

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES C. BOYD and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Waco, TX

*Docket No. 98-2277; Submitted on the Record;
Issued February 24, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained a recurrence of disability on or after July 16, 1996, causally related to his April 28, 1995 soft tissue lumbosacral muscular strain injury.

The Office of Workers' Compensation Programs accepted that on April 28, 1995 appellant, then a 36-year-old police dispatcher, sustained soft tissue lumbar muscular strain while rising from a chair.¹ He stopped work following the April 28, 1995 incident and was treated by Dr. H. Stephen Goldberg, a Board-certified neurosurgeon, who noted that a lumbar computerized tomography (CT) scan he ordered dated June 5, 1995 showed "some mild bulging at L5-S1 but certainly nothing that looks like an extruded disc."² The CT scan also revealed mild multilevel spondylosis. Dr. Goldberg noted appellant's working diagnosis as "radicular syndrome of the lower extremity," but he found no indication for surgery.³ He retired in December 1995 and appellant's care was assumed by his associate. Dr. Marcial G. Lewin, a Board-certified neurosurgeon, who diagnosed radicular syndrome of the left lower limb, cause unknown, chronic. A February 1996 magnetic resonance imaging (MRI) scan was noted to be normal showing no disc rupture or herniation⁴ and he released appellant to return to regular duty

¹ Appellant had a history which included a motor vehicle accident on February 11, 1993 during which he injured his back, a motor vehicle accident on May 13, 1993 during which he injured his neck and back, a motor vehicle accident on June 16, 1993 during which he injured his neck and a motor vehicle accident on February 22, 1995 during which he injured his back and neck. None of these accidents were in the performance of duty. Appellant also experienced a post-injury nonwork-related June 1995 motor vehicle accident during which he probably "reactivated his symptoms."

² The reporting radiologist diagnosed "central bulge versus protrusion L5-S1."

³ He noted on November 15, 1995 that appellant could go back to work as soon as his job position opened back up, as long as he did not have to do bending, lifting or stooping.

⁴ Mild disc bulging was noted at L5-S1.

on February 19, 1996. Appellant had returned to work on January 30, 1996 for four hours per day light duty.

Thereafter appellant filed a claim alleging that he sustained a recurrence of disability on or after July 16, 1996.

In support, appellant submitted a July 16, 1996 medical progress note from Dr. Lewin which noted that two weeks previously appellant had experienced a severe recurrence of left sciatic pain and he diagnosed "radicular syndrome left lower extremity."

Also submitted were July 11, 16 and 30, 1996 reports from Dr. Lewin which noted that a discogram was very positive; he diagnosed L5-S1 disc herniation and he recommended surgery. Appellant underwent cardiac surgery for a coronary artery bypass on August 12, 1996 following a heart attack.

By letter dated January 14, 1997, the Office requested that appellant provide all medical records and notes pertaining to the treatment of his back condition for the period February 16 to July 15, 1996 and a rationalized report from his treating physician supporting causal relation between his condition on and after July 16, 1996 and his April 28, 1995 accepted lumbar muscular strain injury.

Appellant resubmitted multiple reports previously of record including a copy of the July 25, 1996 discogram and reports of appellant's trigger point injections. Also submitted was a January 20, 1997 letter from Dr. Lewin which stated that the CT scan of June 5, 1995 showed the herniated disc and he opined that "this ruptured disc came about when he got up from that chair and developed a severe sudden onset of pain in the back extending into the left sciatic region." He further stated that the fact that the MRI scan did not demonstrate the herniated disc was not unusual. Dr. Lewin additionally reported on the status of appellant's condition during 1997.

By decision dated July 25, 1997, the Office denied appellant's recurrence claim finding that the evidence of record failed to establish that appellant's condition on or after July 16, 1996 was causally related to his April 28, 1995 accepted employment injury. The Office found that Dr. Lewin failed to provide a rationalized medical explanation as to how appellant's accepted lumbar strain or his getting up out of a chair on April 28, 1995 caused the diagnosed herniated L5-S1 disc. It also noted that the February 6, 1996 MRI scan was reported as being negative for any such herniation.

By letter dated February 5, 1998, appellant requested reconsideration and in support he submitted two new medical reports.⁵

By report dated July 31, 1997, Dr. Lewin stated that appellant needed a left L5-S1 laminectomy and discectomy. He noted that a CT discogram done on July 25, 1996

⁵ Copies of previously submitted reports were also resubmitted.

demonstrated the L5-S1 disc herniation and he opined that this pathology was causing appellant's low back and sciatic pain symptomatology.

By report dated November 24, 1997, Dr. Lewin noted that he had treated appellant since January 1996, at which time he took over appellant's care from Dr. Goldberg who retired in December 1995 and he indicated that he was treating appellant "for the same injury that Dr. Goldberg treated him [for] in 1995." Dr. Lewin opined that appellant's condition remained unchanged.

