U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSE M. VALDEZ and DEFENSE LOGISTICS AGENCY, KELLY AIR FORCE BASE, San Antonio, TX

Docket No. 02-1627; Submitted on the Record;
Issued May 14, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON, MICHAEL E. GROOM

The issue is whether appellant established that he sustained a recurrence of disability on or after January 20, 1998 due to his accepted May 8, 1996 employment injury.

On May 8, 1996 appellant then a 30-year-old material handler, filed a traumatic injury claim alleging that on May 8, 1996 he injured his back while lifting boxes.[1] The Office accepted his claim for a lumbar strain.[2] By letter dated August 26, 1996, the Office placed appellant on the periodic roll for temporary total disability. Appellant was referred for vocational rehabilitation which resulted in a limited-duty job placement at Pager Texas effective October 13, 1997.

Subsequent to appellant's return to limited duty on October 13, 1997 appellant submitted medical reports from his treating physician for the period January 29 through August 18, 1998.

In a treatment report dated January 29, 1998, Dr. Patrick H. Wilson, an attending Board-certified orthopedic surgeon, noted:

> "[Appellant] is at a sitting job and does pager type of repair and conditioning. That bothers him when he sits too long. [Appellant] has to get up and move around. But his job is to sit and work. There is a potential for [appellant] to get another position closer to home and I think that would be beneficial even though he would be working half the time for the first couple of months he would be on fulltime to follow."

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[1] The Board notes that appellant previously filed a traumatic injury claim for a lower back injury sustained while picking up a box on March 12, 1996. The Office of Workers' Compensation Programs assigned this claim number 16-0276474 and accepted the claim for a lumbar strain. The Office assigned claim number 15-0280734 to the May 8, 1996 injury, which then became the master file number for both claims.

[2] Appellant stopped work on May 8, 1996 and resigned from the employing establishment on June 21, 1996.

In records dated February 5 and 18, 1998, Dr. Wilson treated appellant for back pain in his left side. In a February 5, 1998 report, he noted that appellant had "a[n] L3 to S1 radiculopathy and more so at L5-S1" which was bilateral. Dr. Wilson noted that appellant had returned to work and that "it still bothered him because he is bending over." In a February 15, 1998 report, Dr. Wilson reviewed appellant's recent magnetic resonance imaging (MRI) scan which did "not show anything real drastic." Appellant related that he had "trouble sitting at long durations and bending over a bench." Dr. Wilson advised that appellant was on a no work status and that, if appellant continued to have pain, he may refer appellant out for another opinion.[3]

Subsequent treatment notes dated March 25 and May 4, 1998 noted appellant's change of employment to driving a bus. In his May 4, 1998 treatment note, Dr. Wilson opined that he did "not think he can perform his usual and customary job of sitting for [eight] hours a day even with rests" and indicated that appellant was doing well in his current position as a driver.

In an August 13, 1998 treatment note, Dr. Wilson noted a history of an L4-5 bulge and pain. He further noted:

> "We took [appellant] off his work in the past year. I wrote a letter in May 1998 that he had been performing driving a school bus in Lytle, Texas and he had also been permanently displace (sic) from sitting bench work and was referred to driving as an occupation…. [Appellant's] straight leg raising is nontender today but he has had some problems recently. I think [he] definitely could not be doing any benchwork that he had been on, but as far as the future is concerned I think that a continuous job is not the type of work he should be doing."

In an August 18, 1998 report, Dr. Wilson stated:

> "[Appellant] had a bulging disc at L4-5. He had a sit down type of job which was causing him great harm. [Appellant] sought work driving a bus. I think this is appropriate and he can do. [Appellant] is on Glucosamine Chondroitin Sulfate Complex and it seems to be helping him somewhat. Therefore, I think that driving a bus is appropriate. [Appellant] should not be doing any prolonged sitting and no bending over for [six] to [eight] hours. He can drive and stand and get up and stretch every so often while he is driving a school bus. I think that stooping, bending, climbing, kneeling, crawling, twisting and squatting cannot be performed. [Appellant] can sit, stand and walk and drive but he will need to get up and walk around at least after one hour of driving."

By letters dated February 20 and March 1, 2002, the Office informed appellant that it had received evidence indicating a possible recurrence of disability. The Office informed appellant of the definition of a recurrence and advised him as to the type evidence required to support a claim of a recurrence of disability.

