

IN THE MATTER OF JAMES ROBINSON
606 Beavers Court
Joppa, MD 21085

* BEFORE THE COUNTY
* BOARD OF APPEAL
* FOR
* BALTIMORE COUNTY
* Case No.: CBA-I1-019

RE: DECISION OF BOARD OF TRUSTEES/
ACCIDENTAL DISABILITY
BENEFITS RESCINDED

* * * * *

OPINION

This case comes before the Board as a result of the decision of the Medical Board for the Employees' Retirement System (ERS) of Baltimore County, dated February 28, 2011, in which Mr. James Robinson's accidental disability benefits were rescinded, based on the determination by the Medical Board that the Appellant is not physically incapacitated for the performance of duties required by the position he held prior to his retirement. On March 16, 2011, Mr. Robinson appealed the decision rendered on February 28, 2011 by the ERS. A hearing before the Board of Appeals was held on May 19, 2011. Appellant Robinson was represented by Mitchell A. Greenberg, Esquire. The Employees' Retirement System of Baltimore County was represented by Suzanne Berger, Assistant County Attorney of the Baltimore County Office of Law. Closing Briefs were filed with the Board on May 31, 2011. It was stipulated before the trial, by both parties, that the medical evidence would be presented by way of reports, in lieu of live testimony.

BACKGROUND

Mr. Robinson, the Appellant herein, was employed for sixteen (16) years by Baltimore County as a Laborer II or Public Works Technician I. He was employed by the Bureau of Highways and among his duties, he was required to drive a truck. On January 7, 2004 Mr. Robinson pulled his truck to the side of the road and was releasing a tarpaulin. The handle of the

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binder holding the tarpaulin over the truck body was spring loaded, and when he released the handle, it spun around and struck him on the right wrist. Mr. Robinson complained to his Supervisor, and was taken to Concentra Medical Facility, where his right wrist was x-rayed. There was tenderness noted at the 4th and 5th metatarsal areas. That night he went to see his own doctor, Dr. Jeffrey Schultz, who noted tenderness at the 3rd, 4th and 5th metatarsal areas. Again, x-rays were taken and there was no abnormal finding. Dr. Schultz prescribed a pain killer; namely Ultracet. From that point on, Mr. Robinson alleges that his condition deteriorated to the point where it was necessary for him to utilize a wheelchair permanently, in order to move around. He alleges that there was not only pain in his right hand and wrist, but his elbow, his right shoulder, his neck, his right buttocks and right leg. Mr. Robinson has been treated and evaluated by approximately sixteen (16) doctors and one (1) physiologist. Two of the doctors were psychiatrists. On March 17, 2008, Mr. Robinson was certified as incapacitated for duty by the Employees' Retirement System (ERS). As previously stated, that decision was reversed in February of 2011, after extensive investigation.

Mr. Robinson was given various diagnoses, including Reflex Sympathetic Dystrophy (RSD), also known as Chronic Regional Pain Syndrome (CRPS). He was evaluated on two (2) occasions by Peter Oroszlan, M.D., M.P.H.F., F.A.C.P.M., at the request of the County. Dr. Oroszlan indicated that he felt that the disability of Mr. Robinson was self-induced and that he could be best treated by removing him from all narcotics, and evaluating him in a medical setting. This feeling was also shared by Dr. Stephen W. Siebert, who stated:

"...my opinion is that, if Mr. Robinson is intentionally producing his own symptoms, then he has fooled some of the best experts and this issue will never be resolved unless there is clear evidence of

fraud. This issue could be easily resolved by putting him into an in-patient setting with around the clock monitoring."

Since the County was in no position to order Mr. Robinson into an in-patient setting, it determined that it would hire investigators to track Mr. Robinson's movements and determine whether or not he was faking his disability. Thereafter, the County hired investigators who observed Mr. Robinson on various dates from October 2008 through April 26, 2011.

After putting Mr. Robinson under surveillance, the County decided to have him evaluated by an independent physician. The independent physician was not given copies of the video surveillance, nor copies of any of the investigative reports prior to giving Mr. Robinson his examination.