By decision dated May 11, 1998, the Office denied modification of its July 25, 1997 decision finding that the evidence submitted was insufficient to warrant modification. The Office found that appellant had been involved in an intervening nonemployment-related motor vehicle accident in June 1995 which had worsened his back symptomatology, that an MRI scan performed on February 6, 1996 was reported as being normal, that appellant had returned to regular duty on February 19, 1996 without documented problems, that he submitted no bridging medical evidence for the period February 19 through July 15, 1996 demonstrating that he received any medical treatment for his back during that period and that Dr. Lewin's reports were of diminished probative value because they were based upon an inaccurate history of injury, omitting any consideration of the intervening motor vehicle accident and because they were unrationalized, omitting any medical explanation as to how a soft tissue muscular strain injury which had resolved by February 19, 1996, caused an L5-S1 herniated disc diagnosed on July 25, 1996.

The Board finds that appellant has failed to establish that he sustained a recurrence of disability on or after July 16, 1996, causally related to his April 28, 1995 soft tissue lumbosacral muscular strain injury.

As used in the Federal Employees' Compensation Act,⁶ the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.⁷

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.⁸ 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

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17). Disability is not synonymous with physical impairment. An employee who has a physical impairment, even a severe one, but who has the capacity to earn the wages he was receiving at the time of injury, has no disability as that term is used in the Act and is not entitled to disability compensation; see *Gary L. Loser*, 38 ECAB 673 (1987) (although the evidence indicated that appellant had sustained a permanent impairment of his legs because of thrombophlebitis, it did not demonstrate that his condition prevented him from returning to his work as a chemist or caused any incapacity to earn the wages he was receiving at the time of injury).

⁸ *Charles H. Tomaszewski*, 39 ECAB 461 (1988); *Dominic M. DeScala*, 37 ECAB 369 (1986).

that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.⁹ Where no such rationale is present, medical evidence is of diminished probative value.¹⁰ Causal relationship is a medical issue and can be established only by medical evidence.¹¹

In the instant case, appellant has not submitted such rationalized, probative medical evidence. None of the medical reports of record even addressed how appellant's condition on or after July 16, 1996 was causally related to his April 28, 1995 accepted condition of soft tissue musculoligamentous strain. Consequently, none of the medical reports of record support that appellant sustained a recurrence of disability causally related to that accepted condition and appellant has failed to establish his recurrence claim.

Furthermore, appellant has failed to establish that he sustained a herniated L5-S1 disc on April 28, 1995 while arising from a chair. He has the burden of establishing by the weight of reliable, probative and substantial evidence that the injury claimed was caused or aggravated by his federal employment. As part of this burden, appellant must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the injury claimed and factors of his federal employment.¹² As noted above, causal relationship is a medical issue that can be established only by medical evidence.¹³ The Board notes that the fact that a condition manifests itself or worsens during a period of employment does not raise an inference of an employment relationship.¹⁴ The Board further notes that mere conclusions as to causal relationship, such as the declaration of Dr. Lewin in his January 20, 1997 letter, without supporting rationale, is of little probative value.¹⁵

Dr. Goldberg noted that appellant's CT scan on June 5, 1995 showed mild L5-S1 bulging "but certainly nothing that looks like an extruded disc." Dr. Lewin, however, later opined that this same scan demonstrated a ruptured, herniated disc. Therefore there was a disagreement between appellant's own treating physicians as to whether a herniated disc existed on June 5, 1995 or not and the reading Board-certified radiologist did not feel that his films demonstrated a frank disc herniation at L5-S1. The MRI scan performed in February 1996 was also reported as being negative, but the reason this was not diagnostic for the presence or absence of a L5-S1 herniated disc and was totally discounted by Dr. Lewin, was not explained. Further, he provided no explanation of the mechanics or pathophysiology as to how appellant rising from a chair on April 28, 1995 caused this unclear disc condition. This is a particularly significant omission,

⁹ *Mary S. Brock*, 40 ECAB 461 (1989); *Nicolea Bruso*, 33 ECAB 1138 (1982).

¹⁰ *Michael Stockert*, 39 ECAB 1186 (1988).

¹¹ *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

¹² *Steven R. Piper*, 39 ECAB 312 (1987); see 20 C.F.R. § 10.110(a).

¹³ *Mary J. Briggs*, *supra* note 11.

¹⁴ *Paul D. Weiss*, 36 ECAB 720 (1985); *Hugh C. Dalton*, 36 ECAB 462 (1985).

¹⁵ See *Richard Giordano*, 36 ECAB 134 (1984).

considering appellant's history of multiple preinjury motor vehicle accidents resulting in back pain, and his June 1995 motor vehicle accident causing similar symptomatology, none of which were considered by Dr. Lewin in his conclusory opinion on causal relation. Further, Dr. Lewin's comment that he was treating appellant for the same condition that Dr. Goldberg treated him for does not support that appellant sustained a herniated disc on April 28, 1995, particularly as Dr. Goldberg was admittedly treating "radicular syndrome of the left lower extremity," a condition not accepted by the Office as being employment related.

As appellant submitted no rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, explaining how the incident on April 28, 1995 caused an L5-S1 herniated disc not conclusively diagnosed until the discogram of July 25, 1996, more than one year after the chair rising incident. He has therefore failed to establish causal relation with that incident.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated May 11, 1998 and July 25, 1997 are hereby affirmed.

Dated, Washington, D.C.
February 24, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member