

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLAYTON R. HIXON and DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION, Sacramento, Calif.

*Docket No. 97-869; Submitted on the Record;
Issued December 9, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant met his burden of proof in establishing that he sustained an alleged recurrence of disability causally related to his accepted conditions of low back strain and aggravation of hernia from his March 5, 1993 employment injury.

On March 5, 1993 appellant, then a 52-year-old electrician, was pulling wire through a conduit and injured his back. The Office of Workers' Compensation Programs accepted appellant's claim for a low back strain and later for an aggravation of hernia. Appellant stopped work on March 5, 1993 and compensation benefits was paid for a period of total disability from April 23, 1993 through May 28, 1994. Appellant resigned from his federal employment on June 18, 1993.

On May 10, 1994 Dr. Mark E. Silver, a Board-certified family practitioner and appellant's treating physician, noted that on his examination of appellant on May 3, 1994 appellant had full range of motion and no objective symptoms related to his lumbar strain. Dr. Silver additionally noted that appellant's small umbilical hernia was asymptomatic at that time. Dr. Silver opined that, based on his examination, appellant should be considered no longer disabled as of May 28, 1994. Dr. Silver additionally noted that appellant should avoid doing certain activities and released him to seek employment.

On July 15, 1994 Dr. Eugene G. Patel, an orthopedic surgeon, examined appellant at the Office's request. After examining appellant and reviewing the medical evidence of record, Dr. Patel diagnosed chronic muscular and ligamentous strain lumbar spine superimposed on multi-level early degenerative disc disease without radiculopathy and a history of umbilical hernia. Dr. Patel found no objective findings, but noted that the diagnostic studies including x-rays and magnetic resonance imaging (MRI) show some evidence of early degenerative changes in the discs in the mid and low lumbar spine. Dr. Patel indicated that appellant's back had stabilized and that his condition was permanent and stationary. Dr. Patel stated that he believed appellant's period of temporary total disability ended on May 3, 1994 when Dr. Silver indicated

that appellant was released to actively seek employment. Dr. Patel imposed some restrictions on appellant's activities.

On October 8, 1994 appellant filed a Form CA-8 for continuing compensation on account of disability related to March 5, 1993 employment injury.

By letter dated October 12, 1994, the Office informed appellant that there was no medical documentation that he was disabled for work. The Office noted that the job restrictions referenced by the second opinion examiner, Dr. Patel, were considered prophylactic due to appellant's degenerative changes in his back. There was no evidence that the March 5, 1993 injury resulted in a permanent aggravation of that preexisting degenerative disease. Accordingly, the Office requested appellant to submit a medical report with objective reasons for disability.

In a March 14, 1995 medical report, Dr. Silver noted that he examined appellant on March 2, 1995 and appellant was medically stationary without impairment. Dr. Silver stated that appellant previously had a heavy manual labor-type job and opined that he could not resume this occupation because of his degenerative disc disease in his lumbosacral spine. Dr. Silver stated that "whether that degenerative process was the result of small repetitive traumas from the job occupation or another is unknown to this examiner and is likely unknown to any examiner." Based on appellant's history of back pain and the findings on his MRI from March 1993, Dr. Silver imposed restrictions on appellant's activities.

By decision dated November 4, 1996, the Office denied appellant's claim because there was no medical evidence to support disability.

The Board finds that appellant failed to sustain his burden of proof in establishing that he sustained an alleged recurrence of disability causally related to his March 5, 1993 employment injury.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his alleged recurrence of disability and his accepted employment condition.¹ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual history, concludes that the condition is causally related to the accepted employment injury and supports that conclusion with sound medical reasoning.² The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.³ Neither the fact that the condition became apparent during a period of

¹ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

² *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

³ *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

employment nor the claimant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.⁴

In this case, the record shows that appellant sustained a low back strain and aggravation of hernia on March 5, 1993. Appellant voluntarily resigned from federal employment on June 18, 1993. In his May 10, 1994 report, Dr. Silver, appellant's treating physician, reported a full range of motion and no objective symptoms related to the work injury. He opined that appellant was no longer disabled as of May 28, 1994. In his July 15, 1994 report, Dr. Patel, the Office's second opinion physician, found no objective findings and opined that appellant's period of temporary total disability ended on May 3, 1994 when Dr. Silver indicated that appellant was released to actively seek employment. Although Dr. Patel noted that the MRI revealed early degenerative changes, the medical restrictions imposed were related to the nonwork-related degenerative disease process in appellant's back. In his March 14, 1995 report, Dr. Silver again found no objective findings to support disability. The medical restrictions imposed were based on appellant's history of back pain and the March 1993 MRI, which found degenerative changes. Thus, the medical restrictions imposed by both Drs. Silver and Patel are considered to be prophylactic in nature and not related to appellant's March 5, 1993 injury.

As there is no medical evidence to support disability, appellant has failed to provide any rationalized medical evidence establishing that he sustained a recurrence of disability causally related to his April 5, 1993 employment injury and thus has failed to discharge his burden of proof.

The decision of the Office of Worker's Compensation Programs dated November 4, 1996 is hereby affirmed.

Dated, Washington, D.C.
December 9, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁴ *Bruce E. Martin*, 35 ECAB 1090, 1093 (1984); *Dorothy P. Goad*, 5 ECAB 192-93 (1952).

Bradley T. Knott
Alternate Member