United States Department of Labor
Employees' Compensation Appeals Board

KENT W. RASMUSEN, Appellant	)	
and	)	**Docket No. 04-1137**
	)	**Issued: August 4, 2004**
DEPARTMENT OF THE NAVY, PACIFIC FLEET, Bremerton, WA, Employer	)	

Appearances:
John Eiler Goodwin, Esq., for the appellant
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 March 16, 2004 appellant filed an appeal of a merit decision of the Office of Workers' Compensation Programs dated March 19, 2003, by which the Office refused to modify its December 4, 2002 decision denying appellant's claim for a recurrence of the need for medical treatment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this claim.[1]

[1] An appellant has up to one year from the date of issuance of a final adverse decision by the Office to file an appeal in the office of the Clerk of the Board. *See* 20 C.F.R. §§ 501.3(d)(2) and 501.2(c), respectively. "If the notice is sent by mail and the fixing of the date of delivery as the date of filing would render the appeal untimely, it will be considered to have been filed as of the date of mailing. The date appearing on the postmark … shall be *prima facie* evidence of the date of mailing." 20 C.F.R. § 501.3(d)(3)(ii). As the date of delivery of March 22, 2004 would have rendered the instant appeal of a March 19, 2003 Office decision untimely, the postmark of March 16, 2004 was recognized by this Board as the date of delivery.

ISSUE

The issue is whether appellant has established that he sustained a recurrence of a need for further medical treatment beginning September 23, 2002 causally related to his April 16, 2000 employment injury.

FACTUAL HISTORY

On April 26, 2000 appellant, then a 38-year-old shipfitter, filed a claim for compensation for a traumatic injury to his low back sustained on April 16, 2000 by lifting a tarp. Appellant stopped work on April 25, 2000 and returned to limited duty on April 26, 2000.

Appellant was examined on April 26, 2000 by Dr. Robert Bethel, an osteopath, who diagnosed an acute lumbosacral strain and prescribed medication, light duty and physical therapy. In a May 3, 2000 report, Dr. Bethel stated that appellant's pain level was markedly diminished and his range of motion improved, and that he was ready to return to work with no restrictions. Dr. Bethel approved six more physical therapy visits, the last of which occurred on May 19, 2000.

The Office accepted the claim for low back strain.

On October 10, 2002 appellant filed a claim for a recurrence of the need for medical treatment related to his April 16, 2000 injury. He listed the date of the recurrence as January 17, 2002, and stated that his back condition had been progressively getting worse. Appellant submitted reports from Dr. Bethel regarding medical treatment rendered on February 28, 2001 and September 23 and October 9, 2002. The February 28, 2001 report stated that appellant was treated with osteopathic manipulation for recurrent low back pain. The September 23, 2002 report stated that appellant had recurrent back pain on a daily basis that was beginning to affect his functioning and recommended another magnetic resonance imaging (MRI) scan, as the last one was eight years earlier. In the October 9, 2002 report, Dr. Bethel stated that the results of the recent MRI scan, showing annular tears with protruding disc material, certainly explained appellant's symptoms, and that appellant "believes his condition is job related because of several injuries he has reported while working. Since this is job related he needs to file claim with OWCP through the base dispensary…."

In an October 31, 2002 letter, the Office advised appellant that he needed to submit, within 30 days, a statement describing his condition since his return to work, and a medical report with the physician's opinion, with supporting explanation, as to the causal relationship between his condition and the original injury.

By decision dated December 4, 2002, the Office found that medical treatment at its expense was not authorized, as appellant had not established that his condition was causally related to his accepted employment injury.

On December 11, 2002 appellant requested reconsideration and submitted additional reports from Dr. Bethel and the report of the September 30, 2002 MRI scan. In a November 27, 2002 report, Dr. Bethel noted that appellant had had a "series of low back pains" starting 21

years earlier when he was working as a laborer in a nongovernment job, continuing with a 1989 injury while working with the Department of Defense, a 1991 motor vehicle accident, and "several episodes in the past three to four years of low back injuries associated with his job the dates of which are not exactly known, but I have seen him on several occasions for manipulative therapy for low back discomfort." Dr. Bethel then noted the April 2000 injury, and stated, "Since that time he has had persistent ongoing discomfort in the low back with decreased strength in activities and increased amount of pain on a regular basis. Subsequently had an MRI scan which is part of the medical record which shows rather extensive degenerative process in the lumbar spine." In a December 30, 2002 report, Dr. Bethel noted that appellant was complaining of ongoing back pain and "could barely walk two days ago."