Dr. Paul M. Apostolo examined Mr. Robinson on January 28, 2011. He took an extensive history from Mr. Robinson and reviewed his medical records. Dr. Apostolo gave a detailed description of the problems which Mr. Robinson alleged he was suffering at the time of the examination. This description is quite detailed and bears repeating in this decision since it comports with the testimony Mr. Robinson gave before this Board.

The independent medical report of Dr. Paul M. Apostolo, dated January 28, 2011, states:

"At this time, Mr. Robinson denies any discomfort or difficulties relative to his accident with his left arm or his left lower extremity. With respect to his right lower extremity, he tells me that he could walk normally up to about 2006 but by the end of 2006, he was using a cane in the left hand. By 2007, he was wheel-chaired bound and an electric wheelchair was purchased for him in July of 2007. Since then, he has not walked except for transfers. He

reports swelling throughout his right foot. He is unable to tolerate wearing even an oversized shoe for the past four to five years because of extreme sensitivity to any touch. Even the air touching his foot dramatically exacerbates his pain. His wife has to help him on with his pants. He is able to transfer on his own as long as the chair he is transferring to is the same level or slightly lower than his chair. He has terrible pain with any form of weight-bearing on the right leg and only puts his right foot down if there is an "accident". This phenomenon was been present for at least two years. He last drove a couple of months ago for about two blocks to the corner store. His mini-van is equipped with custom swivel seats and a ramp. He uses a "suicide knob" on the steering wheel and manipulates the gas and breaks with his left foot. He wears an adult diaper because he can not move fast enough to get to the bathroom. He reports deep burning pain in his right knee which is not present if he is in the wheelchair. The pain can extend proximally to his underwear line, through his buttocks, up the right side of his back and into the neck. I read back all of the above and asked Mr. Robinson if there were any other symptoms with respect to the right lower extremity that he would like to report today and he responded "nothing that I can think of". With respect to his arms, he notes neck pain that he feels is related to the back discomfort. He explains "the pain goes up into the neck". He

reports a deep burning sensation throughout the arm. He only has tingling if he is riding in the van and hits a bump. He is only able to move his right shoulder a "few inches with my left hand" but denies having any active motion at all about the right shoulder. He is unable to move his right elbow on his own but is able to move it passively enough so that he can touch his own face and extend it to "pretty straight". With respect to his right hand, he reports extreme discomfort. Most days he cannot not move his hand at all but "some days I can write very little". Even after writing for a few moments, he has pain to the point that he is unable to complete a sentence or even a signature. At this time, he reports that he is not using his hand "for anything" and this has been his status for the past couple years. I read back the above about the upper extremity and asked Mr. Robinson if there were any other symptoms that he would like to report today and he responded "nothing else".

At the hearing before the Board, Mr. Robinson was the sole witness for the Appellant. Counsel for the ERS, questioned Mr. Robinson as to whether or not the statements he made to Dr. Apostolo were correct. Mr. Robinson admitted that he told Dr. Apostolo that he had not walked since 2007. The Appellant admitted telling Dr. Apostolo that he could not use his arm for anything for the past couple of years. He admitted telling Dr. Oroszlan in 2009, that he had not used his right arm in five (5) years.

Dr. Apostolo observed Mr. Robinson and saw that he had a callus pattern on both the upper and lower extremities. In the mid-portion of his right palm he had a distinct callus

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measuring approximately 3mm by 8mm by 2mm in the region of the distal palmer crease overlying the third metacarpal head. Dr. Apostolo stated the only conceivable way that a callus like this could form, is if an individual was continuing to perform gripping activities in some fashion. When he pointed this out to Mr. Robinson, Mr. Robinson said he had "no idea how that could form there".

Dr. Apostolo also looked at Mr. Robinson's feet, which revealed an absolutely symmetric callus pattern and an absolutely symmetric wear and dermal thickness pattern of both lower extremities. He had particularly thickened calluses along the medial border of both great toe pads. Dr. Apostolo observed that the callus pattern and the nail plate pattern of Mr. Robinson's feet were absolutely medically inconsistent with the described disability that Mr. Robinson claimed. Dr. Apostolo found that there was swelling in the right leg extending from the foot to the mid-calf, where it ends in an abrupt circumferential manner. He stated:

"It is as though a tourniquet has been applied in the past.
However, there was no tourniquet evident in the office.
Mr. Robinson was wearing an unsoiled diaper."

