

FACTUAL HISTORY

This case has previously been before the Board. The facts of this case as presented in the previous Board decisions are hereby incorporated by reference.¹ The facts pertinent to this appeal are set forth.

On February 21, 1984 appellant, then a 32-year-old eggshell grader, sustained an injury to his back while attempting to catch a falling box of eggs. The Office accepted his claim for a lumbosacral strain and herniated nucleus pulposus L4-5. Appellant received appropriate compensation and medical benefits. On October 16, 1985 the Office accepted that appellant sustained an aggravation of his preexisting knee joint disease. Appellant returned to work on February 15, 1991 in a modified job as a Veterans' Service Officer for Lavaca County.

On December 10, 1995 appellant filed a notice of recurrence due to the February 21, 1984 employment injury. He alleged that the recurrence occurred in August 1995 with work stoppage on November 1, 1995. Appellant stated that the position of Veterans' Service Officer changed when his secretary's position was eliminated and required him to perform most of her duties in addition to his own. This forced him to resign from the position. In a December 27, 1999 medical report, Dr. Maurice G. Wilkinson, a family practitioner, indicated that appellant was experiencing discomfort and noted that appellant's back condition was aggravated by the amount of filing, bending and stooping that he was required to perform. In a report dated February 10, 1999, Dr. Wilkinson indicated that appellant was still unable to perform duties which required him to lift or sit for long periods.

The Office referred appellant to Dr. Jonathan Clark Race, a Board-certified orthopedic surgeon, for a second opinion. In a report dated May 27, 2003, Dr. Race stated that he did not believe that the effects of the accepted lumbar strain and degenerative disc disease condition had resolved. He opined that appellant's slip and fall had probably aggravated his knee condition, but would not be the primary reason that he continued to have knee problems of the current magnitude. Dr. Race noted that appellant had multiple surgeries prior to his work-related injuries and that appellant's ongoing conditions are primarily related to his degenerative arthritis of the knee, which was primarily related to his preexisting injuries.

The Office found a conflict between Dr. Wilkinson and Dr. Race with regard to whether the accepted condition caused or contributed to total disability on or after November 1, 1995. By letter dated February 17, 2004, it referred appellant to Dr. Eradio Arredondo, a Board-certified orthopedic surgeon, for an impartial medical examination. In a report dated March 16, 2004, Dr. Arredondo opined:

“It is my impression that his main problem with his back is degenerative and congenital, but mostly degenerative. There is no evidence of a disc herniation. That by itself, should not keep him from doing sedentary work. His right knee

¹ *Allen W. Hermes*, 41 ECAB 838 (1990); Docket No. 04-1758 (issued March 1, 2005); Docket No. 03-1859 (issued December 19, 2003); Docket No. 02-1591 issued November 14, 2002); Docket No. 98-161 (issued December 13, 1999); Docket No. 94-2143 (issued August 22, 1996); Docket No. 93-72 (issued January 6, 1994); Docket No. 93-185, (issued December 17, 1993); 43 ECAB 435 (1992).

has severe osteoarthritis and that would preclude him from doing any standing or walking, any climbing of stairs, or working on uneven ground. In short, it will be hard for him to be employed with these two problems. But, at the present time, his worse problem is the right knee.”

Dr. Arredondo noted that appellant’s degenerative disc disease has not resolved. He also indicated that the work-related aggravation of appellant’s right knee condition had not resolved. Dr. Arredondo predicted that appellant would continue to have problems with his knee and would need a joint replacement. With regard to returning to work, he indicated that, if it was only for the lumbar condition, he could do sedentary work, but that his knee kept him from being on his feet for any significant period of time. Dr. Arredondo noted that appellant could be employed if accommodations were made. He found that appellant could not do prolonged sitting, prolonged standing, any prolonged walking, no climbing, no crawling, no walking on uneven ground. With regard to his work, Dr. Arredondo stated:

“If this work that he had was something that was for the most part done by his secretary. When he lost the secretary, he lost the job, because he could not do it. But, the job itself did not cause him any further disability. The reason he has been totally disabled is because a job with the just mentioned restriction has not been offered to him, at least not to my knowledge.”

Dr. Arredondo concluded that appellant was capable of sedentary work.

On April 29, 2004 the Office referred appellant to Dr. David Willhoite for an impartial medical examination. Dr. Willhoite submitted a medical report dated May 27, 2004.

