United States Department of Labor
Employees' Compensation Appeals Board

R.T., Appellant	)	
and	)	**Docket No. 10-2059**
	)	**Issued: June 21, 2011**
U.S. POSTAL SERVICE, JAMES C. BROWN, JR. FACILITY, Las Vegas, NV, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 10, 2010 appellant timely appealed the July 12, 2010 merit decision of the Office of Workers' Compensation Programs, which denied modification of a previous decision terminating compensation and medical benefits. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation and medical benefits effective May 14, 2007; and (2) whether appellant has established that he has any other medical condition causally related to his accepted injury.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On March 17, 2006 appellant, then a 54-year-old mail processor, filed a claim (Form CA-1) for injury to his "middle back" that reportedly occurred on March 7, 2006. He explained that he had been pushing a cage of mail to another operation. The cage had a bad wheel. Appellant stated that, when he finished pushing the cage, he felt like he had really overexerted himself. His back started to feel really tight and his arms felt heavy. Appellant described the nature of his injury as pain/tightness in back, mid back.

Dr. William S. Kyle, a Board-certified family practitioner, examined appellant on March 7, 2006 and diagnosed thoracic strain. Appellant informed Dr. Kyle that he was pushing a large heavy object for a long way down the hallway and felt a little twinge of pain in his thoracic spine, bilaterally. The pain then slowly progressed to more pain and tightness in the back. Appellant also informed Dr. Kyle that he felt somewhat weaker than usual in both arms. There were no abdominal or respiratory complaints and no radiation of pain. Dr. Kyle also noted there was no prior history of injury to the area. On physical examination, appellant's spine was nontender to palpation. X-ray of the spine revealed no fracture or dislocation. Dr. Kyle reported tenderness and spasm of the musculature bilaterally at T4-T10. He prescribed pain and anti-inflammatory medication, as well as a muscle relaxant. Dr. Kyle also placed appellant on work restrictions and advised him to follow up in a couple days.

Appellant returned for follow up on March 10, 2006, at which time he was seen by Dr. Cesar A. Estela, a Board-certified physiatrist, who noted that appellant had used a heat pad at night and had been taking his prescribed medications. He reportedly felt significantly better and was ready to return to full duty. Physical examination of the thoracic spine did not reveal any significant tenderness. Dr. Estela also reported full range of motion of the shoulders. He diagnosed thoracic strain, and advised that appellant had reached maximum medical improvement and required no further treatment. Dr. Estela released appellant to full duty with no restrictions and discharged him from his care.

The Office accepted appellant's March 7, 2006 traumatic injury for sprain of the back, thoracic region.

On March 27, 2006 appellant sought emergency treatment at the local Department of Veterans Affairs (VA) medical facility. He complained of left flank pain of two days ("48 hours") duration. The triage notes indicated no history of injury or trauma to back. Elsewhere in the March 27, 2006 treatment records there was a notation that appellant's lumbar back pain started three days ago, and he reportedly denied having recently injured himself. An x-ray of the lumbar spine was essentially normal.[2] Appellant was diagnosed with lumbar muscle strain and prescribed Motrin and Vicodin.

Appellant returned to the VA hospital on April 4, 2006 where he was seen by Dr. Miki M. Crane (Maj.), a Board-certified internist. The treatment notes indicated a history of

[2] The film revealed straightened lumbar lordosis, possibly secondary to paraspinal muscle spasm or positioning. Otherwise, appellant's vertebral bodies appeared intact with satisfactory anatomic alignment and the disc interspaces appeared grossly within normal limits.

back pain in the left flank area for one and half weeks, as well as a recent visit to the emergency room. There was also mention of appellant having been diagnosed with a strain a month ago when he was pushing a heavy object at work. Dr. Crane's primary diagnosis was backache. She prescribed various medications and released appellant without limitations. When Dr. Crane saw appellant again on April 14, 2006 she diagnosed herniated disc at L1-2 on the left. Appellant had reportedly been unable to work at all. He complained of pain in the left lower back radiating down the anterior thigh to the left knee. Appellant also reported numbness and tingling in the left leg. Dr. Crane recommended three days' bed rest with limited standing, sitting and walking.

A May 3, 2006 lumbar magnetic resonance imaging (MRI) scan revealed bilateral neural foramina stenosis at L4-5. The MRI scan also showed spinal canal stenosis as well as bilateral neural foramina stenosis at L5-S1.

