

**United States Department of Labor
Employees' Compensation Appeals Board**

BEDLU HAILEMICHAEL, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Denver, CO, Employer**

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**Docket No. 02-1938
Issued: February 9, 2004**

Appearances:
Bedlu Hailemichael, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On July 11, 2002 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated March 15, 2002. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained a recurrence of disability causally related to his December 1, 1999 employment injury.

FACTUAL HISTORY

On December 2, 1999 appellant, then a 42-year-old casual clerk, filed a claim for a traumatic injury occurring on December 1, 1999 when he felt a "twinging pain [while] sorting mail." The Office accepted appellant's claim for thoracic strain which resolved on

December 8, 1999.¹ Appellant was released to limited-duty employment on December 2, 1999 and to regular employment on December 8, 1999. Appellant resigned from the employing establishment on December 19, 1999.

In a clinic note dated February 15, 2000, Dr. Sandra K. Buseman, who is Board-certified in preventative medicine, discussed appellant's history of a low back injury on December 1, 1999. She noted that appellant related that he had resigned from the employing establishment due to pain. Dr. Buseman diagnosed myofascial sprain/strain and a sleep disturbance. She further found that appellant's history and "clinical examination suggest some possible functional overlay." Dr. Buseman referred appellant for physical therapy.

In a report dated March 14, 2000, Dr. Cliff A. Gronseth, a Board-certified physiatrist, noted that appellant experienced neck pain due to a December 1, 1999 employment injury. He found that appellant had improved following physical therapy. He diagnosed chronic cervicgia due to appellant's December 1, 1999 employment injury. Dr. Gronseth opined that appellant had no "permanent work restrictions at this time" but should avoid overhead work as a preventative measure.

Dr. David M. Ackerman, a chiropractor, noted in a report dated April 4, 2000 that he began treating appellant on March 17, 2000 "for injuries sustained while at work on December 1, 1999." He diagnosed subluxations at C3, T11 and L1 by x-ray and found that appellant had reached maximum medical improvement and required no further chiropractic treatment.

On March 29, 2001 appellant filed a claim for compensation from December 1, 1999 onwards. By decision dated May 21, 2001, the Office denied appellant's claim on the grounds that the medical evidence did not support disability from employment after December 8, 1999. The Office further noted that the employing establishment had provided appellant with light duty until December 8, 1999 and that appellant had worked until his resignation on December 19, 1999.

An official with the employing establishment submitted a letter dated April 18, 2001 indicating that appellant was hired with an ending date for his employment of December 31, 1999. The official noted that appellant had voluntarily resigned on December 19, 1999.

In a report dated May 1, 2001, Dr. Gronseth diagnosed chronic thoracic pain and stated, "I do not feel there are any physical limitations required for his work."

On October 15, 2001 appellant filed a notice of recurrence of disability on December 4, 1999 causally related to his December 1, 1999 employment injury. On the reverse side of the

¹ The Office indicated in its April 18, 2001 letter notifying appellant of the acceptance of his claim that his thoracic strain resolved on December 8, 2000 by medical report. However, it appears that the Office made a typographical error and that the medical report relied upon by the Office is dated December 8, 1999. The Office specified in its May 21, 2001 decision that appellant had been released to his regular employment on December 8, 1999 and sustained no periods of disability due to his employment injury.

claim form, the employing establishment indicated that appellant stopped work following the alleged recurrence of disability on December 19, 1999. The Office requested additional information from appellant in a letter dated November 29, 2001. In response, appellant submitted a statement dated December 5, 2001 in which he described his medical treatment and noted that he continued to experience pain and discomfort.

In a report dated December 11, 2001, Dr. Gronseth noted that appellant received disability through the Social Security Administration but worked for the employing establishment for two weeks beginning November 13, 1999. He indicated that he had not treated appellant since March 14, 2000 but that appellant “did see a pain psychologist who found significant psychosocial factors contributing to his symptomatology. There [were] never any signs of nerve injury or permanent disability.” Dr. Gronseth diagnosed thoracic sprain/strain with chronic myofascial pain. Regarding the relationship between appellant’s diagnosed condition and his employment, Dr. Gronseth stated:

“[Appellant] states he injured himself sorting mail at work. This seems reasonable, although he had only been working there two weeks, and previously had been on [w]orkman’s [c]ompensation. There are strong suggestions of secondary gain and psychosocial issues involved with this case, however. It is unclear whether this chronic condition is due to two weeks of sorting mail. It is very unlikely.”

Dr. Gronseth found that appellant had reached maximum medical improvement on March 14, 2000 and had no permanent disability.

By decision dated March 15, 2002, the Office denied appellant’s claim on the grounds that he had not established that he sustained a recurrence of disability due to his accepted employment injury.

LEGAL PRECEDENT

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.² This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of 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.³

ANALYSIS

In this case, appellant sustained a thoracic strain due to a December 1, 1999 employment injury. Appellant’s physician found that he could continue working with restrictions until

² *Robert H. St. Onge*, 43 ECAB 1169 (1992).

