

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

C.C., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
FORT SNELLING, Minneapolis, MN, Employer)

Docket No. 09-1141
Issued: February 18, 2010

Appearances:

Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 24, 2009 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated August 12, 2008 and February 20, 2009. Under 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 sustained a recurrence of disability due to his accepted lower back condition as of May 12, 2008.

FACTUAL HISTORY

Appellant, a 38-year-old temporary cemetery caretaker, experienced pain in his lower back on August 31, 2006 while setting and lifting headstones. He filed a claim for benefits on September 5, 2006, which the Office accepted for displacement of the lumbar intervertebral disc without myelopathy.

Appellant's temporary position as a cemetery caretaker expired on October 1, 2006; the Office commenced payment for temporary total disability compensation as of that date.

In a September 21, 2007 report, Dr. David M. Olson, Board-certified in family practice and appellant's treating physician, outlined updated work restrictions for appellant. These included: continuous lifting not exceeding 10 pounds; frequent lifting not exceeding 11 to 20 pounds; occasional lifting not exceeding 21 to 35 pounds; no twisting/turning; no lifting exceeding 35 pounds; continuous pulling/pushing not exceeding 25 pounds; frequent pulling/pushing not exceeding 26 to 50 pounds; occasional pulling/pushing not exceeding 51 to 75 pounds; no pulling/pushing of exceeding 76 pounds; occasional kneeling and squatting; and frequent sitting, standing, walking, overhead reaching, ladder/stair climbing with one third to two-thirds effort. Dr. Olsen stated that appellant should be allowed to stand and stretch his low back briefly, for one minute or less, every 15 to 30 minutes.

On February 29, 2008 appellant accepted a job within Dr. Olson's restrictions as a clerk. The position entailed working as a shelter monitor, overseeing committal services such as insuring casketed and cremated remains are kept in attendance until remains were properly transferred, remaining alert while in attendance of committal services, detecting and reporting unusual or potential problems, assisting in folding and presenting the flag to next of kin if required, escorting family members to assigned burial section, insuring that family members remained a safe distance from gravesites and performing other administrative duties as assigned. In addition, appellant was required to type maps and casket tags, answer telephones, provide information to visitors and public regarding the location of gravesites, visiting hours, flower containers, etc. The position required a valid driver's license so that appellant could perform the driving duties associated with the position.

The physical requirements of the job description were described as light in nature; work was to be performed inside and outside but predominantly outside. The job required: intermittent lifting for one to two hours per day; not exceeding 35 pounds; intermittent sitting for one to two hours per day; frequent walking for four to six hours per day; frequent standing for four to six hours per day; intermittent kneeling for two hours per day; intermittent bending/stooping for one to two hours per day; intermittent pulling/pushing for one to two hours per day, not exceeding 75 pounds; intermittent simple grasping for two to four hours per day; intermittent fine manipulation for one to two hours per day; intermittent reaching above the shoulder for one to two hours per day and no climbing.

Appellant accepted the employing establishment's job offer on March 3, 2008 and returned to work on March 16, 2008.

In a report dated May 8, 2008, Dr. Olson stated that appellant had a musculoskeletal problem involving numbness radiating into his arms and hands. He diagnosed thoracic outlet syndrome secondary to his low back injury. In a May 14, 2008 report, Dr. Olson stated that he was treating appellant for a flare-up of low back pain and evaluating his problem with numbness radiating into all of his fingers on both hands. He noted that appellant's low back pain had started suddenly on the previous Sunday. In another report dated May 14, 2008, Dr. Olsen indicated that he was keeping appellant out of work for one week due to thoracic outlet syndrome, low back pain and displacement of the lumbar intervertebral disc. In a May 15, 2008 report, he stated that he saw the claimant on May 14, 2008 for an exacerbation of his work injury from August 31, 2006.

On May 23, 2008 appellant filed a Form CA-7 claiming compensation from May 12 to 30, 2008.

In a May 21, 2008 report, Dr. Olson reiterated that appellant had experienced an exacerbation of low back pain which began the previous Sunday. He noted that he had been treating appellant for a flare-up of low back pain and to evaluate numbness into his fingers; he also reiterated the diagnoses of displacement of lumbar intervertebral lumbar disc and thoracic outlet syndrome. Dr. Olson reported that appellant's low back was tender with spasms on the left paravertebral muscles from the mid-lumbosacral spine to the top of the neck. Appellant also had complaints of tingling in the toes and reflexes symmetrically decreased throughout. Dr. Olson advised that he discussed treatment options and future diagnostic testing with appellant and kept him out of work for another two weeks. He submitted work restrictions dated May 21, 2008 which remained unchanged from those he presented in September 2007.

