

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TOMMY R. HOLAMON and DEPARTMENT OF THE INTERIOR,
MINERAL MANAGEMENT SERVICE, Dallas, TX

*Docket No. 02-947; Submitted on the Record;
Issued October 8, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant's low back condition is causally related to factors of his employment.

On May 20, 1997 appellant, then a 48-year-old supervisory auditor, filed a claim for an occupational disease for a low back condition. He contended that his sedentary work environment aggravated his pain, leg cramps and bladder dysfunction and "directly caused the degenerative disc disease and all associated symptoms." Appellant attributed his back condition to prolonged sitting in poorly designed chairs furnished by companies under audit, awkward lifting of boxes of data, travel to perform audits and his commute to work.

By decision dated August 26, 1997, the Office of Workers' Compensation Programs found that "the [employing establishment] has attempted to comply with your restrictions and requests to make your work conditions tolerable and there has been no medical evidence submitted to indicate that your condition has worsened because of your employment or how after approximately 15 years it is now related to your employment."

At a hearing held at appellant's request on April 13, 1998, he testified that he had no back trouble before beginning his federal employment on August 2, 1975 and that he had taken disability retirement effective September 2, 1997. Appellant submitted additional medical evidence. In a report dated April 24, 1998, Dr. Walter G. Carr, a Board-certified neurologist, noted that appellant's "duties required extensive travel, via both vehicle and plane, prolonged sitting or stationary standing and carrying heavy files." Dr. Carr set forth a history of appellant's back problems since the late 1970's, which included disc surgery at L5-S1 in 1984 and a fusion of L4, L5 and S1 in 1993; he stated:

“[Appellant] is suffering from degenerative disc disease resulting in chronic, severe and intractable low back pain and a neurogenic bladder due to multiple low lumbar herniated dis[c]s and scarring.

“In general, prolonged sedentary activities (sitting in nonergonomic chairs, stationary standing and long commutes or other extensive travel, followed by lifting heavy files) contributes to and aggravates degenerative disc disease and increases lower lumbar pain.

“Specifically increased lumbar pressure, ligament stretch and postural changes from his work environment aggravates [appellant’s] preexisting back problems and contributes to his pain and urinary incontinence. In addition, the stress of his job contributes to increased back problems and aggravates his preexisting problems.

“Sitting is known to significantly increase the pressure on the lower lumbar. Prolonged stationary standing and stress results in lumbar muscle fatigue. All of these work environment factors contribute to and aggravate [appellant’s] degenerative disc disease and neurogenic bladder condition.”

By decision dated June 18, 1998, an Office hearing representative found that the medical evidence submitted by appellant displayed a knowledge of his employment environment and provided a definitive diagnosis and unequivocal opinion regarding causal relationship, but that this medical evidence did not contain sufficient rationale to meet appellant’s burden of proof. The Office hearing representative remanded the case for referral of appellant, the case record and a statement of accepted facts to a Board-certified orthopedic surgeon for a rationalized medical opinion on the relationship between appellant’s back condition and factors of his employment.

The Office referred appellant to Dr. Jack A. Kern, a Board-certified orthopedic surgeon, who, in a report dated July 27, 1998, set forth appellant’s history, complaints and findings on examination. He stated:

“The symptoms expressed by [appellant] regarding continuing low back pain aggravated by prolonged standing and sitting in one position are certainly not unusual considering his history. The episodes of small amounts of urinary incontinence on a frequent basis are perhaps compatible with his spinal history.

“There is no evidence of nerve root problems or neural damage on physical examination of an objective nature at this point to correlate with this, so I think that the story is still out as to whether the urinary incontinence is related to his spinal condition or not.

“It is my opinion that there is no evidence that [appellant’s] low back pain, his lumbar disc problems and his necessary spinal surgery X2 is causally related to a work injury or to any precipitating factors at work that have caused or been responsible for this.

“However, [appellant] is now post-operative back surgery X2 with continuing back pain aggravated by sitting and standing. Obviously it would be difficult for him to work in a job that requires prolonged sitting and standing. If the U.S. Department of Labor is agreeable to accepting him as is, with periodic changes of position up and down from chairs and movements about the office, then I think he

could perform work activity that would be very similar to his original job description. I do n[ot] see anything here that would be particularly stressful, as far as lifting. It appears to me that type of work could easily be associated with frequent changes of position.

“At this time, I see no indication for any further surgical treatment. [Appellant] is involved with a self-help program at home with walking and flexibility exercises. He has a TENS unit. I see no need for any more diagnostic studies or treatment in regard to [appellant’s] back problem at this time.

“Therefore, in summary, he has a long-term low back problem that originally consisted of lumbar disc herniation and radiculopathy X2 [--] each requiring lumbar spinal surgery. There is no evidence that this lumbar spine herniation was work related.

“In a postoperative patient, it is evident that prolonged standing and sitting may cause problems and I think that [appellant’s] history is compatible with this. If there are modifications to his work activity that could be allowed, I think that he could perform his work activity as a supervisory auditor.

“I do n[ot] see anything in particular in regard to the duties of this job that will aggravate this preexisting condition unless the job required prolonged sitting or required extensive time in a car to and from areas of employment.”

By letter dated July 30, 1998, the Office advised Dr. Kern that, “since 1992, [appellant] has been afforded special work equipment in the form of a drafting table which would allow him to sit, stand or move around as necessary and more recently has been afforded the opportunity to work at home beginning in January 1996, where he can stand, sit, walk or lie down as necessary in the course of his normal workday.” The Office asked Dr. Kern whether, based on these accommodations, there was any reason why he would be incapable of continuing his duties on an indefinite basis,” he replied, “No.”

