

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

GILBERT RENDON, Appellant

and

**NATIONAL PARK SERVICE, Fritch, TX,
Employer**

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**Docket No. 04-529
Issued: May 5, 2004**

Appearances:
Gilbert Rendon, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 18, 2003 appellant filed an appeal from merit decisions of the Office of Workers' Compensation Programs dated March 10, April 21 and November 26, 2003. 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 on January 29, 2003 causally related to his February 14, 2000 employment injury.

FACTUAL HISTORY

On February 16, 2000 appellant, then 54-year-old equipment operator, filed a claim for a traumatic injury occurring on February 14, 2000 while in the performance of duty. The Office accepted appellant's claim for lumbar strain and a herniated nucleus pulposus at L3-4. Appellant underwent a decompression laminectomy at L1 to L5 on November 13, 2000.

On January 29, 2003 appellant filed a notice of recurrence of disability on January 15, 2003 due to his February 14, 2000 employment injury. Appellant indicated that he stopped work

on January 29, 2003. The employing establishment indicated that appellant returned to limited-duty employment on February 29, 2001 and returned to full duty on May 1, 2001.

In an unsigned progress note dated January 29, 2003, Dr. Luiz Cesar, a Board-certified neurosurgeon and appellant's attending physician, reviewed the history of back surgery and noted that he currently had pain from his back to his leg. He diagnosed right lumbosciatica and recommended a magnetic resonance imaging (MRI) study.

In a form report dated January 30, 2003, Dr. Cesar diagnosed right lumbosciatica and lumbar spondylosis and checked "yes" that the condition was caused or aggravated by employment because of "heavy lifting." He opined that appellant was totally disabled beginning January 29, 2003.

In a letter dated February 18, 2003, the employing establishment noted that, following the his February 14, 2000 employment injury, appellant returned to regular duty on May 3, 2002 with a 40-pound lifting limitation. The employing establishment indicated that appellant's duties "have not changed. He is still required to operate heavy equipment and performing welding and general laborer duties."

Appellant, in response to a request for additional information, related in a letter dated February 18, 2003 that he had pain and numbness in his leg which had continued since his accepted employment injury. He stated that his employment "continues to aggravate the back pain and leg numbness." Appellant noted that he had a lifting restriction of 40 pounds but that much of the lifting required by his employment exceeded that amount.

In an unsigned progress note dated February 26, 2003, Dr. Cesar indicated that appellant's MRI scan revealed lateral recess stenosis at L5-S1.

By decision dated March 10, 2003, the Office found that appellant failed to establish that he sustained a recurrence of disability beginning January 29, 2003 due to his accepted employment injury.

In a letter dated March 12, 2003, the Office informed Dr. Cesar that it authorized a myelogram and computerized tomography (CT) scan. The Office also requested that Dr. Cesar provide a reasoned opinion regarding whether appellant's current condition was causally related to the February 14, 2000 employment injury.

In a March 19, 2003 response, Dr. Cesar diagnosed lumbar spondylosis with a narrow lumbar canal at L5-S1. He discussed his treatment of appellant since July 5, 2000 and noted that appellant returned to work following surgery but subsequently required treatment for right lumbosciatica.

By letter dated March 19, 2003, appellant requested reconsideration of his claim.

In an unsigned progress note dated April 2, 2003, Dr. Cesar related that appellant's myelogram and CT scan of the lumbosacral spine showed an old compression fracture at L3 and "multiple protrusions at multiple levels" without a "very important narrowing that would require

surgery.”¹ He noted that appellant had a “scoliotic defect in the lumbar spine” and indicated that he was referring appellant to a pain clinic.²

By decision dated April 21, 2003, the Office denied modification of its March 10, 2003 decision.

The record indicates that Dr. Cesar released appellant to resume light-duty work on April 28, 2003. In a form report of that date, he diagnosed lumbar spondylosis as the condition due to the injury but did not respond to the question of whether the history provided by appellant corresponded to that provided on the form; that appellant sustained a back injury “maybe climbing down out of [a] loader.”

In a duty status report dated July 24, 2003, Dr. Cesar diagnosed lumbar spondylosis and listed work restrictions.³

By letter dated August 26, 2003, appellant requested reconsideration. He submitted an unsigned progress note dated September 17, 2003 from Dr. Cesar, who noted that appellant had achieved good results from the dorsal column stimulator.

In a form report dated November 21, 2003, Dr. Cesar diagnosed right lumbosciatica and checked “yes” that the condition was caused or aggravated by employment, providing as a rationale that over time appellant “developed pain in the [right] low back going down [the] leg.” He found that appellant was totally disabled as of November 21, 2003 due to the placement on that date of a dorsal column stimulator.

