

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RALPH HOAGLAND and U.S. POSTAL SERVICE,
POST OFFICE, Boca Raton, FL

*Docket No. 01-831; Submitted on the Record;
Issued January 25, 2002*

DECISION and ORDER

Before BRADLEY T. KNOTT, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant met his burden of proof in establishing that he had any disability from January 19 to May 26, 1999 causally related to the accepted injuries.

On July 15, 1998 appellant, then a 49-year-old clerk, injured his low back when he lifted a mail bucket. The Office of Workers' Compensation Programs accepted appellant's claim for lumbar strain and a herniated lumbar disc at L5-S1 with radiculopathy and lumbar subluxation. Appellant stopped work on July 15, 1998 and returned to limited duty on October 26, 1998.

Accompanying appellant's claim was a report from Dr. Mark Waeltz, a Board-certified orthopedic surgeon, dated August 5, 1998; and treatment notes from Dr. David N. Migdal, a chiropractor, dated July to August 1998. The report from Dr. Waeltz noted a history of appellant's injury on July 14, 1998 and subsequent treatment. Dr. Waeltz diagnosed appellant with a lumbar strain; rule out lumbar disc herniation. The treatment notes from Dr. Migdal documented appellant's chiropractic care from July to August 1998 for his July 14, 1998 injury.

Thereafter, appellant submitted treatment notes from Dr. Ignacio Magana, a Board-certified neurologist, dated October 13 and November 10, 1998; and a report from Dr. Jose A. Zuniga, a Board-certified neurologist, dated December 2, 1998. Dr. Magana's October 13, 1998 report noted a history of appellant's work-related injury and diagnosed appellant with a herniated lumbar disc at L5-S1; mechanical low back pain; and lumbar radiculopathy. He noted this condition was a result of appellant's work-related injury of July 14, 1998. Dr. Magana indicated that appellant could return to work full time with the following restrictions: standing, sitting and driving no more than four hours a day; no bending below the waist; a carrying restriction of 10 pounds; no lifting from the floor to waist; and a lifting restriction of 10 pounds. His November 10, 1998 report indicated that appellant's condition had worsened and he had been unable to work the previous week. Dr. Magana noted that appellant complained of leg and back pain. The report from Dr. Zuniga noted that appellant underwent nerve conduction tests which revealed no abnormalities; and an electromyogram (EMG) which revealed minimal irritability without clear denervation in the distribution of the

left lower lumbar roots primarily L5-S1. He diagnosed appellant with a history of lumbar disc herniation with L5-S1 irritation and mechanical low back pain.

On December 7, 1998 appellant filed a notice of recurrence of disability on November 2, 1998, noting that he was having problems with his low back since the July 14, 1998 injury. The Office accepted appellant's claim for a herniated disc at L5-S1 with radiculopathy. Appellant stopped work on November 3, 1998 and returned to a limited-duty position on January 19, 1999 subject to restrictions as set forth by appellant's treating physician, Dr. Magana. Appellant was paid temporary total disability for intermittent time loss from October 9, 1998 to January 15, 1999.

On June 3, 1999 appellant filed a CA-7 form requesting wage-loss compensation for disability for the intermittent period of January 9 to May 26, 1999. The employing establishment indicated that appellant returned to work on January 19, 1999 to a limited-duty assignment. The employing establishment further noted that appellant's treating physician placed permanent restrictions on appellant's duties and this position was in compliance with these restrictions.

Subsequently, appellant submitted a medical report from Dr. Magana dated December 15, 1998; an attending physician's report prepared by Dr. Magana of the same date and a medical report dated March 30, 1999. Dr. Magana's report dated December 15, 1998 noted appellant's continued complaints of leg pain and indicated that appellant did not believe he could return to work. He noted that appellant had reached maximum medical improvement from his work-related injury of July 14, 1998. Dr. Magana noted that appellant would have permanent work restrictions and would not be able to return to his preinjury employment. He further noted that appellant would intermittently miss days of work. The attending physician's report indicated that appellant sustained a work-related injury which resulted in a herniated disc. Dr. Magana did not indicate a period of disability. Dr. Magana's March 30, 1999 report indicated that appellant had "two episodes where, due to leg pain, he had to cut his working short." He indicated that it would be medically appropriate for appellant to be placed in a job where he did not have to commute one hour.

