

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of THOMAS STOCKTON and RESOLUTION TRUST CORPORATION,  
Dallas, Tex.

*Docket No. 95-2778; Submitted on the Record;  
Issued January 8, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether appellant's dental problem was a consequential injury that was related to the treatment appellant received for his December 14, 1993 employment injury.

On December 14, 1993 appellant, then a 49-year-old attorney, was riding an elevator at work when the elevator suddenly accelerated then stopped abruptly as the emergency brakes engaged. He indicated that the elevator dropped twice more before it was lowered to a floor where he could exit the elevator. He stopped working that day and filed a claim for a back injury. The Office of Workers' Compensation Programs accepted appellant's claim for a lumbosacral strain. Appellant received continuation of pay for the time he lost from work in the period December 15, 1993 through February 17, 1994 and temporary total disability compensation for intermittent periods thereafter through December 19, 1994.

In a December 15, 1993 report, Dr. Huntley G. Chapman, a Board-certified orthopedic surgeon, indicated that appellant had paralumbar muscle spasm. He noted that x-rays showed a well-healed spinal fusion and surgical decompression at L4-5. In an April 27, 1994 report, Dr. George E. Plum, a Board-certified radiologist, indicated that a computerized tomography (CT) scan of the lumbar spine showed extravasation of contrast medium at the L2 and L3 disc levels which was compatible with annular tears at those levels. He also reported that appellant had previous fusion surgery at L4-5 with grade I spondylolisthesis of L4 on L5.

The Office accepted appellant's claim for herniated nucleus pulposus at L3-4. On August 4, 1994 appellant underwent surgery for a decompressive laminectomy and spinal fusion at L3-4. After the surgery appellant claimed that he lost four teeth and had eye pain and blurred

vision as a result of the surgery. In a January 24, 1995 decision, the Office rejected appellant's claim for the loss of teeth as a result of the August 4, 1994 surgery.<sup>1</sup>

The Board finds that the case is not in posture for decision.

In the case of *John R. Knox*,<sup>2</sup> regarding consequential injury, the Board stated:

"It is an accepted principal of workers' compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct. As is noted by Professor Larson in his treatise: '[O]nce the work-connected character of any injury, such as a back injury, has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.... [S]o long as it is clear that the real operative factor is the progression of the compensable injury, associated with an exertion that in itself would not be unreasonable [under] the circumstances. A different question is presented, of course, when the triggering activity is itself rash in the light of claimant's knowledge of his condition.'"<sup>3</sup> (Citations omitted.)

The Board has held that conditions arising out of surgery performed for treatment of an employment-related injury are compensable under the Federal Employees' Compensation Act because such conditions constitute a consequential injury related to the employment injury.<sup>4</sup>

In an August 17, 1994 letter, Dr. Stan D. Lowrance, a dentist, noted that appellant underwent surgery on August 4, 1994 and was released from the hospital on August 8, 1994. Dr. Lowrance related that on August 9, 1994 appellant noticed some teeth were loose and one tooth fell out. The next day a second tooth fell out. Dr. Lowrance reported that appellant felt his teeth were loosened by the surgery because he was on his stomach for four hours during the surgery with an intubation tube inserted. In a September 13, 1994 report, Dr. Lowrance stated that appellant presented with loss of both mandibular central incisors. He noted that the lateral incisors had class III mobility and were removed. He indicated that x-rays showed extensive bone loss. He related that appellant stated his teeth were loosened following an elevator accident.

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<sup>1</sup> The Office subsequently stated that the January 24, 1995 decision addressed appellant's claim for dental and vision problems. However, a review of the memorandum to the Director which accompanied the Office's decision shows that it addressed only appellant's claim for his loss of teeth.

<sup>2</sup> 42 ECAB 193 (1990).

<sup>3</sup> *Id.* at 196.

<sup>4</sup> *Carolee E. Williams (Lester V. Williams)* 16 ECAB 587 (1965).

In an October 19, 1994 report, Dr. John Barry Gilbert, the Board-certified anesthesiologist who worked in appellant's August 4, 1994 operation, stated that during the preanesthetic interview, he discussed appellant's periodontal disease and loosened teeth and warned him that the surgery and anesthetic experience could loosen his teeth further. He indicated that during the operation appellant was placed in the prone position with an endotracheal tube and rubber oropharyngeal airway in place. He commented that during anesthesia and while emerging from anesthesia there would be a tendency to bite down on these structures. He stated that appellant's teeth were probably loosened at that time. He indicated that it was interesting that the actual loss of teeth occurred a few days later but concluded that the surgery and anesthetic event played a role.

Dr. Lowrence's reports are insufficient to establish that appellant's loss of teeth were caused by the employment-related surgery because he only repeated appellant's opinion on the cause of the loss of the teeth and did not present his own opinion on the cause of the loss of appellant's teeth. However, Dr. Gilbert concluded that the loss of appellant's teeth was probably caused by biting down on the tube and airway used in his operation, aggravating a preexisting periodontal condition and loosening his teeth further to the point where they were lost. Dr. Gilbert's report is insufficient by itself to establish that the loss of appellant's teeth was a consequential injury from the surgery performed to treat a condition arising from the employment injury because he did not discuss in detail the nature of appellant's preexisting periodontal condition. However, his report, uncontradicted by any other medical evidence of record, is sufficient to require further development of this issue.<sup>5</sup>

The case, therefore, will be remanded to the Office. On remand the Office should refer appellant, together with the statement of accepted facts and the case record, to an appropriate physician for an examination. The Office should obtain from appellant any medical records related to his preexisting periodontal disease to submit to the specialist. The specialist should then be requested to give his opinion on whether appellant's surgery caused the loss of appellant's teeth or contributed to the loss of his four teeth by aggravating a preexisting periodontal condition. After further development as it may find necessary the Office should issue a *de novo* decision.

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<sup>5</sup> The Board notes that appellant has also claimed that he sustained a right knee injury in the December 14, 1993 employment injury. He also has contended that his disability after January 3, 1995, when the employing establishment released appellant from work due to differing interpretations of his work restrictions, is causally related to the employment injury. He has claimed that his vision problems are a consequence of the August 4, 1994 surgery. He further claims that he has depression and post-traumatic stress disorder due to the employment injury. He also states that he has not been reimbursed for \$1,500.00 in medical expenses. He contends that the Office improperly denied Dr. Chapman's recommendation for a magnetic resonance imaging (MRI) scan of the neck and has not acted on his requests for a bed and exercise equipment needed for rehabilitation of his back condition. The Office has not issued any final decisions on these issues. As the Board's jurisdiction only extends to final decisions of the Office, it has no jurisdiction over these issues on this appeal. 20 C.F.R. § 501.2.

The decision of the Office of Workers' Compensation Programs, dated January 24, 1995, is hereby set aside and the case remanded for further action in accordance with this decision.

Dated, Washington, D.C.  
January 8, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member