

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOUGLAS McGHEE, SR. and U.S. POSTAL SERVICE,
POST OFFICE, Los Angeles, CA

*Docket No. 03-1424; Submitted on the Record;
Issued October 7, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability on May 20, 2002 causally related to his April 3, 1996 right knee injury.

The Office of Workers' Compensation Programs accepted that on April 3, 1996 appellant, then a 45-year-old industrial equipment mechanic, sustained a right knee strain when he was struck by a hand truck in the performance of duty. In connection with his right knee injury, the Office authorized arthroscopic surgery and total disability for the period April 4 through September 20, 1996, after which he returned to full-duty work.

On January 26, 2003 appellant filed a claim alleging that he sustained a recurrence of disability causally related to his prior accepted employment injuries. On the claim form, appellant listed the dates of the original injuries as April 1, 1996 and May 31, 2000. However, appellant indicated that his recurrence was related to claim number 131103987, which is his April 3, 1996 right knee injury claim.¹ Appellant stated that he was in severe pain at all times and missed a lot of time from work. He stated that he required physical therapy, a neurological consultation and stronger pain medication. Appellant indicated on his claim form that he stopped work on May 20, 2002, and returned to work on September 20, 2002. In support of his claim for a recurrence of disability, appellant, through counsel, submitted a medical report dated December 5, 2002, from Dr. Albert Simpkins, a Board-certified orthopedic surgeon. The employing establishment controverted appellant's claim for a recurrence, noting that appellant was off work on total disability on May 20, 2002, the claimed date of his recurrence of disability.

¹ The May 31, 2000 injury date pertains to a claim for traumatic low back injury which was filed on July 6, 2000. Appellant alleged that he sustained a back injury while lying on a cold floor repairing a motor in the performance of duty. In connection with his back injury claim, the record indicates that appellant stopped work on August 26, 2000 and did not return. The Office accepted appellant's claim for lumbar strain. While appellant's recurrence claim form originally listed both his back injury and his right knee strain claim numbers, the back injury claim number has been crossed out. In addition, the Board notes that the record file received from the Office contains only information pertinent to appellant's April 3, 1996 right knee claim.

By letter dated February 28, 2003, the Office explained the type of evidence necessary to support a claim for a recurrence of disability and asked that appellant submit additional medical and factual evidence, including a comprehensive medical report from his physician containing a rationalized opinion explaining the relationship between his current condition and his original injury. The Office allowed 30 days for appellant to submit the requested information.

By letter dated March 20, 2003, appellant, through counsel, responded: “After evaluation of your letter it is very clear as to your position and we see no benefits in continuing at this level in the process. It is our decision to take this matter on appeal after you deny the matter.”

In a decision dated April 11, 2003, the Office rejected appellant’s claim for a recurrence of disability. The Office noted that the December 5, 2002 report of Dr. Simpkins attributed appellant’s current condition to a November 3, 2002 neck and back injury, which is the subject of a different claim, number 13-2066871, and not to his April 3, 1996 right knee injury. The Office noted that appellant failed to provide the additional evidence requested in its February 28, 2003 letter and, therefore, failed to establish that his claimed recurrence resulted from his accepted work injury.

The Board finds that appellant has not established that he sustained a recurrence of disability for the period May 20 to September 19, 2002 causally related to his accepted April 3, 1996 right knee strain.

A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish 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 reasoning.²

In this case, the Office properly determined that appellant failed to establish an employment-related recurrence of disability, because he did not provide a rationalized medical opinion discussing the causal relationship, if any, between his current condition and his accepted April 3, 1996 right knee injury. In support of his claim, appellant submitted a medical report dated December 5, 2002 from Dr. Simpkins, who discussed the history of an employment injury which occurred on November 3, 2002. The physician stated that appellant related to him that on that date he was struck by a heavy wooden door, which jerked his entire body forward causing him to experience a sharp pain in his neck and mid and low back, radiating into his left shoulder and hand. Dr. Simpkins also noted that appellant reported having sustained additional employment-related injuries, including a 1982 rat bite, a 1995 jaw injury, a 1996 right knee injury and a 2000 lower back injury. Dr. Simpkins noted appellant’s current complaints, as well as his findings on physical examination, and listed his impressions as: sprain/strain cervical spine; status post arthroscopy, left shoulder, with adhesive capsulitis; post-traumatic de Quervain’s tenosynovitis, left wrist; possible traction plexopathy, left upper extremity; strain/sprain thoracic spine; bilateral trapezius strains; sprain/strain lumbar spine, with history of

² *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

giving way of the lower extremities; and synovitis, post-traumatic, bilateral knees, status post arthroscopy right knee. In his discussion of appellant's condition, Dr. Simpkins stated:

“[Appellant] presents today for an orthopedic evaluation regarding a specific injury occurring on November 3, 2002. The patient's physical examination rendered the above diagnoses. As such, it is my recommendation the patient attend physical therapy for evaluation of ambulation dependent of wheelchair and its possibilities. A neurological consultation with Dr. Harold Smith for evaluation of neurologic reason for problems with ambulation and his legs giving out. Also evaluate for plexopathy, as well-performing EMG [electromyogram]/NCV [nerve conduction velocity] studies of the upper and lower extremities if he feels they are indicated.”

Dr. Simpkins summarized the course of treatment he would pursue and indicated that appellant would be placed on temporary total disability for the day prior to and the day of his examination and then could return to work. As Dr. Simpkins did not specifically discuss appellant's April 3, 1996 injury, or its relationship to appellant's current condition, but addressed a November 3, 2002 injury, his report is insufficient to support appellant's claim for a recurrence of disability causally related to the April 3, 1996 right knee injury.³ The record also contains two attending physician's form reports from Dr. Charles M. Bosley, appellant's treating orthopedic surgeon. On these forms, dated September 5 and 20, 2002, Dr. Bosley diagnosed herniated disc, hip strain, a postoperative shoulder injury and postoperative internal derangement of the right knee, and indicated by check mark that these conditions were causally related to appellant's employment. While the physician indicated that appellant was totally and permanently disabled from August 7, 2002 to the present, he did not provide any discussion or explanation for his conclusion that appellant's disability after August 7, 2002 was due to the April 3, 1996 injury.⁴ The Board has held that when a physician's opinion on causal relationship consists only of checking “yes” to a form question, that opinion has little probative value and is insufficient to establish a claim.⁵ The only other medical evidence relevant to the time period of the claimed recurrence of disability, consists of medical and psychiatric treatment notes which do not contain any discussion as to appellant's ability to work during the period May 20 to September 19, 2002. By letter dated February 28, 2003, the Office advised appellant of the type of medical evidence necessary to establish his claim. As appellant has failed to submit rationalized medical evidence

³ *Charles P. Mulholland, Jr.*, 48 ECAB 604 (1997) (the test of “disability” under the Federal Employees' Compensation Act is whether an employment-related impairment prevents the employee from engaging in the kind of work he or she was doing when injured); *Debra A. Kirk-Littleton*, 41 ECAB 703, 706 (1990) (whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence); (in assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality); *Anna C. Leanza*, 48 ECAB 115, 124 (1996) (the factors which enter in such an evaluation include the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion).

⁴ A recurrence of disability is defined as “an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. See 20 C.F.R. § 10.5(x).

⁵ *Beverly J. Duffey*, 48 ECAB 569 (1997).

establishing that he sustained a recurrence of disability causally related to his April 3, 1996 employment injuries, he has not met his burden of proof.

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

Dated, Washington, DC
October 7, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member