

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FRED E. BARTON and DEPARTMENT OF THE ARMY,  
McALESTER ARMY AMMUNITION PLANT, McAlester, Okla.

*Docket No. 97-1258; Submitted on the Record;  
Issued March 18, 1999*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability commencing February 6, 1996, causally related to his accepted March 1, 1995 lumbosacral sprain.

The Board has duly reviewed the case record in the present appeal and finds that appellant failed to establish that he sustained a recurrence of disability commencing February 6, 1996 causally related to his accepted March 1, 1995 lumbosacral sprain.

Appellant filed a claim on March 13, 1995 alleging that on March 1, 1995 while performing his duties as a blocker bracer, he sustained a back sprain from stretching to use a nail gun. A witness corroborated appellant's statement. The employing establishment stated that appellant stopped work on March 6, 1995 and returned to work on March 28, 1995. Appellant was on light duty and then returned to regular duty. The Office of Workers' Compensation Programs accepted appellant's claim for lumbosacral sprain.

On February 20, 1996 appellant filed a notice of recurrence of disability (CA-2a) alleging that on February 6, 1996 he sustained a recurrence of disability causally related to his accepted March 1, 1995 lumbosacral sprain. The employing establishment indicated that appellant stopped work on February 14, 1996. By decision dated April 9, 1996, the Office denied appellant's claim. The Office found that the evidence of record failed to demonstrate that the claimed recurrence of disability on or after February 6, 1996 was causally related to appellant's accepted March 1, 1995 lumbosacral sprain.

By letter dated May 4, 1996, appellant requested reconsideration of the April 9, 1996 decision. By decision dated May 16, 1996, after a merit review, the Office denied appellant's request for reconsideration, finding that the evidence of record was insufficient to warrant modification of its prior decision. By letter dated July 29, 1996, appellant's representative requested reconsideration of the May 16, 1996 decision. By decision dated August 5, 1996, after

a merit review, the Office denied appellant's request for reconsideration, finding that the evidence of record was insufficient to warrant modification of its prior decision. By letter dated September 11, 1996, appellant's representative requested reconsideration of the August 5, 1996 decision. By decision dated January 3, 1997, after a merit review, the Office denied appellant's request for reconsideration, finding that the evidence of record was insufficient to warrant modification of its prior decision. By letter dated January 9, 1997, appellant requested reconsideration of the January 3, 1997 decision. By decision dated February 6, 1997, the Office denied appellant's request for reconsideration, finding that the evidence of record was insufficient to warrant modification of its prior decision.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitations of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury."<sup>1</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>2</sup>

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the accepted employment injury and supports that conclusion with sound medical reasoning.<sup>3</sup>

The medical evidence submitted in support of appellant's claim for recurrence of disability commencing February 6, 1996 consists of office notes covering the period February 8 through April 26, 1996 by Dr. John Fuhrman, a Board-certified internist, and a March 4, 1996 report by Dr. Donald H. Schuller, a Board-certified radiologist.

In his office notes, Dr. Fuhrman found, on February 8, 1996, that "[appellant] is having a lot of problems. His back injury way back when he was doing his nailing gun activities several months ago is continuing to give him problems. It never did really get well. He has chronic lumbosacral pain and at times radicular component posterior lateral distribution down to the knee." On examination Dr. Fuhrman reported arthritis in the lumbosacral spine and the right hip. On February 14, 1996 Dr. Fuhrman noted that "[appellant] is still having problems with his back." He recommended a magnetic resonance imaging (MRI) scan and stated "[h]e could have an element of spinal stenosis." On February 23, 1996 Dr. Fuhrman stated "[appellant] still has a lot of spasm and tightness and an extremely rigid back. On March 8, 1996 Dr. Fuhrman noted

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<sup>1</sup> *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>2</sup> *David J. Overfield*, 42 ECAB 718, 721 (1991).

<sup>3</sup> *Louis G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1993).

that appellant had an MRI which revealed some spinal stenosis and some degenerative changes. He also stated that appellant declined an epidural block and would continue not to work. On April 8, 1996 Dr. Fuhrman noted that appellant was coming along and “still has a lot of myofascial tightness and arthritic symptoms with locking and catching. It is primarily in the lower lumbar area, but he has it in the interscapular region as well. On April 17, 1996 Dr. Fuhrman noted the denial of appellant’s claim and stated, “I think the chart documents the fact that [appellant] has had more than one episode of back problems. First, I believe it was with a nailing gun and it never really did get well after that. It has continued to plague him ever since then and subsequent through the treatment course of that and his knee problems.” On April 26, 1996 Dr. Fuhrman noted that he received a narrative from appellant’s supervisor requesting information regarding his back problems. Dr. Fuhrman noted that appellant’s present back problems were related to the March 1, 1995 accepted lumbosacral sprain. He further noted that the degenerative changes in appellant’s lumbosacral spine were there for a long period of time, but he was symptom free until the “nailing gun incident.” “It was at that time that [appellant] suffered a superimposed lumbosacral myofascial syndrome, which as been chronic in nature. And that is the etiology of his pain.”

In a March 4, 1996 report, Dr. Shuller, a Board-certified radiologist, reported his findings of decreased signal intensity of the L3, L4 and L5 intervertebral discs with some apophyseal joint spurring and hypertrophy throughout, mild central spinal stenosis and L3 and L4 due primarily to apophyseal joint changes. Otherwise, an essentially negative study.

In his office notes covering the period February 8 through April 8, 1996, Dr. Fuhrman opined that appellant’s condition in 1996 was causally related to his accepted March 1, 1995 lumbosacral sprain. However, he failed to provide any rationale to support his opinion. Dr. Fuhrman did not treat appellant for any back condition between the time of his original injury in 1995 until his claimed recurrence in February 1996, *i.e.*, he did not provide any bridging medical evidence to support a causal relationship between appellant’s March 1, 1995 accepted lumbosacral sprain and his condition in 1996. Therefore, Dr. Fuhrman’s office notes are insufficient to establish appellant’s recurrence of disability claim.

In his March 4, 1996 report, Dr. Shuller failed to address a causal relationship between appellant’s diagnosed condition and the March 1, 1995 accepted back strain. Therefore, Dr. Shuller’s, March 4, 1996 report is insufficient to establish appellant’s recurrence of disability claim. By letter dated March 6, 1996, the Office advised appellant of the evidence needed to support his claimed recurrence of disability on February 6, 1996, but such evidence was not submitted. The Board finds that appellant has failed to meet his burden of proof in establishing his recurrence of disability claim commencing February 6, 1996.

In summary, none of the medical evidence submitted provided a rationalized medical opinion explaining how a claimed recurrence of disability commencing February 6, 1996 was causally related to appellant’s accepted March 1, 1995 lumbosacral sprain, or to provide bridging information between the two, especially since appellant returned to regular duty after returning to work from the original injury.

The decisions of the Office of Workers’ Compensation Programs dated February 6 and January 3, 1997 and August 5, May 16 and April 9, 1996 are affirmed.

Dated, Washington, D.C.  
March 18, 1999

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member