United States Department of Labor
Employees' Compensation Appeals Board

JAMES E. LOCKHART, Appellant	)	
and	)	**Docket No. 04-247**
	)	**Issued: April 5, 2004**
DEPARTMENT OF DEFENSE, FORT ORD COMMISSARY, Fort Ord, CA, Employer	)	

Appearances:
James E. Lockhart, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On November 6, 2003 appellant filed a timely appeal from the August 7, 2003 decision of the Office of Workers' Compensation Programs, which denied appellant's claim for compensation benefits after January 3, 1991. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's claim. The Board has no jurisdiction, however, to review the July 27, 2001 operative report submitted on appeal. Pursuant to 20 C.F.R. § 501.2(c), the Board may consider only the evidence that was before the Office at the time of its August 7, 2003 decision.

ISSUE

The issue is whether appellant's condition or disability after January 3, 1991, is causally related to the incident that occurred at work on March 14, 1988.

FACTUAL HISTORY

On or about May 16, 1988 appellant, then a 39-year-old store worker, filed a claim for compensation alleging that he was pulling a cart of water, made a turn and pinched a muscle in

his back. From that, he stated, numbness and swelling occurred in both hands. He first became aware of this condition on March 14, 1988. Appellant stopped work on April 1, 1988. The Office determined that the nature of appellant's claim was one of traumatic injury.[1] The Office accepted the claim for subluxation of the spine at the L5, T6 and C3 levels and paid compensation for temporary total disability on the periodic rolls. Effective October 22, 1989, the Office reduced appellant's compensation based on his actual wages as a file clerk.

In a decision dated March 12, 1991, the Office terminated appellant's compensation. The Office found that the weight of the medical evidence established that appellant no longer had residuals of the employment injury and that any disability resulting from the employment injury ceased no later than January 3, 1991. On November 9, 1993 an Office hearing representative affirmed the termination of appellant's compensation benefits.

In a decision dated May 29, 1996,[2] the Board found that the weight of the medical evidence justified the Office's termination of compensation. The Board further found that the medical evidence submitted after the Office's March 12, 1991 termination decision was of little probative value in supporting entitlement to continuing compensation.

Following the Board's decision, appellant submitted additional medical evidence. In a report dated June 22, 1995, Dr. J. Michael Weir, a chiropractor, related that appellant's symptoms began suddenly when, in March 1988, he was attempting to prevent a pallet jack from turning over. He related his findings, including findings on x-ray examination and diagnosed, among other conditions, multiple subluxations of the dorsal and lumbar spine, as well as a sacroiliac subluxation. Dr. Weir reported that appellant's symptoms were consistent with the presence of neurospinal biomechanical lesions, or a subluxation complex, with accompanying muscular, neurological and kinesiological dysfunction, sensory neuropathy and marked myofascial involvement. He opined: "This degree of abnormality is, in my opinion, a direct result of the injury and does warrant a comparative study in [four] weeks to evaluate progress." To support his opinion, Dr. Weir offered the following:

> "Injuries such as those sustained by this patient are likely to have some degree of permanent effects. It is well documented that every moderate to major traumatic episode has a mechanical wear-and-tear effect on the spine/joint structures. This joint dysfunction can be [a] potent perpetuator of muscle spasms and the etiology of some degenerative arthritis."

In a report dated March 4, 1988, Dr. Mark W. Howard, a Board-certified orthopedic surgeon, stated that the onset of appellant's lumbar pain dated back to a 1988 work injury. Appellant was pulling a pallet jack loaded with water and noted immediate low back pain. Appellant stated that an injury at work in 1989, aggravated his complaints. He reported that his

[1] Appellant described no mechanism of injury in the narrative statement he submitted to support his claim. He stated merely that he told his supervisor on March 14, 1988 that he was having numbness and swelling in both hands. He told his other supervisor that he had pinched a muscle in his back. A June 29, 1988 medical report related an injury sustained "while maneuvering a hand palate (sic) jack loaded with water containers in a confined area at the employing establishment. This occurred on March 14, 1988."

[2] Docket No. 94-1124 (issued May 29, 1996).

anterior left leg pain and intermittent anterior thigh tingling also dated back to the 1988 work injury. Dr. Howard noted a head-on motor vehicle accident on March 9, 1996, following which appellant reported no prior neck or significant upper extremity complaints. Giving appellant the benefit of the doubt and taking subjective factors into account, notwithstanding the paucity of objective factors, Dr. Howard found that appellant was permanent, stationary and ratable "and I believe he has been such since probably 1990." On the issue of causal relationship, he reported as follows:

> "I have no medical records to indicate serious or significant back problems, which preexisted the 1988 injury. To whatever extent his discogenic pain contributes to his permanent disability as above, I would causally relate the predominance of such to his 1988 injury. The records I have indicate that the 1989 event could probably be considered a flare-up or exacerbation of the original 1988 injury. It [i]s noted that he had preexiting spondylosis, though radiographically he certainly had a progression of spondylosis or degenerative changes in the cervical spine between the latter 1980's and 1995. To whatever extent he does have a systemic arthropathy or fibrositis/fibromyalgia condition, I would consider this a non-industrial condition. I would certainly causally relate the majority of his current subjective complaints of the caudal lumbar spine and the great majority of his medical treatment and evaluation to date to such and, therefore, think this is certainly the majority contributor to his permanent disability as already stated. I will add that the patient today stated that his 1989 reinjury was due to excessive stooping beyond his stated workplace limitations, which aggravated his 1988 injury-related complaints."