By decision dated June 25, 2004, the Office denied appellant’s claim for a recurrence in August 1995. However, in a March 1, 2005 decision, the Board set aside this decision, finding that the Office improperly referred appellant to a second impartial medical examination without giving Dr. Arredondo a chance to correct any deficiencies in his initial reports.²

In a medical opinion dated May 24, 2004, Dr. Susan L. Boullioun, a Board-certified family practitioner, stated that appellant had significant lumbar disc disease and that due to these degenerative changes appellant has difficulty sitting for long periods of time. She noted that appellant used a cane for stability and that, even with his daily use of narcotics for pain management, his pain was only partially controlled.

On June 14, 2005 the Office referred appellant to Dr. Arredondo for a functional capacity examination. In a medical report dated July 18, 2005, Dr. Arredondo stated that appellant has “chronic nonspecific low back pain” and a “very prolonged and severe disability on account of his back.” He noted that appellant was clinically better than at that time of his last evaluation. Dr. Arredondo opined:

“It is my impression that [appellant] can do a full-time job doing sedentary work. He would have to avoid doing repetitive lifting or lifting anything over 20 pounds.

² *Allen W. Hermes*, Docket No. 04-1758 (issued March 1, 2005).

[Appellant] would have to avoid being on uneven ground, any climbing, or crawling or kneeling or squatting. He cannot do running. [Appellant] cannot be up on his feet for more than 4 hours a day, either walking or standing, even with breaks of 10 minutes every 1 hour or be allowed to sit. His job category is sedentary.”

In a medical report dated July 18, 2005, Dr. Boullioun noted that, due to spinal changes resulting from lumbar disc disease, appellant has difficulty sitting for long periods of time. She also noted significant degenerative joint disease in appellant’s right knee.

In a medical report dated November 2, 2005, Dr. G. Steven White, a Board-certified orthopedic surgeon, indicated that appellant has advanced osteoarthritis, particularly to the medial joint of the right knee. He recommended a pressed fit total knee arthroplasty. On December 5, 2005 Dr. White performed this surgery.

Appellant submitted decisions with regard to his social security claim.

By decision dated September 21, 2006, the Office denied appellant’s claim for recurrence of total disability as of August 1995 as the evidence submitted failed to establish a causal relationship between the alleged recurrence and the work-related injury of February 21, 1984.

LEGAL PRECEDENT

When an employee, who is disabled from the job he held when injury 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 of establishing 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.³

ANALYSIS

The Board finds that this case is not in posture for decision. In this case, the Office accepted that appellant sustained a lumbosacral strain and herniated nucleus pulposus L4-5. The Office also later accepted appellant’s claim for aggravation of his preexisting knee joint disease. Appellant returned to work in a modified job as a Veterans’ Service Officer on February 15, 1991. He alleged a recurrence of disability when he stopped work on November 1, 1995. Appellant alleged that the position of Veterans’ Service Officer changed when his secretary’s position was eliminated which required him to perform most of her duties as well as his own, and this required him to resign from the position.

In order to resolve the conflict between appellant’s treating physician, Dr. Wilkinson, and the second opinion physician, Dr. Race with regard to whether the accepted condition caused or contributed to total disability on or after November 1, 1995, the Office referred appellant for an

³ *Cynthia M. Judd*, 42 ECAB 246, 25 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

impartial medical examination to Dr. Arredondo. In his March 16, 2004 report, Dr. Arredondo opined that, if it was only for appellant's back condition, he could do sedentary work, but that his knee keeps him from being on his feet for any significant period of time. He noted that he could be employed if accommodations were made, but that when appellant lost his secretary, he could not perform his job. Dr. Arredondo's opinion was insufficient to show a recurrence as it was not fully rationalized. His opinion did not provide a complete description of appellant's duties, sufficiently explain how the disability had worsened or why appellant could no longer perform the job. The Board previously found that Dr. Arredondo's opinion did not provide a clear response to the questions raised and remanded the case with instructions that the Office provide Dr. Arredondo an opportunity to clarify his opinion with regard to whether appellant's accepted work injury caused or contributed to total disability on or after November 1, 1995. On remand, the Office only asked Dr. Arredondo to perform a functional capacity evaluation. The Office never asked Dr. Arredondo to clarify aspects of his reports, as directed in the prior Board decision.

This case will be remanded in order for the Office to provide Dr. Arredondo an opportunity to clarify his opinion with regard to whether appellant sustained a recurrence of disability on November 1, 1995, causally related to the February 21, 1984 employment injury. If Dr. Arredondo is unable or declines to clarify his opinion once proper instructions are given, the case should be referred to another impartial medical examiner.⁴

CONCLUSION

The case is not in posture for decision.

⁴ See *Guiseppe Aversa*, 55 ECAB 164 (2003); *Harold Travis*, 30 ECAB 1071 (1979).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 21, 2006 is vacated and the case is remanded for further action consistent with this opinion.

Issued: June 4, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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