

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

ROBERT J. COOK, JR., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Atlanta, GA, Employer)

Docket No. 04-836
Issued: October 21, 2004

Appearances:
Robert J. Cook, Jr., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On February 9, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated June 20 and November 14, 2003 which denied his claim for compensation for temporary total disability for the period April 23 to May 20, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim for compensation for the period April 23 to May 20, 2003.

ISSUE

The issue is whether appellant established a recurrence of total disability for the period April 23 through May 20, 2003, as a result of his accepted April 26, 1993 employment injury.

FACTUAL HISTORY

This case has previously been before the Board on appeal.¹ By decision dated April 1, 1997, the Board reversed the Office's decisions dated February 16 and May 16, 1994 which

¹ The Board notes that appellant has had appeals on claim numbers 06-04757252 and 06-0627257 before the Board. On claim number 06-04757252, the Board found the evidence insufficient to establish that he sustained a

terminated appellant's compensation benefits on the grounds that appellant no longer had any residuals due to his accepted April 26, 1993² employment injury.³ Specifically, the Board found that the Office erred in relying on the opinion of Dr. Thomas L. Dopson, a referral Board-certified orthopedic surgeon, who found that appellant's injury-related condition had resolved as Dr. Dopson had confused appellant's previous left shoulder impairment with his current claim, which involved cervical, thoracic and lumbar strains on the right side. The law and facts of the case as set forth in the Board's prior decision are hereby incorporated by reference.

Subsequent to the Board's decision, the Office paid appellant compensation for the periods February 14 through December 29, 1994 and July 23, 1995 to June 3, 1997. Appellant returned to a limited-duty position effective June 4, 1997. On October 3, 1997 appellant filed a recurrence claim for disability beginning June 6, 1997, which the Office accepted and paid compensation for the period June 7, 1997 through February 13, 1998. Intermittent wage loss was authorized for the period April 12, 1998 through June 19, 2002. On September 10, 1999 the Office issued a schedule award for a 10 percent permanent impairment of his right arm.

On April 23 and May 19, 2003 appellant filed claims for wage-loss compensation (Form CA-7) for total disability for the period April 23 through May 20, 2003. In support of his claim appellant submitted disability slips dated April 24 and May 15, 2003 and reports dated April 23 and May 14, 2003, attending physician forms (Form CA-20) dated April 23 and 30 and May 21, 2003 and a May 15, 2003 duty status report by Dr. Ralph D'Auria, an attending Board-certified physiatrist.

In an April 24, 2003 work status report, Dr. D'Auria indicated that appellant was unable to work through May 14, 2003. In an attending physician's form dated April 23, 2003, Dr. D'Auria indicated that he treated appellant on April 23, 2003 and indicated that appellant was totally disabled for the period April 23 through May 14, 2003, due to his lumbosacral sprain/strain and shoulder impingement syndrome.

By letter dated May 1, 2003, the Office advised appellant that his situation might meet the description of a recurrence and informed him of the information needed regarding a recurrence claim and allotted him 30 days to submit the requested information.

Subsequent to the Office's letter, appellant submitted an April 23, 2003 treatment report by Dr. D'Auria. A physical examination revealed: "flexion and extension are both limited with lumbosacral pain," extension was "also limited due to right trapezius pain" and "right and left

recurrence of disability on February 1, 1991 causally related to his accepted November 14, 1989 employment injury of a cervical strain. Docket No. 93-1656 (issued October 14, 1994). On claim number 06-0627257 which was accepted for left knee strain, internal derangement left knee and left knee arthroscopy, the Board found that the Office failed to meet its burden of proof to terminate appellant's compensation benefits effective November 6, 1995, on the grounds that he abandoned suitable work. Docket No. 97-2171 (issued May 13, 1999). In a decision dated March 20, 2003, the Board affirmed the Office's termination of benefits on claim number 06-0627257 on the grounds that he refused an offer of suitable work. Docket No. 02-1648 (issued March 20, 2003).

² This was assigned claim number 06-0569209. On May 15, 1998 the Office doubled claim number 06-0697774 with claim number 06-0569209, which became the master number.

³ Docket No. 95-1059 (issued April 1, 1997).

lateral flexion both limited to 15 [degrees] with lumbosacral pain.” Under assessment, Dr. D’Auria stated that he had treated appellant since his 1993 employment injury, appellant reported: “exacerbation of low back” and he was “seen here presently as needed for exacerbation of his trapezius, cervical, lumbar and right shoulder complaint.”

In a May 14, 2003 report, Dr. D’Auria reported appellant’s employment injuries involving both his back and left knee “have caused a great deal of misery for [appellant] and have resulted in development of reactive depression.” Dr. D’Auria opined this condition was “work related as it arises in response to his physical and medical complaints” and appellant “has been kept off work for portions of April and May 2003. In response to the Office’s letter, Dr. D’Auria stated that he would “reiterate there is no material change in [appellant]’s condition, except that it is slowly becoming progressively worse.” He opined that appellant requires total replacement of his left knee and “has slow progressive worsening of the right shoulder and neck complaints.”