On June 28, 1999 the employing establishment made a permanent limited-duty assignment offer to appellant. The job was to begin immediately and was subject to various restrictions to suit appellant's medical condition and to conform to his treating physicians restrictions.

By letter dated June 30, 1999, the Office requested additional factual evidence from appellant.

In a note dated July 12, 1999, appellant refused the employing establishments limited-duty assignment offer. He indicated his reasons for refusal were he could not guarantee regular attendance due to his injury and that the long commute aggravated his back condition.

In response to the Offices request appellant submitted reports from Dr. Magana dated August 17 and 31, and November 15, 1999; a magnetic resonance imaging (MRI) scan dated August 27, 1999; and a report from Dr. Craig H. Lichtblau, Board-certified in physical medicine and rehabilitation, dated September 30, 1999. Dr. Magana's report dated August 17, 1999

indicated that appellant continued to have back and left leg pain. His August 31, 1999 report noted that appellant's back complaints were unchanged. Dr. Magana indicated that appellant was experiencing seizures.¹ He further noted that appellant underwent an MRI scan of the lumbar spine which revealed bulging discs at L3-4, L4-5 and L5-6. In his November 15, 1999 report, Dr. Magana indicated that there was nothing further that he could do to help appellant. He referred appellant to Dr. Lichtblau. The MRI scan dated August 27, 1999 revealed a bulging annuli fibrosi at L3-4 through L5-S1 with a small left sided protrusion at L5-S1. The report from Dr. Lichtblau dated September 30, 1999, noted a history of appellant's injury. Dr. Lichtblau diagnosed appellant with herniated nucleus pulposus at the L5-S1 level; bulging annuli fibrosi at the L3-4 and L4-5 spinal levels; and lumbar myofascial pain syndrome. He noted that appellant could return to the work under the restrictions placed by Dr. Magana.

In a letter dated October 21, 1999, the Office advised appellant that a suitable position was offered to him on June 28, 1999 and that this position was currently available. The Office indicated that appellant had 30 days to accept the position or provide an explanation for refusal.

On November 19, 1999 appellant filed a CA-2a, notice of recurrence of disability. He indicated a recurrence on July 19, 1999, noting that he was having problems with his low back since the employment-related injury of July 14, 1998. Appellant stopped work on July 19, 1999 and did not return.²

In a December 6, 1999 letter, appellant, through his attorney, indicated that appellant refused the employing establishment's limited-duty assignment offer in a note dated July 12, 1999. Appellant indicated that he submitted satisfactory reasons for his refusal that included his inability to guarantee regular attendance due to his injury and that the long commute aggravated his back condition.

In a decision dated February 29, 2000, the Office denied appellant's claim, finding that the evidence was not sufficient to establish that the claimed period of disability beginning January 9 to May 26, 1999 was causally related to appellant's accepted injury of July 14, 1998.

By letter dated March 24, 2000, appellant requested a hearing before an Office hearing representative.³ He submitted various treatment notes from Dr. Lichtblau dated March to September 2000. Dr. Lichtblau's treatment notes from March 8 to July 2000 indicated that appellant continued to be treated for herniated nucleus pulposus at the L5-S1 level; bulging annuli fibrosi at the L3-4 and L4-5 spinal levels; and lumbar myofascial pain syndrome. He noted that appellant's condition had deteriorated and that he could not return to work until he completed the coordinated outpatient physical medicine program. Dr. Lichtblau further noted that appellant would continue to miss workdays because of his condition. His August 31, 2000 report noted appellant's continued low back complaints. Dr. Lichtblau noted that he believed

¹ The record indicates that appellant has a seizure disorder; however, this condition is not work related.

