

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

N.G., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
New Orleans, LA, Employer)

**Docket No. 06-1648
Issued: April 20, 2007**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 13, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' August 24, 2005 merit decision denying his recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of total disability on or after April 9, 2004 due to his accepted employment injuries.

FACTUAL HISTORY

On December 17, 1999 appellant, then a 45-year-old distribution clerk, filed a traumatic injury claim (File NO. 160346279), alleging that he injured his right shoulder while casing mail at work. The Office accepted that he sustained a right shoulder strain, right rotator cuff tendinitis

and subacromial bursitis and right rotator cuff tear.¹ Appellant began working in a limited-duty position for the employing establishment and received compensation for periods of disability. He was restricted from lifting more than 20 pounds and actions such as reaching above his shoulders and pushing and pulling were limited.

In a February 11, 2002 decision, the Office granted appellant a schedule award for a 17 percent permanent impairment of his right arm. On February 12, 2002 appellant filed a traumatic injury claim (File No. 162033144) alleging that he sustained an injury on that date while sweeping mail for dispatch when he turned his head to the right. He indicated that he experienced pain which radiated from his right neck area down into his right hand. The Office accepted that appellant sustained a neck sprain/strain.

The findings of February 27, 2003 magnetic resonance imaging (MRI) scan showed degenerative disc changes at C2-3, C3-4, C4-5 and C5-6. The findings of a February 19, 2004 MRI scan revealed degenerative disc changes at C2-3, C3-4, C4-5, C5-6 and C6-7. The findings were most significant at C3-4 and included moderate compression of the spinal cord and severe narrowing of the right neural foramen.

On March 11, 2002 appellant filed an occupational disease claim (File No. 162035160), alleging that he sustained carpal tunnel syndrome due to the repetitive movement of his arms required by his job. The findings of November 11, 2002 electromyogram (EMG) testing showed delayed median nerve signals consistent with bilateral carpal tunnel syndrome. The Office accepted that appellant sustained bilateral carpal tunnel syndrome. He underwent a right carpal tunnel repair on May 29, 2003. Appellant's three injury files were combined under File No. 160346279. He continued to work in a limited-duty position for the employing establishment and received compensation for partial disability.

On February 10, 2004 Dr. Bryant S. George, Sr., an attending Board-certified neurosurgeon, stated that when he saw appellant on February 4, 2004 he complained of pain in his neck and left shoulder, arm and hand with tingling and numbness in his left arm and hand. He reported that examination of the neck and arms revealed no objective spasms in the posterior musculature. Dr. George found restricted motion of the neck, referred pain in the C5 myotome, and decreased sensation in the distal portions of the arms, but there was no weakness or atrophy of the arms.

Appellant stopped work on March 25, 2004 and claimed that he sustained a recurrence of total disability on April 9, 2004 due to his accepted employment injuries.² At the time he stopped work, appellant was restricted from lifting more than 20 pounds, reaching above his shoulders and pushing and pulling.

In a March 25, 2004 form report, Dr. George listed the date of injury as February 12, 2002 and indicated that appellant reported that the injury occurred when he turned his head to the

¹ On August 22, 2000 appellant underwent a right rotator cuff repair with acromioplasty and resection of the distal clavicle. The procedure was authorized by the Office.

² Appellant apparently used leave between March 25 and April 9, 2004.

right “while reaching from flat containers.” He stated that an MRI scan of the cervical spine revealed multiple levels of spondylosis and severe spinal cord compression at C3 and diagnosed cervical myelopathy and spondylosis. Dr. George checked a “yes” box indicating that appellant’s condition was related to the February 12, 2002 injury and determined that he was totally disabled from March 25, 2004 until an undetermined time.³ On April 2, 2004 he noted that appellant reported on March 25, 2004 that he had pain in his neck and left shoulder, arm and hand, numbness in his left arm and hand and occasional pain in his left hip. Dr. George stated that he had instructed appellant to remain off work and recommended that he undergo an anterior cervical fusion with plating at C3-4.

In an August 2, 2004 decision, the Office denied appellant’s claim on the grounds that he did not submit sufficient medical evidence to show that he sustained a recurrence of total disability on or after April 9, 2004 due to his accepted employment injuries.

In an undated report, received by the Office on August 30, 2004, Dr. George stated that he first saw appellant on February 17, 2003 at which time he indicated that he had cervical pain, left hip pain and headaches that began after suffering an employment-related injury in 1997. He stated that MRI scans revealed multiple levels of cervical spondylosis and diagnosed cervical myelopathy. Dr. George recommended that appellant undergo an anterior cervical fusion at C3-4 to release his spinal cord compression and noted, “[Appellant] is unable to work at this time due to evidence of cervical myelopathy which would aggravate his condition and could lead to permanent neurological compromise.” Appellant later submitted an undated document which he indicated was an addendum to the report received on August 30, 2004. The document consisted of a notation by Dr. George which noted, “It is my opinion that [appellant’s] injury is work related.”

In a September 29, 2004 decision, the Office affirmed its August 2, 2004 decision.

