

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL MATHEWS and DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION, Roosevelt Dam, AZ

*Docket No. 03-1976; Submitted on the Record;
Issued October 22, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability on March 25, 2002 based on his April 15, 1994 work-related injury.

On April 28, 1994 appellant, then a 35-year-old laboratory technician, filed a claim for traumatic injury alleging that, on April 15, 1994, while lifting an air meter pot, he sustained an injury to his lower back. On August 25, 1994 the Office of Workers' Compensation Programs accepted appellant's claim for subluxation at L5. He missed intermittent periods from work, and on December 19, 1994 filed a recurrence claim, stating that on October 21, 1994 he stopped work due to pain. He returned to regular duty on November 30, 1994. The Office accepted this recurrence of disability and he received appropriate wage-loss compensation.

The Office continued to develop the claim, and on January 30, 1995, referred appellant, a copy of his records, a statement of accepted facts and a list of pertinent questions to Dr. Stephen Robert Stein, a Board-certified orthopedic surgeon, for a second opinion. In a report dated March 3, 1995, Dr. Stein reviewed appellant's history of injury, noting that he had no prior history of a back condition. Findings on examination included that appellant walked in a normal gait, rose to and from the examining table with no distress and squatted and rose without difficulty. Range of motion of his back was full and complete. Straight leg raising test was normal. Motor and sensory findings were equal and symmetrical, as were the deep tendon reflexes in knee and ankle jerks. Circumferential measurement of the thighs and calves were equal and symmetrical and his spine was nontender. Dr. Stein advised that appellant had work-related "lumbosacral strain and possible disc that has resolved from time to time. He has no permanent injury as a result of the accident in question. He is working full work at this time without restriction. I have no restrictions at his working at this point."

In a letter dated April 25, 1995, the Office noted that Dr. Stein's report was sufficient "to accept that the claimant still has residuals of the work-related strain." The Office stated that degenerative disc disease had not been accepted as employment related and noted that it would

rely on the reports of Dr. Ralph V. Wilson, a Board-certified orthopedic surgeon, as the attending physician in this case.¹

In a report dated May 24, 1995, Dr. Predrag Moskovljevic, Board-certified in internal medicine, stated that he had examined appellant on March 23, 27 and 30, and April 5, 1995, for low back pain, and that he was totally disabled from March 27 to May 5, 1995, when he was released to return to full duty with no restrictions.²

On September 30, 1995 the employing establishment terminated appellant as a result of a reduction-in-force action.

On January 17, 2002 appellant telephoned the Office requesting information. On January 22, 2002 he filed a claim for a schedule award.³ By letter dated March 20, 2002, the Office forwarded appellant a Form CA-2a, notice of recurrence claim form and advised him of the type evidence needed to support his claim. On March 25, 2002 appellant filed the CA-2 claim for recurrence of disability, stating that his light-duty limitations based on his April 15, 1994 injury “still exist,” and that “actually there is no recurrence, but [a] continuation of original injury.” He claimed compensation benefits from the date of employment termination, September 30, 1995, forward.

In support of his recurrence claim, appellant submitted treatment notes from Dr. W. Bishop dated September 28, November 2 and December 2, 1998, January 12, 2000, March 15, 2001 and February 5 and April 22, 2002 which reported a history that appellant was “disabled for his back” while lifting pots at work and related his continued complaints of low back pain.⁴

By decision dated June 19, 2002, the Office denied appellant’s claim for recurrence of disability on the grounds that the medical evidence was insufficient to establish a recurrence of his April 15, 1994 injury. In a letter dated July 22, 2002, appellant requested reconsideration, and submitted notices of personnel actions dated March 17, June 27 and July 9, 1995 and a copy of his attorney’s written submission to the Merit Systems Protection Board (MSPB) regarding his disability retirement appeal. By decision dated October 11, 2002, the Office denied modification of its prior decision.

The Board finds that appellant failed to establish that he sustained a recurrence of disability based on his April 15, 1994 work-related injury.

¹ In a report dated November 28, 1994, Dr. Wilson had released appellant to return to regular duty effective November 30, 1994.

² The record indicates that appellant received either continuation of pay or wage-loss compensation for the periods April 16 to May 1994, October 21 to November 29, 1994 and March 27 to April 3, 1995.

³ The record before the Board does not contain a decision regarding the schedule award claim.

⁴ Appellant also submitted reports of x-rays of the chest and abdomen.

When an employee claims a recurrence of disability casually related to an accepted employment injury, he has the burden of establishing by the weight of reliable, probative and substantial medical evidence that the claimed period of disability is casually related to the accepted injury.⁵ A claimant's burden of proof in establishing a recurrence of disability requires the submission of medical evidence from a physician who, on the basis a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁶

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁷ 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.⁸ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁹

Under the Federal Employees' Compensation Act,¹⁰ the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Act.¹¹ Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.¹²

The relevant medical evidence includes the March 3, 1995 report in which Dr. Stein, the second opinion examiner, advised that appellant had no permanent injury and was working full time without restriction. In a report dated May 24, 1995, Dr. Moskovljevic advised that

⁵ *Kenneth R. Love*, 50 ECAB 193 (1998).

⁶ *Helen Holt*, 50 ECAB 279 (1999).

⁷ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁰ 5 U.S.C. §§ 8101-8193.

¹¹ *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

¹² *Fereidoon Kharabi*, 52 ECAB 291 (2001).

appellant could return to full duty on May 5, 1995 with no restrictions. While appellant submitted treatment notes dating from September 28, 1998 to April 22, 2002 in which Dr. Bishop reported that appellant stated that he injured his back at work and chronicled appellant's complaints of continued back pain, the Board finds these reports of diminished probative value. Dr. Bishop did not indicate a knowledge of the accepted employment injury or appellant's work duties. Furthermore, he did not indicate that appellant was disabled. It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value.¹³ The Board therefore finds that Dr. Bishop's reports are insufficient to establish that appellant had a recurrence of disability causally related to the April 15, 1994 employment injury.¹⁴

Appellant's evidence on reconsideration consisted of personnel actions and a legal brief filed in connection with his disability retirement appeal to the MSPB. None of these documents were relevant to appellant's recurrence of disability claim which requires that appellant submit reliable, probative and substantial medical evidence that the claimed period of disability is casually related to the accepted injury.¹⁵ For these reasons, appellant failed to establish that he sustained a recurrence of disability casually related to his April 14, 1994 work-related injury.

The decisions of the Office of Workers' Compensation Programs dated October 11 and June 19, 2002 are affirmed.

Dated, Washington, DC
October 22, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹³ *Douglas M. McQuaid*, 52 ECAB 382 (2001).

¹⁴ *Leslie C. Moore*, *supra* note 8.

¹⁵ *Kenneth R. Love*, *supra* note 5.