United States Department of Labor
Employees' Compensation Appeals Board

M.R., Appellant	)	
and	)	**Docket No. 06-198**
	)	**Issued: August 28, 2006**
U.S. POSTAL SERVICE, WESTERN NASSAU P & DC, Garden City, NY, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 2, 2005 appellant filed an appeal from an August 24, 2005 decision of the Office of Workers' Compensation Programs which denied his herniated lumbar discs as a consequence of his accepted lumbosacral strain. 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 met his burden of proof to establish that his herniated lumbar discs are a consequence of his accepted lumbosacral strain.

FACTUAL HISTORY

On October 17, 2001 appellant, then a 49-year-old mail handler, sustained an employment-related lumbosacral sprain when he injured his back picking up buckets of nixie mail. He returned to work on October 22, 2001 and on January 3, 2002 submitted a claim alleging that he sustained a recurrence of disability on November 28, 2001, stating that since that time he could only work six hours a day. By decision dated March 22, 2002, the Office denied

his recurrence claim. A hearing was held on October 29, 2002. In a January 9, 2003 decision, an Office hearing representative affirmed the March 22, 2002 decision.[1]

On April 13, 2005 appellant, through counsel, filed a request to have his accepted conditions expanded to include herniated discs in the cervical and lumbosacral region, alleging they were caused by employment injuries of January 2, 1995 and October 17, 2001. He referenced reports by Dr. Bernard J. Savella, an attending Board-certified neurologist. Appellant requested that his cervical spine claim, adjudicated under file number 020693381, be consolidated with the instant claim for a lumbosacral sprain, adjudicated under file number 022017911. He also submitted additional medical evidence.

In an October 10, 1995 report, Dr. Savella advised that constant lifting at work caused chronic pain covering every part of appellant's back. A July 11, 1996 x-ray of the lumbosacral spine demonstrated mild narrowing at the lumbosacral junction. In a February 12, 1998 report, he diagnosed chronic musculoskeletal pain syndrome involving the cervical, lumbosacral and thoracic spines. By report dated February 23, 2000, Dr. David L. Andrews, Board-certified in orthopedic surgery, noted that appellant had low back and cervical symptoms since an injury in 1995 with a magnetic resonance imaging (MRI) scan showing a left-sided protrusion at C4-5. In an April 3, 2002 report, he advised that appellant was seen for chronic pain in the cervical and lumbar spine areas with spasm and limited range of motion on examination. Dr. Andrews opined that the condition was chronic and had "peaked" following the October 17, 2001 lifting injury. In an August 13, 2002 report, Dr. Savella reviewed the history of the October 2001 lifting injury which caused severe low back pain that gradually subsided but noted that appellant was never without pain. He diagnosed herniated discs in the cervical and lumbosacral regions. In an attending physician's report dated November 5, 2002, Dr. Savella diagnosed cervical and lumbar radiculopathy and checked the "yes" box indicating that the conditions were employment related, stating that appellant's degenerative spine was caused by lifting. By report dated December 12, 2002, he diagnosed chronic lower back syndrome and cervical spine pain with radiculopathy which appeared stable. In duty status reports dated February 19 and March 18, 2003, Dr. Savella diagnosed herniated discs at L4-5 and C5-6 with degenerative disc disease.

By decision dated August 24, 2005, the Office denied appellant's request to expand his accepted lumbosacral condition on the grounds that the medical evidence was not well rationalized.

LEGAL PRECEDENT

It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an

[1] Appellant did not file an appeal with the Board of this decision. The Board's jurisdiction is limited to consider and decide appeals from final decisions of the Office and extends only to those final decisions issued within one year prior to the filing of the appeal. 20 C.F.R. §§ 501.2(c) and 501.3(d); *see Annette Louise*, 54 ECAB 783 (2003). Because more than one year has elapsed between the January 9, 2003 decision and the filing of this appeal on November 2, 2005, the Board lacks jurisdiction to review the merits of whether appellant establish a recurrence of disability on November 28, 2001.

independent intervening cause which is attributable to the employee's own intentional conduct.[2] Regarding the range of compensable consequences of an employment-related injury, Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of "direct and natural results" and of the claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury. Thus, once the work-connected character of any condition is established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.[3]

ANALYSIS

The issue is whether appellant met his burden of proof to establish whether herniated lumbar discs were a consequence of his October 17, 2001 employment injury. The Board initially notes that the Office has the discretion to determine when and if cases should be doubled,[4] and there is no evidence in this case that demonstrates an abuse of discretion.[5]

The Board finds that the medical evidence lacks sufficient rationale to establish that appellant's herniated lumbosacral discs were a consequence of the accepted lumbosacral sprain.[6] There is no objective evidence such as a lumbosacral MRI scan to demonstrate that appellant has a lumbar herniated disc. Dr. Andrews merely diagnosed chronic back pain which he stated "peaked" following the October 7, 2001 lifting injury. However, he did not provide a firm diagnosis other than note the chronic pain and provided no reasoned opinion on causal relationship.[7] Dr. Savella opined that appellant had herniated lumbosacral discs with radiculopathy. In a December 5, 2002 form report, he advised that appellant's degenerative spine was caused by lifting at work; however, Dr. Savella did not state that this was caused by the October 17, 2001 lifting injury.

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[2] *Mary Poller*, 55 ECAB ____ (Docket No. 04-31, issued May 3, 2004); *Charlet Garrett Smith*, 47 ECAB 562 (1996).

[3] A. Larson, *The Law of Workers' Compensation* § 13.11.

[4] Federal (FECA) Procedure Manual, Part 1 -- Mail & Files, *Case Maintenance*, Chapter 1.500.4 (February 2000), Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.400 (February 2000).

[5] Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts. *See Thomas Lee Cox*, 54 ECAB 509 (2003). Thus, whether appellant's cervical herniated discs are a consequence of his 1995 employment injury would properly be adjudicated under that claim, Office file number 020693381.

[6] *See John W. Montoya*, 54 ECAB 306 (2003) (the physician must provide an opinion on whether the employment incident described caused or contributed to the claimant's diagnosed medical condition and support that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical and rational). *See also Charles W. Downey*, 54 ECAB 421 (2003) (the Board held that appellant did not submit sufficient probative medical evidence to establish that his diabetes was a consequence of his accepted employment injuries).

[7] *See Deborah L. Beatty*, 54 ECAB 340 (2003).

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. 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 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.[8] It is well established that medical reports must be in the form of a reasoned opinion by a qualified physician[9] and must explain from a medical perspective how the current condition is related to the injury.[10] Dr. Savella provided scant explanation for his conclusion that appellant's lumbar herniated discs were caused by the employment injury. His opinion is therefore insufficient to establish that this condition was caused by the October 17, 2001 employment injury and thus the record in this case does not contain a medical report providing a reasoned medical opinion that appellant's claimed lumbar herniated discs were a consequence of his October 17, 2001 employment injury.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a consequential injury causally related to his October 17, 2001 employment injury.

[8] *Pamela J. Glenn*, 53 ECAB 159 (2001).

[9] *William D. Farrior*, 54 ECAB 566 (2003); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[10] *Tomas Martinez*, 54 ECAB 623 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 24, 2005 be affirmed.

Issued: August 28, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board