

Appellant sustained recurrences of disability causally related to his accepted employment injury on August 5 and 22, 1995. He returned to full duty on November 9, 1995.

On July 7, 1998 appellant filed a claim alleging that he sustained a recurrence of disability causally related to his July 17, 1995 employment injury. His supervisor reported leave without pay (LWOP) from April 3 to 19, April 20 to 27 and May 4 to 11, 1998. Appellant first saw Dr. Joseph Cammarata, a chiropractor, on May 18, 1998, who diagnosed cervical radiculopathy and cervical degenerative disc disease. He provided treatment to appellant on May 18, 20, 28, 29 and June 4, 1998. Dr. Cammarata also treated appellant one time in July 1998.

On July 17, 1998 the Office requested that appellant submit additional information to support his claim, including a complete narrative from his doctor describing the objective findings that convinced him that appellant's condition had worsened such that he could no longer perform his employment duties.

In a report dated August 1, 1998, Dr. Cammarata related appellant's history and medical treatment. He noted that appellant was hospitalized several weeks earlier with neck, head and back pain and anxiety. The chiropractor began a treatment program of spinal manipulation of both the back and lower neck, electric muscle stimulation and moist heat. Dr. Cammarata reported as follows:

“Based on the current condition of [appellant] and a current diagnosis of cervical degenerated disc disease, cervical radiculitis, lumbar degenerative disc disease and lumbar radiculitis, it is my opinion that [appellant] is currently suffering from symptoms as a result of his work injury that took place on July 17, 1995. [He] did indicate that since returning to work after that injury he has had progressive symptoms of neck, shoulder and back pain that have gotten worse on several occasions and it is my opinion that the reason for the pain and his inability to work is a result of the fact that the July 17, 1995 injury resulted in a chronic condition of his neck and right shoulder. This chronic condition of the neck has been documented by recent [x]-rays that were done o[n] May 12, 1998.”

In a decision dated September 17, 1998, the Office denied appellant's claim of recurrence. The Office found that the evidence failed to establish that the claimed recurrence of disability was causally related to the accepted employment injury of July 17, 1995.

Appellant requested an oral hearing before an Office hearing representative. He submitted an October 29, 1998 report from Dr. Jay Klazmer, a neurologist, who related appellant's history and findings on examination. He offered the following assessment:

“[Appellant], in summary, has a history of a right cervical radiculopathy. He also has clinical findings to suggest a right shoulder impingement syndrome, which may be on the basis of tendinitis, though a partial tear of the right rotator cuff tendons cannot be excluded. On the basis of the history provided to me by [appellant], these conditions directly resulted from the work accident that occurred on July 17, 1995.”

Dr. Klazmer saw appellant for a follow-up neurological evaluation on February 11, 1999.

Following the oral hearing, which was held on September 30, 1999, the Office hearing representative issued a decision on December 9, 1999 finding that further development of the medical evidence was warranted. The hearing representative found that Dr. Klazmer's opinion on causal relationship was not well rationalized but provided an inference of causal relationship not refuted elsewhere in the record.

The Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Steven J. Valentino, an orthopedic surgeon. On February 10, 2000 Dr. Valentino reported that he examined appellant that day. He related appellant's complaints, history and treatment. Dr. Valentino reviewed reports of appellant's diagnostic studies and other medical records. After describing his findings on physical examination, Dr. Valentino diagnosed "resolved sprain neck, right shoulder and right arm." Based on his examination of appellant and his review of the medical record and diagnostic studies, he found no evidence of a recurrence of the July 17, 1995 work injury around April 3, 1998. There was no evidence that the work-related condition sustained on July 17, 1995 was still active, he reported or still causing objective findings, as all examinations were normal. Dr. Valentino noted that appellant's history of degenerative disc disease, transient left hemiparesis, lymphocytosis, sinus bradycardia, muscle tension headaches and cocaine use bore no causal relationship to his employment.

In a decision dated March 9, 2000, the Office denied appellant's claim of recurrence on the basis of Dr. Valentino's opinion, which represented the weight of the medical opinion evidence.

Appellant again requested an oral hearing before an Office hearing representative, which was held on September 20, 2000. At the hearing he submitted a return to work slip dated June 30, 2000 and a report of that same date from Dr. Cammarata, who released appellant to restricted duty. Appellant submitted an account summary showing dates and descriptions of medical treatment from May 18, 1998 to September 12, 2000.