By decision dated November 26, 2003, the Office denied reconsideration of the April 21, 2003 decision.

LEGAL PRECEDENT

Where an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the

¹ An MRI scan of appellant’s lumbar spine, obtained on February 24, 2003, showed a new or recurrent disc protrusion at L4-5 and L5-S1. A post myelogram CT scan, performed on March 27, 2003, showed disc bulges at multiple levels, foraminal stenosis at L2-4 and possibly at L4-5, ligamentous hypertrophy, facet joint hypertrophic and degenerative changes at L4-5 and L5-S1, and scoliosis, mild diffuse spondylolysis and moderate compression deformity at L3.

² The record contains multiple reports from Dr. Robert Paige, a Board-certified anesthesiologist, discussing his treatment of appellant with lumbar epidural injections and a dorsal column stimulator.

³ In an unsigned progress note dated July 10, 2003, Dr. Cesar diagnosed right lumbosciatica and recommended a dorsal column stimulator. He opined that he could continue with his current work limitations. Appellant underwent psychological evaluation on July 30, 2003 regarding the placement of the dorsal column stimulator.

employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.⁴

ANALYSIS

Following his February 14, 2000 employment injury, appellant returned to light-duty employment on February 29, 2001 and to his regular employment on May 30, 2002 with restrictions on lifting over 40 pounds. The employing establishment submitted a statement dated February 18, 2003 indicating that his duties had not changed. Appellant did not allege a change in the nature and extent of his job requirements as a cause of his work stoppage on January 29, 2003 but instead argued that his work required him to lift over 40 pounds. He did not, however, submit any evidence in support of this allegation. Therefore, he has not established that he was unable to work beginning January 29, 2003 due to a change in his light-duty job requirements.

The record contains unsigned progress notes from Dr. Cesar dated January 29, February 26, April 2, July 10 and September 17, 2003. These progress notes do not constitute probative medical evidence because they do not contain a signature from a physician.⁵

In a form report dated January 30, 2003, Dr. Cesar diagnosed right lumbosciatica and lumbar spondylosis. He checked “yes” that the condition was caused or aggravated by employment due to “heavy lifting.” He found that appellant was disabled as of January 29, 2003. Dr. Cesar, however, did not attribute the diagnosed conditions to appellant’s February 14, 2000 employment injury and thus his report is of diminished probative value.⁶ Additionally, Dr. Cesar provided no findings on physical examination. Generally, findings on examination are needed to support a physician’s opinion that an employee is disabled for work.⁷

The Office requested that Dr. Cesar discuss whether appellant’s current condition was due to the February 14, 2000 employment injury. In a response dated March 19, 2003, Dr. Cesar diagnosed lumbar spondylosis and a narrow lumbar canal at L5-S1. He did not, however, as requested by the Office, address the cause of the diagnosed conditions. Medical evidence which does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship.⁸

In a form report dated April 28, 2003, Dr. Cesar diagnosed lumbar spondylosis and found that appellant could resume light-duty employment. As Dr. Cesar did address the cause of

⁴ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁵ *Merton J. Sills*, 39 ECAB 572 (1988).

⁶ Appellant can file an occupational disease claim if he believes that employment activities caused or aggravated his back condition.

⁷ *Barry C. Peterson*, 52 ECAB 120 (2000).

⁸ *Michael E. Smith*, 50 ECAB 313 (1999).

appellant's lumbar spondylosis or the relevant issue of whether appellant was disabled beginning January 29, 2003, his report is of diminished probative value.⁹

Dr. Cesar submitted progress notes dated July 10 and 24, 2003 addressing appellant's current work restrictions and a form report dated November 21, 2003 finding appellant unable to work as of that date. However, as this evidence does not address the pertinent issue of whether appellant sustained a recurrence of disability on January 29, 2003, it is of little relevance in this case.¹⁰

An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.¹¹ To establish causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to discharge his burden of proof.¹²

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability on January 29, 2003 causally related to his February 14, 2000 employment injury.

⁹ *Id.*

¹⁰ Additionally, the reports from Dr. Paige addressing his pain management of appellant do not address causation and thus are of little probative value. *Linda I. Sprague*, 48 ECAB 386 (1997).

¹¹ *Donald W. Long*, 41 ECAB 142 (1989).

¹² Following the Office's November 26, 2003 decision, appellant submitted additional evidence. As the Office did not review this evidence in reaching a final decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 26, April 21 and March 10, 2003 are affirmed.

Issued: May 5, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member