In a report dated May 7, 1999, Dr. Joseph I. Hoffman, Jr., an orthopedic surgeon, related that appellant gave a history of initially injuring his low back in March 1988, while moving a pallet jack at work. Appellant stated that he had low back pain radiating to his right lower extremity at that time. After describing his findings on examination, Dr. Hoffman diagnosed chronic paravertebral myofascitis of the cervical and lumbar spine, as well as degenerative disc disease at the L4-5 and L5-S1 levels. He offered the following opinion:

> "I feel this patient has a lumbar spine injury, which is at present totally disabling. A great deal of this disability represents deconditioning over the last nine years, however. Anatomic changes … are minimal, however. It appears that this spinal problem originated directly as a result of the injury to his lumbar spine of March 1988, which was exacerbated by his injury of December 1989."

On August 31, 1999 Dr. Hoffman issued the following addendum:

> "Review of complete medical record dating back to 1988 and including numerous records from the Preventive Medicine and Occupational Health Section at F[or]t Ord, CA and various examinations by physicians over the course of the [11] years since that occurred leads me to rationalize my opinion in that this patient had no prior complaint of musculoskeletal problems prior to the date of his injury in March 1988. It is not only a reasonable assumption but an obvious fact that whatever symptoms remain today result directly from the initial cause. Complete

review of these records do not yield any other findings, which would change that opinion."

In a report dated July 6, 1994, Dr. Michael M. Bronshvag, a Board-certified neurologist and specialist in internal medicine, stated that appellant noted the onset of spinal symptoms in March 1988, while working at the employing establishment and remained symptomatic. He diagnosed spinal strain syndrome, neck and low back with left thoracic symptoms; headache syndrome, apparently muscle contraction headaches; and carpal tunnel syndrome symptoms. Dr. Bronshvag noted that appellant's condition had apparently not changed much in the last many months or few years. In a supplemental report dated August 11, 1994, Dr. Bronshvag reviewed a packet of medical records. He stated: "The records reviewed indicate that the patient had the majority of his musculoskeletal and wrist-carpal tunnel symptoms while working as a loader-stocker at the commissary. As noted above, his physical findings are modest but definite."

Finally, appellant submitted progress notes from March 14 to May 24, 2002 signed by various physicians and nurses.

The Office reviewed this evidence and denied appellant's claim for continuing compensation after January 3, 1991, in decisions dated October 21, 1998, June 16, 1999 and May 15, 2002. In its most recent decision on the merits of appellant's claim, dated August 7, 2003, the Office found that the evidence failed to establish that the condition, for which appellant claimed compensation was caused by or resulted from the injury of March 14, 1988.

LEGAL PRECEDENT

When the Office meets its burden of proof to justify the termination of compensation benefits, the burden shifts to the claimant to establish that any subsequent disability is causally related to the accepted employment injury.[3]

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.[4]

[3] *Wentworth M. Murray*, 7 ECAB 570 (1955) (after a termination of compensation payments, warranted on the basis of the medical evidence, the burden shifts to the claimant to show by the weight of the reliable, probative and substantial evidence that, for the period, for which he claims compensation, he had a disability causally related to the employment resulting in a loss of wage-earning capacity); *Maurice E. King*, 6 ECAB 35 (1953).

[4] *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

ANALYSIS

As the Board found in its May 29, 1996 decision, the weight of the medical evidence justified the Office's termination of compensation effective January 3, 1991. The Office met its burden of proof. Therefore, to establish his entitlement to continuing compensation after January 3, 1991, appellant must submit a probative medical opinion establishing that his condition or disability after January 3, 1991, is causally related to the incident that occurred at work on March 14, 1988.

Appellant submitted several medical opinions to support that he continued to suffer residuals of his March 14, 1988 employment after January 3, 1991. This evidence, however, is not sufficiently probative to discharge his burden of proof.

Dr. Weir, the chiropractor, took x-rays and diagnosed, among other conditions, multiple subluxations of the dorsal and lumbar spine, as well as a sacroiliac subluxation.[5] He reported that the degree of appellant's abnormality was a direct result of the March 1988 injury and stated that such injuries were likely to have some degree of permanent effects. The Board finds that the likelihood of permanent effects from such injuries, as an observation of general application, is not determinative of the issue of causal relationship in appellant's particular case. Dr. Weir's opinion on permanent effects is, therefore, speculative.[6] Dr. Weir offered no medical reasoning to show how subluxations diagnosed from x-rays in 1995, documented conditions sustained at work on March 14, 1988.[7] Medical conclusions unsupported by rationale are of little probative value.[8] Further, the weight of the medical evidence established that appellant no longer had residuals of the employment injury and that any disability resulting from the employment injury ceased no later than January 3, 1991, yet Dr. Weir did not report that evidence. Medical conclusions based on inaccurate or incomplete histories are also of little probative value.[9]

Dr. Weir noted that it was well documented that every moderate to major traumatic episode has a mechanical wear-and-tear effect on the spine/joint structures: "This joint

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[5] Section 8101(2) of the Federal Employees' Compensation Act provides that the term "physician," as used therein, "includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary." 5 U.S.C. § 8101(2).