At the end of his report, Dr. Apostolo stated:

"Following interview and examination of Mr. Robinson, I reviewed seven surveillance discs documenting a wide variety of activities over a number of different days. It is not necessary to describe the observations of each tape, other than to say that the tapes document activities with both upper and lower extremities which are inconsistent with Mr. Robinson's claimed disability and impairment.

IMPRESSION:

1. Conscious deception.
2. Prescription drug abuse
3. Self-inflicted trauma including first degree burns."

Dr. Apostolo closed his report by stating:

"The absolute best therapy for Mr. Robinson at this time is for all pain management prescription drugs to be immediately discontinued and for him to return to full duty work without restrictions or limitations. No further diagnostic or therapeutic intervention for his continuing complaints in the right upper extremity or right lower extremity are warranted to likely improve his status."

In support of her position, Ms. Berger submitted a number of reports from the Commercial Index Bureau Inc., the private investigative firm that engaged in the surveillance of Mr. Robinson from October 2008 until April 26, 2011.

The reports are accompanied by video surveillance tapes, which were reviewed by the Board. That tapes show that on various dates, Mr. Robinson utilized his right hand to drive his vehicle; use a shovel to pick up dog feces; put building materials into the rear of a van; and use a power blower to blow leaves in his yard. The most critical surveillance tape was taken on July 2, 2010. At that time Mr. Robison was observed walking around the property of an individual presumed to be his father. He was utilizing a long tree limb cutter, which requires the individual operating it to hold on with his left hand to the eight (8) foot pole holding the cutters, and to operate the cutter by pulling a cord attached to the cutter, with his right hand. After cutting the

branches, Mr. Robinson was observed picking up the branches and walking to someplace where he deposited the branches. He utilized both of his arms and was walking without any visible limp. Mr. Robinson was observed performing this work for approximately one (1) hour.

BOARD'S ANALYSIS AND CONCLUSION

The Board observed Mr. Robinson as he testified before the Board. He got out of his wheelchair to move to the trial table and also moved to the witness chair and back.

The Board has reviewed all of the medical reports submitted by both sides. As previously stated, the Board has also reviewed the surveillance tapes of Mr. Robinson's activities. Mr. Robinson's only explanation for his activities was that "he had good days and bad days".

The Board credits the reports of Dr. Oroszlan and Dr. Apostolo that Mr. Robinson has engaged in conscious deception and has manufactured his disabilities.

The Board adopts the opinion of Dr. Paul M. Apostolo that Mr. Robinson is not disabled and could return to work without restrictions or limitations.

ORDER

THEREFORE, IT IS THIS 23rd day of June, 2011 by the Board of Appeals of Baltimore County

ORDERED that the decision of the Board of Trustees of the Employees' Retirement System of Baltimore County dated February 28, 2011, rescinding Appellant Robinson's accidental disability benefits based on the determination by the Medical Board that the Appellant, James Robinson is not physically incapacitated for the performance of duties required by the position held prior to Appellant Robinson's retirement, is hereby **AFFIRMED**; and it is further

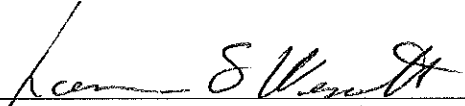
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ORDERED that the accidental disability retirement benefits of James Robinson, Appellant, be and the same are **RESCINDED**; and it is further

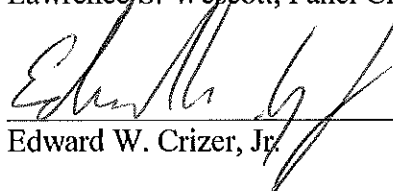
ORDERED that the appeal filed by James Robinson is case number CBA-11-019 be and is hereby **DISMISSED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.


**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Lawrence S. Wescott, Panel Chair



Edward W. Crizer, Jr.



Andrew M. Belt