² The Board does not have jurisdiction over this claim for recurrence in the present appeal as the Office has not rendered a decision on this matter. *See* 20 C.F.R. § 501.2(c).

³ In a letter dated August 24, 2000, appellant through his attorney withdrew his request for an oral hearing and requested a review of the written record.

appellant would not be a candidate to return to employment because of his chronic pain. He based his opinion on the results of the functional capacity assessment as well as his period of treating appellant.

In a decision dated November 6, 2000, the hearing representative affirmed the decision of the Office dated February 29, 2000 on the grounds that the evidence was not sufficient to establish that the claimed period of disability was causally related to appellant's accepted injuries of July 14, 1998.

The Board finds that appellant has failed to establish that appellant's condition during the claimed period of disability is causally related to the accepted employment injury of July 14, 1998.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the period of claimed disability was caused or adversely affected by the employment injury. As part of this burden, he must submit rationalized medical opinion evidence based on a complete factual and medical background showing a causal relationship between his disability and the federal employment.⁴

The Office accepted appellant's claim's for lumbar strain, herniated lumbar disc at L5-S1 with radiculopathy and lumbar subluxation. However, the medical evidence submitted in support of the wage-loss compensation claim for disability for the period beginning January 19 to May 26, 1999 is insufficient to establish that the claimed period of disability was caused or aggravated by the accepted employment injury.

Appellant's treating physician, Dr. Magana, submitted various reports but did not specifically address whether appellant's July 14, 1998 injury caused or aggravated disability during the claimed period at issue, January 19 to May 26, 1999. Dr. Magana's report dated December 15, 1998 noted appellant's continued complaints of leg pain. He indicated that appellant had reached maximum medical improvement from his work-related injury of July 14, 1998. Dr. Magana noted that appellant would have permanent work restrictions and would not be able to return to his preinjury employment. His March 30, 1999 report indicated that appellant had "two episodes where, due to leg pain, he had to cut his working short." Even though Dr. Magana noted that appellant was still experiencing symptoms of his back condition, he did not in this report or in others, specifically address whether appellant had employment-related disability beginning January 19 to May 26, 1999, he merely indicated that appellant would intermittently miss days of work without any indication of any specific dates on which the accepted employment injury caused disability. Dr. Magana also couched his opinion in speculative terms and he did not reference any particular employment factors as causing appellant's condition.⁵ Therefore, these reports are insufficient to meet appellant's burden of proof.

⁴ See *Nicolea Brusco*, 33 ECAB 1138 (1982).

⁵ See *Leonard J. O'Keefe*, 14 ECAB 42, 28 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

Additionally the employing establishment offered appellant a light-duty assignment beginning January 19, 1999 which complied with appellant's medical restrictions and subsequently offered appellant a permanent limited-duty assignment on June 28, 1998 which was also in compliance with appellant's medical restrictions. There is no credible evidence that appellant was denied appropriate light-duty work during periods in which the medical evidence showed that he could perform light duty.⁶

The reports from Dr. Lichtblau beginning in September 1999 indicated appellant's disability status but they did not attempt to explain the relationship between the claimed period of disability and the July 14, 1998 work injury. Therefore, these reports are insufficient to meet appellant's burden of proof.

The remainder of the medical evidence fails to provide a specific opinion on causal relationship between the claimed period of disability and the accepted employment injury of July 14, 1998. Consequently, the medical evidence did not establish that the claimed periods of disability were due to appellant's employment injury.

The decision of the Office of Workers' Compensation Programs dated November 6, 2000 is hereby affirmed.

Dated, Washington, DC
January 25, 2002

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁶ See *Terry R. Hedman*, 38 ECAB 222 (1986).