

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

G.R., Appellant)
and) Docket No. 06-1446
U.S. POSTAL SERVICE, SAN FRANCISCO) Issued: December 19, 2006
PRIORITY MAIL ANNEX,)
Burlingame, CA, Employer)

)

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 5, 2006 appellant filed a timely appeal of the March 30, 2006 merit decision of the Office of Workers' Compensation Programs denying his claim for a recurrence. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability due to his accepted employment injury.

FACTUAL HISTORY

On March 11, 1994 appellant, then a 55-year-old modified postal clerk, filed an occupational disease claim alleging a low back condition as a result of lifting of sacks of mail weighing up to 75 pounds for a 17-year period. By letter dated August 13, 1996, the Office

accepted appellant's claim for "permanent aggravation of multilevel degenerative disc disease lumbar spine and sciatica right side."¹ On September 21, 1998 the Office granted a schedule award for a four percent impairment of the right leg.

Appellant returned to limited-duty work. The Office accepted that appellant sustained a recurrence of disability and was totally disabled from February 3 to March 7, 2002. Dr. Robert A. Fox, a treating Board-certified neurologist, released him to return to work as of March 9, 2002. He placed limitations on appellant of no lifting greater than 10 pounds, no repetitive bending or twisting and restricted standing and sitting to 60 minutes a time for a total of 8 hours a day. Appellant returned to work for the employing establishment on March 9, 2002.

On May 23, 2005 appellant filed a claim alleging a recurrence of disability on or about February 14, 2005. He submitted numerous medical reports by Dr. Fox. In a February 23, 2005 report, Dr. Fox noted that appellant returned on February 14, 2005 complaining that for the past two weeks he had increasingly severe back pain accompanied by dizziness, lightheadedness and numbness in his feet. He opined that appellant's underlying significant diabetes was now out of control and was exacerbated by his work-related back condition. In a March 10, 2005 report, Dr. Fox stated:

"It is now my opinion that the combination of his cumulative trauma lower back condition and his diabetic neuropathy make it impossible for him to return to work in any capacity. He certainly cannot work even with limitations that previously existed of lifting no more than [10] pounds or no repetitive bending or twisting and the need to alternately sit and stand because of the recent diabetic and medical factors aggravating his underlying back condition.

"I do not anticipate that this will significantly change and appropriately he has applied for medical disability retirement.

"I personally do not believe that he will be able to perform his job duties as a distribution clerk, which includes casing mail."

In a June 1, 2005 report, Dr. Fox added:

"[Appellant] has been seen by me for a number of years for his lower back condition, leading to acute and chronic treatment to his lower back dating back to the original report of injury of March 11, 1994.

"I believe that the majority of his lower back problem is related to that specific condition and cumulative trauma from sitting and standing has occurred since that injury. Only over the past year when his diabetes flared up did his medical condition flare up, causing aggravation of his underlying lower back problem."

¹ Appellant filed a claim for a traumatic injury that occurred on September 20, 1994. This claim was accepted for lumbar back strain. Appellant also filed a claim for a February 5, 1994 traumatic injury and this claim was accepted for lumbosacral strain superimposed on underlying lumbar degenerative disc disease.

On June 17, 2005 Dr. Fox noted that, absent his underlying diabetic condition, appellant might be able to work with his lower back condition. However, at least 50 percent of appellant's disability was related to his cumulative trauma to the back.

On July 14, 2005 the Office referred appellant for a second opinion to Dr. Thomas Schmitz, a Board-certified orthopedic surgeon. In a medical report dated September 15, 2005, Dr. Schmitz diagnosed lumbar osteoarthritis at L2-3 and L3-4. He noted that appellant also had moderately well-controlled hypertension and diabetes, but that only his lumbar osteoarthritis was related to his work injury. Dr. Schmitz noted that if appellant only had osteoarthritis he could work, but that he was disabled due to a combination of his hypertension and diabetes. Dr. Schmitz noted that appellant had subjective residuals of his lumbar osteoarthritis with continued low back pain.

In a decision dated March 30, 2006, the Office denied appellant's claim for a recurrence of disability. It found that his disability for work was due to appellant's diabetes and hypertension conditions and not the accepted lumbar osteoarthritis.

LEGAL PRECEDENT

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 he 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 requirements.²

Causal relationship is a medical issue³ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

ANALYSIS

Appellant's claim was accepted for permanent aggravation of multilevel degenerative disc disease of the lumbar spine and right side sciatica. The Office accepted that appellant sustained a recurrence of disability from February 3 to March 7, 2002. Appellant returned to

² *Terry R. Hedman*, 38 ECAB 222 (1986).

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁴ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

limited-duty work for the employing establishment on March 9, 2002. Appellant claimed a recurrence of disability commencing on or about February 14, 2005. The Board finds that appellant has not submitted sufficient evidence to 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 requirements.

Dr. Fox, appellant's treating physician, noted that appellant returned to see him on February 14, 2005 complaining of severe back pain accompanied by dizziness, lightheadedness and numbness in his feet. He opined that appellant was disabled as a result of a combination of his lower back condition and diabetic neuropathy. Dr. Fox stated that, absent appellant's diabetic condition, he would be able to work. The Office referred appellant to Dr. Schmitz for a second opinion. Dr. Schmitz opined that, if appellant only had osteoarthritis, he could work. His disability was caused by a combination of his hypertension and diabetes. No physician opined that appellant sustained a change in his injury-related back condition. Rather, both Dr. Fox and Dr. Schmitz attributed appellant's disability as a result of his nonemployment-related diabetes and hypertension. Accordingly, appellant has not shown that he experienced a change in the nature and extent of his physical condition arising from the employment injury which prevented him from performing his light-duty work. Furthermore, there is no evidence showing that appellant experienced a change in the nature and extent of the light-duty requirements or was required to perform duties which exceeded his medical restrictions.

Appellant has not met his burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements, which would prohibit him from performing his light-duty position.⁵

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained a recurrence of disability due to his accepted employment injury.

⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 30, 2006 is affirmed.

Issued: December 19, 2006
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board