³ *Id.*

December 8, 1999, when he released appellant to his regular employment. Appellant voluntarily resigned from the employing establishment on December 19, 1999. Appellant, therefore, has the burden of proof to establish that he had a continuing condition or disability after December 19, 1999 causally related to his December 1, 1999 employment injury through the submission of rationalized medical evidence.⁴

In a clinic note dated February 15, 2000, Dr. Buseman noted that appellant related that he resigned from the employing establishment due to pain from a low back injury on December 1, 1999. Dr. Buseman diagnosed myofascial sprain/strain and found that appellant's history and the findings on physical examination indicated a possible functional overlay. Dr. Buseman, however, did not specifically relate the diagnosed conditions to appellant's December 1, 1999 employment injury and thus her opinion is of little probative value.⁵ Moreover, Dr. Buseman did not address the relevant issue of whether appellant was disabled from employment beginning December 19, 1999, the date he resigned from the employing establishment.

In a report dated April 4, 2000, Dr. Ackerman, a chiropractor, indicated that he had treated appellant since March 17, 2000 for a December 1, 1999 employment injury. He diagnosed subluxations at C3, T11 and L1 by x-ray and found that appellant required no further treatment.⁶ Dr. Ackerman, however, did not specifically relate the subluxations to appellant's December 1, 1999 employment injury, provide any rationale for his findings or discuss the relevant issue of whether appellant sustained a recurrence of disability beginning December 19, 1999. Thus, his opinion is of little probative value.⁷

Dr. Gronseth provided a report dated March 14, 2000. He diagnosed chronic cervicgia which he related to appellant's December 1, 1999 employment injury. Dr. Gronseth found that appellant had no current work restrictions but should avoid overhead work to prevent further injury. Dr. Gronseth, however, did not provide any rationale explaining how or why appellant sustained chronic cervicgia causally related to his December 1, 1999 employment injury, which was accepted by the Office for thoracic strain. Medical reports not containing rationale on causal relationship are entitled to little probative value and are generally insufficient to meet appellant's

⁴ As noted above, the employing establishment indicated that appellant was hired with an employment ending date of December 31, 1999.

⁵ *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

⁶ In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under 5 U.S.C. § 8101(2). A chiropractor cannot be considered a physician under the Federal Employees' Compensation Act unless it is established that there is a subluxation as demonstrated by x-ray to exist. See *Kathryn Haggerty*, 45 ECAB 383 (1994). The Board notes that, as Dr. Ackerman diagnosed subluxations based upon x-ray evidence, he is considered to be a "physician" under the Act.

⁷ See *Bonnie Goodman*, 50 ECAB 139 (1998) (the opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to her federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant).

burden of proof.⁸ Further, Dr. Gronseth did not address the relevant issue of whether appellant was disabled from his regular employment after December 19, 1999. In addition, Dr. Gronseth's finding that appellant should avoid overhead work is prophylactic in nature. The Board has held that restrictions which are based on a fear of future injury are not compensable; there must be medical evidence that a claimant is currently disabled for work due to an employment-related condition.⁹

In a report dated May 1, 2001, Dr. Gronseth diagnosed chronic thoracic pain and opined that appellant had no work limitations. As Dr. Gronseth did not find appellant disabled from employment, his report is of little relevance to the issue at hand. Further, the Board has held that a diagnosis of "pain" does not constitute a basis for the payment of compensation.¹⁰

In a report dated December 11, 2001, Dr. Gronseth diagnosed thoracic sprain/strain and chronic myofascial pain. He found that it was "unclear whether this chronic condition is due to two weeks of sorting mail. It is very unlikely." Dr. Gronseth indicated that there were "strong suggestions of secondary gain and psychosocial issues...." He opined that appellant had reached maximum medical improvement on March 14, 2000 and had no permanent disability. As Dr. Gronseth found that it was "very unlikely" that the diagnosed conditions were due to appellant's employment injury, his opinion is insufficient to meet appellant's burden of proof. Additionally, while Dr. Gronseth determined that appellant had reached maximum medical improvement on March 14, 2000, he did not find that appellant was disabled preceding that date due to his accepted employment injury. Instead, Dr. Gronseth noted findings suggesting secondary gain.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.¹¹ As appellant failed to submit a rationalized medical report supporting that his employment injury resulted in his inability to perform his employment on or after December 19, 1999, the Office properly denied his claim for compensation.

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability causally related to his December 1, 1999 employment injury.

⁸ *Arlonia B. Taylor*, 44 ECAB 591 (1993).

⁹ *Mary Geary*, 43 ECAB 300 (1991).

¹⁰ *See John L. Clark*, 32 ECAB 1618 (1981).

¹¹ *See Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 15, 2002 is affirmed.

Issued: February 9, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member