

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

FRED GOMILLION, Appellant

and

**GOVERNMENT PRINTING OFFICE,
Washington, D.C., Employer**

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**Docket No. 05-227
Issued: May 19, 2005**

Appearances:
Fred Gomillion, 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
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On November 1, 2004 appellant timely filed an appeal from an October 15, 2004 merit decision by the Office of Workers' Compensation Programs, which denied his request for modification of the Office's September 2, 2004 decision. In the September 2, 2004 decision, the Office denied appellant's claim for disability for the period April 12 to 30, 2004 on the grounds that he had not established that the disability was causally related to his August 27, 2003 employment injury. The Board has jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether appellant met his burden of proof in establishing that his disability from April 12 to 30, 2004 was causally related to his employment injury.

FACTUAL HISTORY

On August 27, 2003 appellant, then a 42-year-old employee, was lifting a bundle of books when he developed pain in the lower back. He stopped working that day.

In a September 2, 2003 medical note, Dr. Teresa Allen, an internist, stated that appellant had lifted a 70-pound container in May 2003 and developed lower back pain on the left side. She noted that appellant was moved to a job where he was lifting 30-pound boxes on August 26, 2003 when he developed back pain. In an October 15, 2003 report, Dr. Steven Taub, a physiatrist, indicated that appellant had intermittent back pain. He reported that appellant's strength and sensation were normal and the straight leg raising test was negative bilaterally. He stated that a magnetic resonance imaging scan showed degenerative changes in L4-5 and L5-S1 with a right paracentral disc herniation at L5-S1.

In a December 3, 2003 letter, the Office informed appellant that his claim had been accepted for a lumbar strain.

In a February 20, 2004 report, Dr. Yusuf Mosuro, an anesthesiologist, diagnosed bilateral L5 radiculopathy, which had improved and lumbar degenerative disc disease. He noted that appellant was not a candidate for a lumbar epidural steroid injection because he had gradually improved with physical therapy. He recommended that appellant not do any lifting over 20 pounds.

In an April 26, 2004 report, Dr. Taub indicated that appellant described symptoms of low back pain and stiffness. Appellant also indicated that he had occasionally experienced referred pain down both legs about once or twice a day, lasting for approximately a minute. Dr. Taub noted that appellant had some discomfort when he rose from a seated position. He reported that appellant's strength and sensation in both legs were normal as was the deep tendon reflexes. He concluded that appellant had symptomatic lumbosacral disc disease and spondylosis causing low back pain. Dr. Taub commented that appellant's rare and fleeting leg symptoms when sitting might represent transient radicular symptoms or some referred symptoms extending from the lumbosacral spine.

On May 4, 2004 appellant requested compensation for seven days between April 12 and 30, 2004. In a July 16, 2004 response, the Office indicated that appellant needed to submit additional medical evidence which showed that his current condition and disability of April 12, 2004 was causally related to the original August 27, 2003 employment injury. Appellant was given 30 days to submit such evidence.

In a September 2, 2004 decision, the Office denied appellant's claim for compensation because he had failed to establish a causal relationship between his August 27, 2003 employment injury and his disability from April 12 to 30, 2004.

Appellant requested reconsideration. In a September 3, 2004 memorandum, appellant's supervisor stated that appellant was packing books on one of the web presses when he sustained a back injury. He received continuation of pay from August 27 to October 10, 2003. He then was on leave without pay until November 24, 2003. On November 25, 2003 appellant returned to work in a light-duty capacity. The supervisor indicated that appellant had incurred numerous setbacks during his treatment which required days off, sometimes continuous days and sometimes brief periods of time. He reported that all of appellant's absences from work were substantiated by medical records.

In an August 25, 2004 report, Dr. Sylvia Medley, a specialist in preventive medicine, reviewed appellant's medical history arising from the August 27, 2003 employment injury. She indicated that appellant could drive for 30 minutes, sit for 15 minutes, stand for 20 minutes, walk for 30 minutes or 4 blocks. She stated that appellant could lift up to 20 pounds.

In an October 15, 2004 decision, the Office denied appellant's request for modification of the prior decision.

LEGAL PRECEDENT

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted employment injury. As part of this burden, the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition and supports that conclusion with sound medical reasoning.¹ When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she 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 show that she cannot perform such light duty. As part of this burden, the 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.²

ANALYSIS

Appellant sought compensation for intermittent periods of disability between April 12 and 30, 2004. The medical evidence he submitted, however, did not satisfy his burden of proof. Dr. Taub, in his April 26, 2004 report, concluded that appellant had symptomatic lumbosacral disc disease and spondylosis causing low back pain. He, however, did not address the issue of whether appellant's back condition at that time was causally related to the August 27, 2003 employment injury. Dr. Medley described appellant's work restrictions but did not discuss whether the work restrictions were due to the effects of the employment injury. Appellant has not submitted any other medical evidence that would show a causal relationship between his August 27, 2003 employment injury and his subsequent intermittent periods of disability between April 12 and 30, 2004.

CONCLUSION

Appellant did not meet his burden of proof in establishing that his intermittent disability between April 12 and 30, 2004, was causally related to his August 27, 2003 employment injury.

¹ *Bernard Snowden*, 49 ECAB 144, 148 (1997).

² *Barry Peterson*, 120, 125 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 15 and September 2, 2004 are affirmed.

Issued: May 19, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member