In an October 11, 2000 report, Dr. Klazmer related his findings on follow-up neurological examination. He noted appellant's history of chronic tendinitis with an impingement syndrome in the right shoulder, in addition to a right cervical radiculopathy secondary to a work-related injury on July 17, 1995. Dr. Klazmer was of the opinion that the initial diagnosis of a right a shoulder strain was incorrect given appellant's clinical findings. He recommended an evaluation by an orthopedist who specialized in shoulder injuries.

In a decision dated December 29, 2000, the Office hearing representative affirmed the denial of appellant's claim of recurrence, finding that Dr. Valentino's opinion continued to carry the weight of the medical evidence.

Appellant requested reconsideration. In support thereof, he submitted an August 16, 2001 report from Dr. Carl R. Goodman, a specialist in physical medicine and rehabilitation, who examined appellant on May 3, 2001. He reviewed reports from

Dr. Cammarata, Dr. Klazmer and Dr. Valentino and related appellant's history, complaints and findings on physical examination. Dr. Goodman diagnosed: (1) a partial frozen shoulder on the right; (2) internal derangement of the right shoulder; and (3) C6 radiculopathy on the right. He expressed the opinion, to a reasonable degree of medical certainty, that these three diagnoses were directly related to the injuries sustained on July 17, 1995. It appeared, he stated, that they were exacerbated and resulted in a frozen shoulder and internal derangement occurring from the original injury of the shoulder with a dislocation. Dr. Goodman recommended an orthopedic evaluation.

In a decision dated March 21, 2002, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. The Office found that Dr. Valentino's opinion continued to represent the weight of the medical evidence.

LEGAL PRECEDENT

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability for which he seeks compensation is related to the accepted injury. This burden requires furnishing 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 who supports that conclusion with sound medical reasoning.¹

ANALYSIS

Appellant filed a claim alleging that he sustained a recurrence of disability causally related to his July 17, 1995 employment injury. Although he did not identify the date that his claimed recurrence began, his supervisor reported LWOP from April 3 to 19, April 20 to 27 and May 4 to 11, 1998. Appellant therefore has the burden of proof to establish that his disability for work on or about those dates was causally related to his July 17, 1995 employment injury.

The only medical opinion in this case that addresses disability for work on or about April 3, 1998 is Dr. Valentino's report of February 10, 2000. He found no evidence of a recurrence of the July 17, 1995 work injury around April 3, 1998. The Board has carefully reviewed the record and can find no disability slip or other medical evidence certifying that appellant was unable to perform the duties of his position during the period in question. The account summary of medical treatment beginning in May 1998 gives no indication that appellant was medically disqualified from work. Reports submitted by Dr. Cammarata, Dr. Klazmer and Dr. Goodman focused on diagnosing appellant's condition and relating these conditions to the incident that occurred on July 17, 1995.² None of these doctors, however, addressed the issue raised by appellant's July 7, 1998 claim for compensation, namely, whether he became disabled for work on or after April 3, 1998 as a result of his July 17, 1995 employment injury.

¹ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

² Without diagnosing a subluxation from x-ray, a chiropractor is not a "physician" under the Federal Employees' Compensation Act and his opinion on causal relationship does not constitute competent medical evidence. See generally *Theresa K. McKenna*, 30 ECAB 702 (1979).

For each period of disability claimed, appellant has the burden of proving that he was disabled for work as a result of his accepted employment injury.³ Findings on examination are generally needed to justify a physician's opinion that an employee is disabled for work.⁴ The Board has held that when a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that he or she hurt too much to work, without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁵ The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁶

In this case appellant has submitted no narrative medical opinion directly addressing the specific dates for which he seeks compensation.⁷ Further, the only medical opinion that addresses the issue presented, Dr. Valentino's report on February 10, 2000, tends to negate appellant's claim of recurrence. For these reasons, the Board finds that appellant has not met his burden of proof by the weight of the medical evidence.

CONCLUSION

Appellant has not met his burden of proof to establish that he sustained a recurrence of disability in 1998 causally related to his accepted employment injury of July 17, 1995.

³ *David H. Goss*, 32 ECAB 24 (1980).

⁴ *See Dean E. Pierce*, 40 ECAB 1249 (1989); *Paul D. Weiss*, 36 ECAB 720 (1985).

⁵ *John L. Clark*, 32 ECAB 1618 (1981).

⁶ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁷ The physician need not itemize each of the dates claimed if he has reviewed a leave breakdown provided by the employing establishment, but his opinion must still be supported by findings.

ORDER

IT IS HEREBY ORDERED THAT the March 21, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 16, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

A. Peter Kanjorski
Alternate Member