By letter dated June 3, 2008, the Office requested additional information from appellant in support of his recurrence claim. It requested a statement from appellant explaining that his light-duty assignment had changed and indicating that they no longer met the restrictions set by his physician. The Office also requested a medical opinion from appellant's treating physician supporting his claim that a worsening in the work-related condition had occurred.

In a June 10, 2008 report, Dr. Olson reiterated that he kept appellant off work as of May 14, 2008 because of thoracic outlet syndrome, which he opined was causally related to the accepted low back injury. He noted on examination that appellant had spasm of the trapezius muscles with no tenderness and otherwise normal range of motion. Dr. Olson stated that, while it was possible for thoracic outlet syndrome to occur independently, the simplest explanation for its emergence in appellant was that the exacerbation of low back spasm triggered the onset of the thoracic syndrome. He asserted that his testing for thoracic outlet syndrome and associated muscle spasm radiating from the lower back supported his opinion that appellant's thoracic symptomatology was causally related to the 2006 low back injury.

By decision dated August 12, 2008, the Office denied appellant compensation for a recurrence of his accepted low back condition. It stated that appellant failed to meet his burden to establish the March 2006 job offer exceeded his work restrictions or that on May 12, 2008 appellant had an objective worsening of his work-related lower back condition.

By letter dated August 18, 2008, appellant's attorney requested an oral hearing, which was held on December 4, 2008.

In a report dated September 10, 2008, Dr. Olson stated that appellant continued to have complaints of low back pain with numbness radiating into the fingers in both hands. He also noted occasional right foot and bilateral hand numbness. Dr. Olson stated that, upon reviewing his records from May 2008, it was clear to him that the numbness in appellant's hands was the primary reason for taking appellant off work and sending him to physical therapy. He advised that numbness of the hands was clearly dangerous in the workplace where tools are being used. Dr. Olson reiterated that appellant had thoracic outlet syndrome in addition to low back pain, which he considered work related; however, he stated that the back pain was "a side issue." He

advised that the main issue was the numbness of appellant's hands due to thoracic outlet syndrome, which was clearly tied to the amount and location of his back muscle spasms.

At the hearing, appellant asserted that the constant riding around the cemetery in his official vehicle throughout six different locations, as required by his job as a shelter monitor, resulted in the exacerbation of his back pain. He stated that he awakened on Sunday morning, May 11, 2008, with back pain so severe that he was barely able to move or walk as of Monday, May 12, 2008. Appellant's attorney stated that the alternating sitting and standing entailed by appellant's light-duty position apparently aggravated his back condition.

By decision dated February 20, 2009, an Office hearing representative affirmed the August 12, 2008 decision.

LEGAL PRECEDENT

A claimant seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.² In this case, appellant has the burden of establishing that a recurrence of a medical condition causally related to his employment injury.³ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale.

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 establishes that light duty can be performed, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability. As part of this burden, the employee must show either 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.⁴

ANALYSIS

In the instant case, the record does not contain any medical opinion showing a change in the nature and extent of appellant's injury-related condition. Indeed, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates his condition or disability as of May 12, 2008 to his employment injury. For this reason, he has not

¹ 5 U.S.C. §§ 8101-8193

² *Edward W. Spohr*, 54 ECAB 806 (2003).

³ Recurrence of medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a "need for further medical treatment after release from treatment," nor is an examination without treatment. 20 C.F.R. § 10.5(y) (2002).

⁴ *Terry Hedman*, 38 ECAB 222 (1986).

discharged his burden of proof to establish his claim that he sustained a recurrence of disability as a result of his accepted employment injury.