In a May 15, 2003 work status report, Dr. D’Auria indicated that appellant was unable to work through May 20, 2003. In an undated attending physician’s report, Dr. D’Auria indicated that appellant was treated on May 15, 2003 and was totally disabled for the period May 15 to 20, 2003, due to injuries sustained from the April 26, 1993 employment injury. In a May 15, 2003 office visit report, Dr. D’Auria indicated that appellant missed “work today as the result of the back and shoulder complaints.”

By decision dated June 20, 2003, the Office denied appellant’s claim for compensation for total disability for the period April 23 to May 20, 2003, on the grounds that the evidence was insufficient to support a recurrence of disability due to his accepted April 26, 1993 employment injury.

In a letter dated July 3, 2003 and received on July 17, 2003, appellant requested reconsideration of the denial of compensation for wage loss for the period April 23 through May 20, 2003. In support of his request, he submitted a bill for treatment by Dr. D’Auria for the period January 24, 2001 through June 23, 2003, copies of approved leave requests for February 20, 2002 through June 22, 2003, statements from appellant dated March 24 and May 4, 2003, work status slips for disability for periods in 2002 and 2003, attending physician forms indicating disability for various periods in 2002 and 2003, a July 16, 1997 magnetic resonance imaging scan and medical reports from 1997 through 2002, reports dated April 23, May 14 and July 8, 2003, by Dr. D’Auria and claims for compensation. The July 8, 2003 report by Dr. D’Auria, concerned disability for the period June 17 through 23, 2003.

By merit decision dated November 14, 2003, the Office denied appellant’s request for modification.

LEGAL PRECEDENT

When a claimant who is on light-duty alleges a recurrence of disability, he must show either a change in the nature and extent of the light-duty job requirements or in the extent of the

work-related injury or condition.⁴ To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.⁵

ANALYSIS

There is no evidence in the record to support that the nature and extent of appellant's light-duty assignment changed. The work release notes from Dr. Griffin continue to support limited standing with breaks for elevation of his right foot. Appellant has not submitted copies of limited-duty job offers establishing that his work requirements exceeded these restrictions or that the nature of his work duties changed in any way.

The Board finds that the reports of Dr. D'Auria fail to establish that appellant sustained a recurrence of disability for the period April 23 through May 20, 2003. Dr. D'Auria has not found that appellant was disabled for his light-duty job. He also opined that appellant had "no material change" in his condition. While Dr. D'Auria, in an April 23, 2003 treatment report, noted that appellant's flexion and extension were limited due to lumbosacral pain and his left and right lateral flexion was limited to 15 degrees due to pain, he did not offer an opinion regarding whether appellant was totally disabled from performing his light-duty job. In his May 14, 2003 report, he noted that he saw appellant due to "exacerbation of his trapezius, cervical, lumbar and right shoulder complaint" and that a physical examination revealed limited flexion and extension due to pain. The physician also noted that appellant's back and left knee injuries caused him misery which resulted in the development of reactive depression and disability for periods in April and May 2003. In a May 15, 2003 report, Dr. D'Auria opined that appellant was totally disabled for the period April 23 through May 20, 2003, due to his April 26, 1993 employment injuries. Dr. D'Auria's opinions are of limited probative value since he did not provide a rationalized medical opinion on the issue of whether appellant's disability for the period April 23 through May 20, 2003, was causally related to the April 26, 1993 employment injury. He offered no opinion as to disability in his April 23, 2003 report. In his May 14, 2003 report, he opined appellant's disability in April and May 2003 to reactive depression, which he attributed to appellant's two employment injuries. The Board notes that reactive depression is not a condition accepted by the Office as employment related and Dr. D'Auria did not explain how that condition was related to the April 26, 1993 employment injury, accepted for cervical, thoracic and lumbar strains on the right side. Similarly, Dr. D'Auria's May 15, 2003 report is also insufficient to support appellant's burden of proof as Dr. D'Auria stated that appellant was disabled for the period April 23 through May 20, 2003, with no supporting rationale. The Board has held that a medical opinion not fortified by medical rationale is of little probative value.⁶ As the May 15, 2003 report is merely conclusory, it is of diminished probative value and is,

⁴ *Roberta L. Kaaumoana*, 54 ECAB ____ (Docket No. 02-891, issued October 9, 2002); *Jackie D. West*, 54 ECAB ____ (Docket No. 02-1299, issued October 21, 2002); *Joseph D. Duncan*, 54 ECAB ____ (Docket No. 02-1115, issued March 4, 2003); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222, (1986).

⁵ *James H. Botts*, 50 ECAB 265 (1999).

⁶ *Willa M. Frazier*, 55 ECAB ____ (Docket No. 04-120, issued March 11, 2004).

therefore, insufficient to support a change in the nature or extent of appellant's injury-related condition and to establish appellant's claim for a recurrence of disability.

As Dr. D'Auria did not state that appellant's employment-related condition had changed and as his work limitations did not become more restrictive there is no evidence that either appellant's work duties or his injury-related condition changed and appellant has failed to meet his burden of proof in establishing a recurrence of total disability.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that his disability for the period April 23 through May 20, 2003, was causally related to his accepted April 26, 1993 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 14 and June 20, 2003 are affirmed.

Issued: October 21, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member