By decision dated March 19, 2003, the Office found that the additional evidence was not sufficient to warrant modification of its prior decision.

LEGAL PRECEDENT

When a claimant with an accepted employment-related condition files a claim for a recurrence of the need for medical treatment, he or she has the burden of establishing that the need for later medical treatment is causally related to the accepted employment injury.[2] 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 condition requiring treatment 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 and need for treatment is related to the injury.[3]

The Office's regulations define recurrence of medical condition as "a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a 'need for further medical treatment after release from treatment,' nor is an examination without treatment."[4]

ANALYSIS

The Office accepted that appellant's April 16, 2000 employment injury resulted in a lumbar strain and paid for medical treatment for this condition, as prescribed by Dr Bethel, from April 26, 2000, when he first received treatment, until May 19, 2000. On October 10, 2002 appellant filed a claim for a recurrence of the need for medical treatment due to his April 26, 2000 employment injury. Although he listed the date of this recurrence as January 17, 2002, the

[2] *See Mary A. Ceglia*, 55 ECAB ____ (Docket No. 04-0113, issued July 22, 2004). *See also* section 8101(5) of the Federal Employees' Compensation Act (5 U.S.C. § 8101(5)) which defines "injury" to include "a disease proximately caused by the employment."

[3] *Joan R. Donovan*, 54 ECAB ___ (Docket No. 03-297, issued June 13, 2003); *see also Mary A. Ceglia, supra* note 2; 20 C.F.R. § 10.104.

[4] 20 C.F.R. § 10.5(y).

first record of medical treatment in 2002 is Dr. Bethel's report of a September 23, 2002 visit. For this reason, the Board considers the issue to be whether appellant's need for medical treatment beginning September 23, 2002 is causally related to his April 16, 2000 employment injury.

The record indicates appellant received medical treatment on only one occasion -- February 28, 2001 -- between May 19, 2000 and September 23, 2002.[5] Thus the record does not support that appellant received continuous treatment since the original injury, and appellant therefore has the burden of establishing that the need for treatment beginning September 23, 2002 is causally related to his April 16, 2000 employment injury.[6]

Appellant has not met his burden of proof. Although Dr. Bethel stated in an October 9, 2002 report that appellant's condition revealed by the September 30, 2002 MRI scan was "job related," the doctor did not provide any rationale for this opinion. Dr. Bethel characterized the MRI scan findings as "extensive degenerative changes" in his November 27, 2002 report and stated that these changes explained appellant's symptoms, but the degenerative changes have not been accepted by the Office as causally related to appellant's April 16, 2000 employment injury.

In his November 27, 2002 report, Dr. Bethel stated that appellant had "persistent ongoing discomfort in the low back with decreased strength" since his April 16, 2000 employment injury. Not only does this not constitute a rationalized medical opinion on causal relationship, but it also appears of questionable accuracy. On May 3, 2000 Dr. Bethel reported that appellant's pain was markedly diminished, and on May 19, 2000 a physical therapist reported that appellant was pleased with his ability to tolerate doing his normal work, recreational activities and yard work at his normal intensity level without any increase in symptoms. Given appellant's history of low back problems long predating his April 16, 2000 employment injury, a rationalized medical opinion on how the treatment beginning September 23, 2002 was related to that injury was essential. In the absence of such a medical opinion, appellant has not met his burden of proof.

CONCLUSION

Appellant has not met his burden of proof to establish that he sustained a recurrence of the need for medical treatment beginning September 23, 2002 causally related to his April 16, 2000 employment injury.

[5] Although Dr. Bethel did not formally discharge appellant from treatment on May 19, 2000, a sufficiently lengthy gap in treatment has the same effect as a formal discharge insofar as shifting the burden of proof to appellant is concerned.

[6] Where the treatment for an employment-related condition is continuous, the Office has the burden of proof to terminate medical benefits and must establish that there are no residuals of the employment-related condition that require further treatment. *Furman G. Peake*, 41 ECAB 361 (1990). Such is not the case here.

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 4, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member