On December 29, 2004 Dr. George provided an assessment of appellant’s cervical condition which was similar to that contained in his prior reports. He continued to recommend cervical surgery and stated, “Again, I would reiterate that [appellant] is totally temporarily disabled at this time and that his disability is related to damage to his cervical spinal cord which is resulting in neurological deficit.” On February 26, 2005 Dr. George indicated that appellant exhibited objective spasms in his neck and arms upon examination on February 10, 2005 and stated that he was totally temporarily disabled. He reported similar findings of an examination conducted on May 5, 2005.

Appellant appealed his claim to the Board and by order dated July 28, 2005, the Board remanded the case to the Office for reconstruction of the case record to be followed by an appropriate decision.⁴ The Office complied with the Board’s order and added numerous relevant documents to the case record which had been missing. In an August 24, 2005 decision, the

³ Dr. George also completed a similar form report on May 14, 2004 in which he indicated that appellant was totally disabled from March 25, 2004 until “one year after surgery.”

⁴ The Board found that numerous documents relating to appellant’s February 12, 2002 employment injury and his claimed April 9, 2004 recurrence of total disability were missing from the record.

Office again determined that appellant had not submitted sufficient medical evidence to show that he sustained a recurrence of total disability on or after April 9, 2004 due to his accepted employment injuries.⁵

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 job requirements.⁶

ANALYSIS

The Office accepted that, between 1999 and 2002, appellant sustained employment-related injuries to his neck, right shoulder and upper extremities. The only injury appellant sustained to his neck was a February 12, 2002 neck sprain/strain which occurred when he turned his head to the right while sweeping mail for dispatch. He worked in limited-duty positions for the employing establishment and claimed that he sustained a recurrence of total disability on April 9, 2004 due to his accepted employment injuries.

The Board finds that appellant did not submit sufficient medical evidence to show that he sustained a recurrence of total disability on or after April 9, 2004 due to his accepted employment injuries. He submitted several reports in which Dr. George, an attending Board-certified neurosurgeon, indicated that his February 12, 2002 neck injury caused total disability on and after April 9, 2004. These reports, however, are of limited probative value on the relevant issue of the present case in that Dr. George did not provide adequate medical rationale in support of his conclusion on causal relationship.⁷

In March 25 and May 14, 2004 form reports, Dr. George listed the date of injury as February 12, 2002 and indicated that appellant reported that the injury occurred when he turned his head to the right “while reaching from flat containers.” He stated that an MRI scan of the cervical spine revealed multiple levels of spondylosis and severe spinal cord compression at C3 and diagnosed cervical myelopathy and spondylosis. Dr. George checked a “yes” box indicating that appellant’s condition was related to the February 12, 2002 injury and determined that he was

⁵ Appellant submitted additional evidence after the Office’s August 24, 2005 decision, but the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

⁶ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Herman*, 38 ECAB 222, 227 (1986).

⁷ *See Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

totally disabled beginning March 25, 2004. Beginning in April 2004, he recommended that appellant undergo an anterior cervical fusion with plating at C3-4.

In an undated report, received by the Office on August 30, 2004, Dr. George stated that he first saw appellant on February 17, 2003 at which time he indicated that he had cervical pain, left hip pain and headaches that began after suffering an employment-related injury in 1997. Dr. George noted, "He is unable to work at this time due to evidence of cervical myopathy which would aggravate his condition and could lead to permanent neurological compromise." In an undated document, submitted shortly thereafter, which apparently was intended as an addendum to the report received on August 30, 2004 Dr. George noted, "It is my opinion that [appellant's] injury is work related."⁸

Dr. George provided no explanation of why he felt that the soft tissue injury that appellant sustained on February 12, 2002, *i.e.*, a neck sprain/strain, could cause total disability on or after April 9, 2004. He appears to believe that appellant sustained a much more severe neck injury on February 12, 2002 in the form of degenerative disc disease of the neck, but such an injury has not been accepted and the medical evidence of record does not support its occurrence. Dr. George did not explain how the mechanism of injury, merely turning the head to the right while sorting mail, could cause a medical condition which rendered appellant totally disabled more than two years after the fact. He provided very few findings on examination from around the time of the claimed recurrence of disability. The findings in Dr. George's reports from the period prior to the claimed recurrence of disability are similar to those found in the reports produced after the recurrence of disability was alleged to have started. His reports do not clearly show a material worsening of appellant's neck condition, let alone an employment-related material worsening of the condition.⁹ Dr. George provided an extremely brief history of appellant's medical problems and, therefore, his opinion on causal relationship is of limited probative value for the further reason that it is not based on a complete and accurate factual and medical history.¹⁰

For these reasons, appellant did not show a change in the nature and extent of his injury-related condition such that he sustained total disability on or after April 9, 2004. Moreover, he made no claim that a change in the nature and extent of his light-duty job requirements rendered him totally disabled. Therefore, the Office properly denied appellant's recurrence of disability claim.

⁸ The record contains other reports of Dr. George, dated between December 2004 and May 2005, but these reports contain no opinion on the cause of appellant's continuing problems.

⁹ The Board notes that there are no medical reports which posit that appellant sustained a recurrence of disability due to his employment-related right shoulder or upper extremity conditions.

¹⁰ See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history). In fact, in the report received by the Office on August 30, 2004, Dr. George appears to have provided an inaccurate medical history in that he suggested that appellant's cervical problems started in 1997 rather than 2002.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of total disability on or after April 9, 2004 due to his accepted employment injuries.

ORDER

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

Issued: April 20, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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