Dr. Crane examined appellant again on May 16, 2006 and reviewed his recent lumbar MRI scan. She diagnosed lumbago and referred appellant for a neurological consultation and physical therapy. Appellant had a follow-up visit with Dr. Crane on June 27, 2006. She noted that appellant had recently been seen by Dr. Charles B. Bernick, a Board-certified neurologist, but his findings were not yet available. Dr. Crane diagnosed lumbar radiculopathy and noted that appellant was taking Percocet twice daily for his back condition.

In a July 5, 2006 attending physician's report (Form CA-20), Dr. Crane diagnosed lumbar radiculopathy, which she attributed to appellant's March 7, 2006 employment injury. According to her, appellant's left flank pain started one month prior to their first appointment when he was pushing a heavy object at work. Dr. Crane advised that appellant was currently totally disabled and could possibly return to limited duty on July 31, 2006.

Appellant subsequently filed a claim for wage-loss compensation for the period July 7 to 30, 2006.[3] By decision dated October 23, 2006, the Office denied wage-loss compensation because he had not demonstrated that his diagnosed lumbar condition was causally related to his March 7, 2006 employment injury.

In a decision dated May 14, 2007, the Office terminated appellant's wage-loss compensation and medical benefits.[4] It based its decision on the January 29, 2007 report of Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon and Office referral physician, who reported there were no objective findings referable to appellant's accepted thoracic strain. As to appellant's lumbar condition, Dr. Swartz diagnosed L5-S1 disc herniation, neural foraminal stenosis at L4-5 and L5-S1, and lumbar sciatic radiculopathy. He indicated that appellant's current lumbar condition was unrelated to his March 7, 2006 employment injury. Dr. Swartz explained that appellant was initially diagnosed with a thoracic strain, which had resolved as of March 10, 2006. He also noted that the March 27, 2006 emergency department treatment records indicated that appellant had been experiencing left flank pain for two days, and the April 4, 2006 follow-up treatment records noted back pain and left flank pain for one and a half

[3] Appellant returned to work on July 31, 2006. On August 5, 2006 he accepted a limited-duty assignment as a modified mail processor.

[4] The Office previously issued a notice of proposed termination of benefits.

weeks. Dr. Swartz concluded that the low back and sciatic symptoms appeared unrelated to the claim of March 7, 2006. According to him, appellant reached maximum medical improvement from his accepted injury on March 10, 2006, and he required no further treatment. However, appellant remained disabled from his regular mail processor duties as a result of his L5-S1 disc herniation and left sciatic radiculopathy, which Dr. Swartz reiterated were unrelated to the March 7, 2006 employment injury.

On May 11, 2008 appellant requested reconsideration and submitted, among other things, a copy of Dr. Bernick's June 26, 2006 report. Dr. Bernick indicated that appellant "sustained injury to his back at work ... in March of this year." He diagnosed L4 radiculopathy on the left. Appellant also submitted an April 3, 2008 report from Dr. Crane who stated, in relevant part, that she continued to follow appellant for "a back injury that occurred at work in 2006."

The Office denied modification by decision dated June 19, 2008. One year later, appellant again requested reconsideration. He argued that his lumbar condition did not preexist his March 2006 employment injury.[5] Appellant submitted his military discharge records, various VA medical records, and an October 1, 1997 preemployment medical examination that revealed a normal spine on physical examination. The Office again denied modification in a decision dated October 2, 2009.

Appellant filed his latest request for reconsideration on June 8, 2010. The request was accompanied by various medical records pertaining to his January 19, 2010 lumbar decompression and fusion at L4-5 and L5-S1. Appellant's postoperative diagnoses included degenerative disc disease at L4-5 and L5-S1, spinal stenosis at L4-5 and L5-S1, annular abnormalities at L4-5 and L5-S1 and degenerative retrolisthesis at L5-S1.

In a March 3, 2010 report, Dr. Mark B. Kabins, a Board-certified orthopedic surgeon, indicated that appellant had undergone surgical reconstruction of the lumbar spine. He also noted that appellant had internal disc disruption. Dr. Kabins stated that the onset of symptoms emanated following an injury, "per patient history," in March 2006 while pushing a loaded container of mail from one location to another. He noted that appellant had permanent work restrictions of light duty with no repetitive bending, stooping and twisting. Dr. Kabins also indicated that appellant should change positions as needed and he could not perform repetitive lifting greater than 20 pounds.

By decision dated July 12, 2010, the Office denied modification.

LEGAL PRECEDENT -- ISSUE 1

Where the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[6] Having determined that an employee has a disability

[5] Appellant was under the mistaken impression that Dr. Swartz believed his lumbar condition preexisted the March 7, 2006 employment injury. Dr. Swartz stated that there was no "evidence that this [was] part of [appellant's] claim of March 7[, 2006] or [was] work related." He did not specifically state that appellant's lumbar condition preexisted the March 7, 2006 employment injury.