[3] Appellant informed the Office on or about February 5, 1998 that his physician had placed him in a no work status.

On March 6, 2002 appellant filed a recurrence of disability claim beginning January 19, 1998 due to his May 8, 1996 employment injury. He noted that he returned to work on April 14, 1998 for four hours per day. In support of his claim, he submitted reports dated February 7 and 8, 2002 by Dr. Wilson.

Dr. Wilson, in a February 7, 2002 treatment note, diagnosed L3-S1 radiculopathy, a bulge at L4-5 and a history of back pain. Regarding a change in appellant's condition, he stated:

> "[Appellant] has been doing a standing-type job where he is not lifting more than 30 pounds. His original job was driving. [Appellant] could only drive up to four hours per day at that time and I allowed him to go back to that but he subsequently went a more substantial job in pay rather than four hours a day but he was working a little longer than that. He was working eight hours a day and standing but if he gets back to the sitting type of driving I think four hours a day to start with plus increasing his time as time goes on."

In a February 8, 2002 letter, Dr. Wilson noted that appellant was limited to working four hours per day and had restrictions on lifting.

By decision dated March 25, 2002, the Office denied appellant's claim for a recurrence of disability on the grounds that the medical evidence of record did not establish a change in the nature or extent of his employment-related injury or in the nature and extent of his light-duty work.

The Board finds that appellant has not established that he sustained a recurrence of disability on and after January 20, 1998 due to his accepted March 12, 1996 employment injury.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a limited- or light-duty position or the medical evidence of record establishes that he can perform the duties of 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 show that he 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 limited-duty requirements.[4]

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his accepted employment injury.[5] 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

[4] *Barry C. Peterson*, 52 ECAB ____ (Docket No. 98-2547, issued October 16, 2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

[5] *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993); *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.[6]

In this case, appellant has not shown a change in the nature and extent of his injury-related condition or of the light-duty requirements. The record shows that, following the May 8, 1996 employment injury, appellant was placed by the Office in a light-duty position on October 13, 1997. The record does not establish, nor does appellant allege, that the claimed recurrence of total disability was caused by a change in the nature or extent of her light-duty job requirements.

Appellant has not submitted sufficient medical evidence establishing that the accepted lumbar strain condition materially changed or worsened since his return to work on October 13, 1997. Appellant did not submit reasoned medical evidence explaining how his present condition had materially changed or worsened. In fact, he did not present any evidence that his condition had worsened. Appellant did not submit a medical report in which his treating physician explained why appellant's continuing condition had changed or worsened and was related to the May 8, 1996 accepted injury. Dr. Wilson diagnosed L5-S1 radiculopathy, a bulge at L4-5 and history of back pain in his various reports during the period January 29 through August 18, 1998 and February 7 and 8, 2002. Dr. Wilson provided no opinion as to whether these conditions were causally related to the accepted May 8, 1996 lumbar strain injury and concluded that appellant was unable to do prolonged sitting or bending for eight hours. Dr. Wilson did not fully address how appellant could not perform his light-duty position due to a material change or worsening of appellant's accepted lumbar strain condition. Dr. Wilson did not provide sufficient explanation that appellant's disability in 1998 and continuing to the present were causally related to the accepted May 8, 1996 employment injury. He did not fully address how the diagnosed L5-S1 radiculopathy, a bulge at L4-5 and resulting back pain were related to the initial injury, accepted for lumbar strain. He did not offer a rationalized medical opinion in his report to show how appellant's employment caused or aggravated his condition.[7]

Appellant has not provided any medical reports, based on objective findings, which establish that there has been a change in the nature and extent of his condition such that he can no longer perform his light-duty job and he has provided no evidence to establish that there has been a change in the nature and extent of his light-duty job requirements. On February 20 and March 1, 2002 the Office advised appellant of the type of medical and factual evidence needed to establish his claim for a recurrence of disability, however, appellant has not submitted such evidence. As appellant has failed to establish that he had a change in the nature or extent of his modified duties and did not submit a rationalized medical report based on a complete factual and medical background establishing a change in the nature or extent of his employment injury such

[6] *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

[7] The opinion of the physician must be based upon a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion; *see James Mack*, 43 ECAB 321 (1991).

that beginning January 20, 1998 he could no longer perform his limited-duty job, the Board finds that he has failed to discharge his burden of proof.[8]

The March 25, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 14, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[8] *Alberta S. Williamson*, 47 ECAB 569 (1996).