the period April 25, 2002 and continuing due to his accepted employment injury, he has not met his burden of proof.

The July 11, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 13, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁴ 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; *see Charles E. Burke, 47 ECAB 185 (1995)*.