[6] *Curtis Hall*, 45 ECAB 316 (1994).

causally related to his federal employment, the Office may not terminate compensation without establishing that the disability has either ceased or that it is no longer related to the employment.[7] The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.[8] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[9] Once the Office has properly modified or terminated benefits, the burden of reinstating benefits shifts to the employee.[10]

ANALYSIS -- ISSUE 1

The Office has accepted appellant's claim for thoracic sprain only. When he filed his CA-1 form, appellant claimed injury to his "middle back," which occurred on March 7, 2006. Dr. Kyle examined him that same day and diagnosed thoracic strain. When appellant returned for a follow-up examination on March 10, 2006, Dr. Estela found that his thoracic strain had resolved. Appellant reportedly felt significantly better and was ready to return to full duty. On examination, there was no significant tenderness in the thoracic spine and full range of motion in appellant's shoulders. Dr. Estela found that appellant reached maximum medical improvement and required no further treatment. He released appellant to full duty without restriction.

On January 29, 2007 Dr. Swartz examined appellant on behalf of the Office and reported that there were no objective findings referable to appellant's accepted thoracic strain. He found that appellant reached maximum medical improvement from his accepted injury on March 10, 2006 and he required no further treatment. Dr. Swartz also noted that appellant had a lumbar condition that precluded a return to his regular mail processor duties. However, this lumbar condition was to appellant's March 7, 2006 employment injury.

While there are varying opinions as to whether appellant's current lumbar condition is causally related to his March 7, 2006 employment injury, there is no contradictory evidence of an ongoing employment-related thoracic strain. As such, the Board finds that the Office met its burden to terminate compensation and medical benefits with respect to the only accepted condition, thoracic sprain. Dr. Swartz's January 29, 2007 report is well rationalized and sufficient to meet the Office's burden. As the evidence of record demonstrates that appellant's accepted thoracic sprain has resolved, the Office properly terminated compensation and medical benefits.

[7] *Jason C. Armstrong*, 40 ECAB 907 (1989).

[8] *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

[9] *Calvin S. Mays*, 39 ECAB 993 (1988).

[10] *Joseph A. Brown Jr.*, 55 ECAB 542, 544 n. 5 (2004).

LEGAL PRECEDENT -- ISSUE 2

Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.[11]

ANALYSIS -- ISSUE 2

Dr. Swartz diagnosed L5-S1 disc herniation, neural foraminal stenosis at L4-5 and L5-S1, and lumbar sciatic radiculopathy. In finding these conditions unrelated to appellant's March 7, 2006 employment injury, Dr. Swartz noted that appellant's thoracic sprain resolved on March 10, 2006, and it was not until his March 27, 2006 emergency department visit that he reported experiencing left flank pain, which at that time was only of two days' duration. Dr. Swartz also noted that the April 4, 2006 follow-up treatment records noted back pain and left flank pain for one and a half weeks. The initial treatment records from Dr. Kyle and Dr. Estela did not document any lumbar complaints, and appellant's thoracic complaints had reportedly resolved by March 10, 2006.

Although Dr. Crane would later attribute appellant's lumbar condition to the March 7, 2006 employment injury, her July 5, 2006 statement that his complaints started a month prior to their initial visit is belied by her own April 6, 2006 treatment records where it was reported that the left flank pain was of one and a half weeks' duration. She offered no salient explanation for the almost three-week delay in the onset of appellant's lumbar complaints. Dr. Crane also has failed to explain how pushing a heavy object at work either caused or contributed to appellant's lumbar condition.

Over time, appellant reported to various other physicians that he injured his back while pushing a cage of mail in March 2006, and those physicians have reiterated appellant's stated history of injury. As in Dr. Kabins' case, the mere recitation of "per patient history" does not suffice for purposes of establishing a causal relationship between appellant's diagnosed lumbar condition and the March 7, 2006 employment injury. Similarly, Dr. Bernick's June 26, 2006 notation that appellant "sustained injury to his back at work ... in March of this year" is not sufficient to establish that his L4 radiculopathy is causally related to the March 7, 2006 employment injury.

Appellant has not established that his lumbar condition and January 19, 2010 surgery are causally related to the March 7, 2006 employment injury.

[11] *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

CONCLUSION

The Office properly terminated medical benefits and entitlement to future wage-loss compensation effective May 14, 2007.

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 21, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board