

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAINEY H. PAIGE and DEPARTMENT OF THE NAVY,
NAVAL CONSTRUCTION BATTALION CENTER, Gulfport, MS

*Docket No. 01-185; Submitted on the Record;
Issued September 26, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability on or after December 7, 1998 due to his accepted May 6, 1996 employment injury.

On May 7, 1996 appellant, then a 52-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that he strained his lower back while delivering a box to the chapel. The Office of Workers' Compensation Programs accepted the claim for a herniated disc at L4-5 with subluxation and authorized surgery for decompression and fusion at L4-5.¹

On March 13, 1998 Dr. Paul A. Stanton, appellant's attending Board-certified orthopedic surgeon, reviewed the employing establishment's proposed clerk position and found it within appellant's physical restrictions. The duties of the position included frequent intermittent reaching below shoulder height, infrequent reaching over the shoulder, intermittently lifting of up to 10 pounds, rare and intermittent bending, frequent sitting with breaks as necessary, occasional walking and standing.

On March 30, 1998 appellant accepted the employing establishment's light-duty job offer of a clerk.

In a June 11, 1998 report, Dr. Stanton noted that he could not "find any objective evidence to warrant further restriction of his work status to the degree that he has been limiting himself." In addition, Dr. Stanton opined that appellant had adequate time for his back to heal and there was no objective evidence to support his being in an off-work status. Lastly, Dr. Stanton stated that appellant had reached maximum medical improvement on December 4, 1997 and that he had recommended "limiting his work restrictions to moderate duty on a permanent basis."

¹ On May 20, 2000 appellant elected to have civil service retirement benefits instead of workers' compensation benefits.

On July 30, 1998 the Office reduced appellant's compensation benefits based on his wage-earning capacity as a clerk.

In a treatment note dated August 18, 1998, Dr. Stanton stated that appellant's June 17, 1998 bone scan was normal and there was no evidence of pseudoarthrosis on the bone scan. Dr. Stanton concluded that appellant stated "that his functional capacities evaluation showed that he could lift 30 pounds, perform moderate duty activities" which appellant felt he was unable to do and that he was currently working in a limited-duty job.

In a September 1, 1998 report, Dr. Terry C. Smith, an attending physician, noted that appellant had a normal gait, normal strength and reflexes and a nonanatomic sensation loss in his lower extremities. Dr. Smith noted that appellant's lumbar myelogram and postmyelographic computerized tomography (CT) scan revealed "postoperative changes and a very mild narrowing of the spinal canal at L3[-]4" which he opined was mild and did "not appear to be causing any neural compression." He stated that appellant requested Dr. Smith say that appellant was unable work which Dr. Smith stated he could not do.

In a report dated September 22, 1998, Dr. Victor T. Bazzone, appellant's attending physician, diagnosed continued postoperative low back pain, rule out herniated disc at L4-5 and perhaps L5-S1. Appellant related that he continued to have pain in his low back, which radiates to his lower extremities and he indicated that his back pain worsened when he returned to work. Based upon appellant's symptomatology, Dr. Bazzone determined that appellant was disabled from any gainful employment.

Dr. Bazzone, in a report dated December 7, 1998, opined that appellant has no further evidence of any lumbar disc herniation based upon a review of the lumbar magnetic resonance imaging tests. In concluding, he opined that appellant was disabled from any gainful employment. In a disability slip dated December 7, 1998, Dr. Bazzone opined that appellant was "currently disabled for gainful employment" and he expected this to be permanent.

On December 6, 1998 appellant filed a recurrence of disability claim alleging that his recurrence of disability began April 4, 1998.

By decision dated May 7, 1999, the Office denied appellant's recurrence claim on the basis that the record lacked sufficient rationalized medical opinion explaining how appellant's recurrence of disability was related to his accepted employment injury.

In a report dated June 4, 1999, Dr. Bazzone opined that appellant's "present symptomatology is a continuation of his original problem and an aggravation of his injury after a return to light duty." Furthermore, the physician noted that, in his opinion, there was "no history of any new injury since May 6, 1996, which could explain his present symptomatology and inability to engage in gainful employment."

Appellant requested an oral hearing, which was held on October 19, 1999. At the hearing, he alleged that his job duties aggravated his lower back condition causing him increased pain.

By decision dated January 6, 2000, the hearing representative found that the medical evidence of record was insufficient to establish that appellant sustained a recurrence of disability. However, the hearing representative remanded the case to determine whether some of appellant's physical duties listed in his limited-duty job as a clerk were outside the restrictions imposed by Drs. Stanton and Smith.

Pursuant to the hearing representative's instructions, the employing establishment submitted appellant's job description on February 1, 2000. The duties and responsibilities of a clerk included answering the telephone, taking and relaying messages, making copies of documents as required, data entry, miscellaneous sorting and/or filing, receiving and sorting communications. The physical demands were noted as sedentary with no lifting over five pounds, sitting or standing as required and as long as appellant felt comfortable. On May 14, 2000 Dr. Smith reviewed the job description and stated this position was within appellant's physical restrictions.

By decision dated June 27, 2000, the Office denied appellant's recurrence of disability claim.

The Board finds that appellant did not sustain a recurrence of total disability.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 to show that he or she 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.²

In this case, appellant has not shown a change in the nature and extent of his light-duty job requirements, nor has he submitted sufficient medical evidence to show a change in the nature and extent of his injury-related condition. In support of his claim, appellant submitted various reports from Dr. Bazzone, wherein he indicated that appellant was totally disabled from his work and indicated that appellant was permanently disabled from performing any work. In his reports, Dr. Bazzone reiterated his opinion that appellant was totally disabled due to his symptomatology while noting that appellant had no further evidence of any lumbar disc herniation based upon a review of the lumbar magnetic resonance imaging tests. However, Dr. Bazzone's reports do not explain how appellant's injury had worsened or explain why appellant became totally disabled from working in April 1998.

The Board has held that medical reports consisting solely of conclusory statements without supporting rationale are of little probative value.³ In this case, Dr. Bazzone's reports merely concluded that appellant was totally disabled due to his employment and that his light-

² *Albert C. Brown*, 52 ECAB ____ (Docket No. 98-2320, issued November 29, 2000); *Barry C. Peterson*, 52 ECAB ____ (Docket No. 98-2547, issued October 16, 2000).

³ *William C. Thomas*, 45 ECAB 591 (1994).

duty employment aggravated his condition. As no explanation or rationale was provided, these reports are of diminished probative value. In this case, Dr. Bazzone's reports have diminished probative value as he provided no supporting medical rationale for his conclusion that appellant was totally disabled. Furthermore, appellant's attending physicians, Dr. Smith and Dr. Stanton, both concluded that appellant was capable of performing the light-duty job and that he was not totally disabled from working.

The decision of the Office of Workers' Compensation Programs dated June 27, 2000 is hereby affirmed

Dated, Washington, DC
September 26, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member