By decision dated August 11, 1998, the Office found that Dr. Kern’s reports constituted the weight of the medical evidence and established that appellant’s condition was not caused by an employment factor.

Appellant requested a hearing, which was held on March 17, 1999. By decision dated May 29, 1999, an Office hearing representative found that the report of Dr. Kern required clarification regarding aggravation by employment factors, including whether any aggravation ceased when appellant retired.

The Office requested clarification from Dr. Kern, but he did not reply. On August 4, 1999 the Office referred appellant and a statement of accepted facts to Dr. Richard V. Wilson, a Board-certified orthopedic surgeon, for an opinion on his condition and its relationship to factors of his employment.

In a report dated August 23, 1999, Dr. Wilson stated that appellant had “ongoing residuals that can be expected to continue in the future,” that “the constant pain, which increases

as one tries to sit or stand, will prevent him from his main job, which has to do with checking figures and putting notes and comments in a computer” and that appellant’s condition of “perineural fibrosis (sometimes misdiagnosed as arachnoiditis), can definitely be aggravated by the tension associated with confrontational and hostile clients that the patient has to deal with as an auditor for the [employing establishment].”

By letter dated September 8, 1999, the Office wrote to Dr. Wilson: “Based on the fact that the claimant’s prior back injuries and resulting surgeries were nonwork related; that he has been removed from the stress associated with confrontational clients over 3 years, has maintained an active lifestyle through numerous lengthy trips in his mobile home and was afforded every possible accommodation in the means of a self-paced work at home job is there any evidence to support ongoing work-related residuals of perineural fibrosis and if so do they disable him from performing his self-paced work at home job.”

In a report dated September 21, 1999, Dr. Wilson stated:

“There is no objective evidence other than (1) a history of multiple back surgeries and (2) the history and subjective complaints by [appellant] that he is unable to sit for longer than 10 to (sic) minutes, unable to stand for the same amount and unable to walk for more than 20 minutes.

“This is often confirmed by the ‘body language’ during the examination, with the patient constantly in motion and changing positions going from sitting to standing.

“Inasmuch as this is not a work-related condition, it appears to me that [appellaent’s] employer has done everything they can to accommodate him and that his condition progressed to the point where it was impossible to accommodate him any further.

“By way of further clarification, I would like to add that I believe that [appellant’s] symptoms were aggravated by the working conditions that he mentioned of a hostile environment. However, as soon as he was put in his home environment that ceased and that the aggravation did not hasten or make the condition worse. The condition has progressed and increased due to the way the disease progresses normally and I believe that his present condition would be the same with or without the hostile environment.”

By decision dated December 17, 1999, the Office found that Dr. Wilson’s reports constituted the weight of the medical opinion and showed that appellant’s condition was not caused by his employment.

By letter dated December 18, 1999, appellant requested a hearing, which was held on May 31, 2000.

By decision dated September 12, 2000, an Office hearing representative found that there was no rationalized medical evidence to support causal relation and that Dr. Wilson’s reports constituted the weight of the medical evidence.

By letter dated March 26, 2001, appellant requested reconsideration. He submitted a report dated December 6, 2000 from Dr. Wilson who stated that appellant's hostile work environment aggravated and accelerated the progress of his perineural fibrosis.

By decision dated October 2, 2001, the Office found that the additional evidence was not sufficient to warrant modification of its prior decisions. The Office noted that appellant was advised at the May 31, 2000 hearing that his claim was adjudicated on the basis of allegations that factors of employment such as standing and sitting aggravated his back condition, that allegations regarding stress had not been considered and that if he felt stress was the cause of his condition he could file a claim for such.

The Board finds that the case is not in posture for a decision due to an unresolved conflict of medical opinion.

Appellant's attending physician, Dr. Carr, a Board-certified neurologist, accurately described appellant's duties and concluded that these duties contributed to and aggravated his degenerative disc disease. Dr. Carr explained that sitting significantly increased pressure on the lower lumbar spine and that prolonged stationary standing resulted in lumbar muscle fatigue, both of which aggravated his preexisting back problems. Dr. Kern, a Board-certified orthopedic surgeon, to whom the Office referred appellant for a second opinion, concluded that there was no evidence appellant's low back pain or herniated discs were related to factors of employment. Dr. Wilson, another Board-certified orthopedic surgeon, to whom the Office referred appellant for a second opinion, stated that appellant's condition was not work related and that his condition progressed "due to the way the disease progresses normally."

To resolve this conflict of medical opinion, the Office should, pursuant to section 8123(a) of the Federal Employees' Compensation Act,¹ refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist for a reasoned medical opinion on the causal relationship between his back condition and his employment. Before this referral, the Office should revise its statement of accepted facts, as it contains inaccurate statements. Although appellant was afforded the opportunity to work at home beginning January 1996, this opportunity did not result in "no commuting or travel to and from work," as stated in the statement of accepted facts. The evidence shows that appellant was allowed to work at home for up to three days a week and that he actually wound up working at home about two days a week, commuting to work the other three days. The evidence also does not support the statement of accepted facts' that appellant took "frequent long distance trips in a motor home." Appellant testified at the May 31, 2000 hearing that he took one 7- to 10-day trip each year and maybe one other 4-day trip each year, which is not accurately characterized as frequent trips.

¹ 5 U.S.C. § 8123(a) states in pertinent part "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

The October 2, 2001 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for action consistent with this decision of the Board, to be followed by an appropriate decision.

Dated, Washington, DC
October 8, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member