[6] *See Philip J. Deroo*, 39 ECAB 1294 (1988) (although the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can such opinion be speculative or equivocal); *Jennifer Beville*, 33 ECAB 1970 (1982) (statement of a Board-certified internist that the employee's complaints "could have been" related to her work injury was speculative and of limited probative value).

[7] *See generally Linda L. Mendenhall*, 41 ECAB 532 (1990) (discussing how the passage of time between the date of the alleged injury and the date of diagnostic testing can diminish the probative value of a medical opinion based at least in part on that testing).

[8] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

[9] *See James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

dysfunction can be [a] potent perpetuator of muscle spasm and the etiology of some degenerative arthritis." Because a chiropractor may qualify as a "physician" under the Act only in the diagnosis and treatment of spinal subluxation, his opinion is not considered competent medical evidence in the evaluation of other disorders, including those of the extremities, although these disorders may originate in the spine.[10] For this reason, Dr. Weir is not competent to offer an opinion on the perpetuation of muscle spasm or the etiology of degenerative arthritis.

On March 4, 1988 Dr. Howard, an orthopedic surgeon, stated: "I have no medical records to indicate serious or significant back problems, which preexisted the 1988 injury. To whatever extent his discogenic pain contributes to his permanent disability as above, I would causally relate the predominance of such to his 1988 injury." The Board has held that when a physician concludes that a condition is causally related to an employment because the employee was asymptomatic before the employment injury, the opinion is insufficient, without supporting medical rationale, to establish causal relationship.[11] Dr. Howard offered no supporting rationale. He noted that radiographically appellant had a progression of spondylosis or degenerative changes in the cervical spine between the latter 1980s and 1995, but he did not explain how this progression was related to the incident that occurred on March 14, 1988. Although he expressed some certainty in relating the majority of appellant's current subjective complaints of the caudal lumbar spine and the great majority of his medical treatment and evaluation, to an industrial injury, he offered no medical reasoning to support his opinion. The Board finds that Dr. Howard's opinion is of little probative value.

On May 7, 1999 Dr. Hoffman, an orthopedic surgeon, diagnosed chronic paravertebral myofascitis of the cervical and lumbar spine, as well as degenerative disc disease at the L4-5 and L5-S1 levels. He stated: "It appears that this spinal problem originated directly as a result of the injury to his lumbar spine of March 1988, which was exacerbated by his injury of December 1989." Again, while this is supportive of appellant's claim, Dr. Hoffman offered no medical reasoning to show how he arrived at this conclusion. He subsequently reviewed medical records dating back to 1988 and observed that appellant had no complaint of musculoskeletal problems prior to the date of his injury in March 1988. From this he concluded that it was not only a reasonable assumption but an obvious fact that whatever symptoms currently remained resulted directly from the initial cause. Dr. Hoffman's reasoning thus rests solely on a temporal sequence of events, which by itself is insufficient to explain from a medical point of view how the March 14, 1998 incident contributed to the pathogenesis of appellant's chronic paravertebral myofascitis and degenerative disc disease at the levels noted.[12] His opinion is of little probative value.

Dr. Bronshvag, the neurologist and specialist in internal medicine, offered no opinion on the issue of causal relationship. On August 11, 1994 he merely noted that the records he reviewed indicated that appellant had the majority of his musculoskeletal and wrist or carpal

[10] *Pamela K. Guesford*, 53 ECAB ___ (Docket No. 02-915, issued August 12, 2002); *George E. Williams*, 44 ECAB 530 (1993).

[11] *Thomas D. Petrylak*, 39 ECAB 276 (1987).

[12] *Id*.

tunnel symptoms while working as a loader-stocker at the employing establishment. The mere fact that a condition manifests itself or worsens during a period of federal employment, however, raises no inference of causal relationship between the two.[13]

Finally, progress notes from March 14 to May 24, 2002 signed by various physicians and nurses are of no probative value in establishing appellant's claim for benefits after January 3, 1991. None of this evidence offers an opinion on the question at issue, namely, whether appellant's condition or disability after January 3, 1991 is causally related to the incident that occurred at work on March 14, 1998. Additionally, the Board notes that a nurse is not a "physician" under 5 U.S.C. § 8101(2) and, therefore, is not competent to render a medical opinion.[14]

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish by the weight of the medical evidence that his condition or disability after January 3, 1991, is causally related to the incident that occurred at work on March 14, 1988. He has submitted medical opinion evidence that is supportive of his claim for benefits, but this evidence is of little probative and is insufficient to discharge his burden of proof.

ORDER

IT IS HEREBY ORDERED THAT the August 7, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 5, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[13] *Steven R. Piper*, 39 ECAB 312 (1987).

[14] *Vicky L. Hannis*, 48 ECAB 538 (1997).