Appellant submitted reports from Dr. Olson, his treating physician, who provided September 21, 2007 work restrictions due to the accepted August 31, 2006 low back injury. The employing establishment offered appellant a light-duty job as a shelter monitor in March 2008 in conformance with these restrictions, which he accepted. Appellant performed this job without apparent difficulty until May 12, 2008, when he purportedly sustained an aggravation of his accepted back condition. The medical evidence of record, however, does not support this assertion. The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁵ While Dr. Olson submitted several reports from May 8 through 21, 2008 which noted that appellant had experienced a flare-up of his accepted low back condition, he indicated that appellant became disabled as of May 12, 2008 primarily because of thoracic outlet syndrome, which he stated was a byproduct of the low back injury. He advised that appellant had a musculoskeletal problem involving numbness radiating into his arms, hands and fingers. In his May 14, 2008 report, Dr. Olson kept appellant out of work for one week due to thoracic outlet syndrome, low back pain and displacement of the lumbar intervertebral disc; he also advised in a May 15, 2008 report that appellant had sustained an exacerbation of his August 31, 2006 work injury. He essentially reiterated these findings in his May 21, 2008 report and kept him out of work for two more weeks. Dr. Olson did not, however, provide any rationalized, probative medical opinion sufficient to establish that appellant's claimed total disability as of May 12, 2008 was causally related to his accepted lower back condition. In his June and September 2008 reports, he attributed most of appellant's problems as of May 2008 to thoracic outlet syndrome, a condition not accepted by the Office. Dr. Olson stated in his June 10, 2008 report that the exacerbation of low back spasm triggered the onset of thoracic syndrome; however, his opinion on causal relationship is of limited probative value in that he did not provide adequate medical rationale in support of his conclusions. He did not describe appellant's work duties in any detail or indicate how appellant's accepted lower back condition would cause or contribute to his alleged disability as of May 12, 2008. In his September 10, 2008 report, Dr. Olson reiterated that appellant had thoracic outlet syndrome in addition to low back pain, which he considered work related. He stated, rather, that appellant's back pain was "a side issue" and opined that the main issue was the numbness of appellant's hands due to thoracic outlet syndrome. Therefore, Dr. Olson's opinion is of limited probative value for the further reason that it is generalized in nature and equivocal in that he only noted summarily that appellant's disability as of May 12, 2008 was causally related to the August 31, 2006 work injury. He therefore failed to explain how appellant's alleged recurrence of disability was caused or aggravated by his accepted condition.

Dr. Olson's reports do not constitute sufficient medical evidence demonstrating a causal connection between appellant's employment injury and his alleged recurrence of disability. Causal relationship must be established by rationalized medical opinion evidence. The reports submitted by appellant failed to provide an explanation in support of his claim that he was totally

⁵ See *Ann C. Leanza*, 48 ECAB 115 (1996).

disabled as of May 12, 2008. These reports did not establish a worsening of appellant's condition, and therefore do not constitute probative, rationalized opinion evidence demonstrating that a change occurred in the nature and extent of the injury-related condition.⁶

In addition, the Board finds that the evidence fails to establish that there was a change in the nature and extent of appellant's limited-duty assignment such that he no longer was physically able to perform the requirements of his light-duty job. Appellant returned to work as a shelter monitor, a job within his prescribed restrictions, on March 16, 2008. The evidence of record indicates that he worked continuously at this job until May 12, 2008, when he asserted that the requirements of driving a golf cart type of vehicle around the employing establishment and exiting and entering this vehicle to perform his monitoring duties caused an exacerbation of his accepted low back condition. Appellant asserted that, because of the physical strain and pain caused by these duties, he had to be excused from doing his job until May 30, 2009. He has presented no evidence, however, which indicates that this job exceeded his physical and work limitations. The restrictions Dr. Olson outlined in September 2007 remained unchanged as of May 14 and 21, 2007. In addition, appellant testified at the hearing that he was able to return to this job as of June 9, 2009. The Office properly denied his claim for benefits based on a recurrence of disability in its August 12, 2008 and February 20, 2009 decisions.

Accordingly, as appellant has not submitted any factual or medical evidence supporting his claim that he was totally disabled from performing his light-duty assignment as of May 12, 2008 as a result of his accepted low back condition, he failed to meet his burden of proof. The Office properly found in its August 12, 2008 and February 20, 2009 decisions that he was not entitled to compensation based on a recurrence of his employment-related disability.

CONCLUSION

The Board finds that appellant has not met his burden to establish that he was entitled to compensation for a recurrence of disability as of May 12, 2008 causally related to his accepted low back condition.

⁶ *William C. Thomas*, 45 ECAB 591 (1994).

ORDER

IT IS HEREBY ORDERED THAT the February 20, 2009 and August 12, 2008 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: February 18, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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