

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERRY E. KLITZKIE and DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS, Jacksonville, Fla.

*Docket No. 97-2108; Submitted on the Record;
Issued May 7, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability causally related to his July 1992 employment-related injury.

The Board has duly reviewed the case record on appeal and finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability causally related to his July 1992 employment-related injury.

On July 15, 1992 appellant, then a 47-year-old real estate appraiser, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that on July 14, 1992 he sustained a lower back injury while lifting a heavy book in the performance of duty. Appellant continued to work and he did not immediately seek any medical attention for his condition. Approximately three years later, on June 2, 1995, appellant filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that the injury he initially sustained in July 1992 had subsequently caused chronic pain in his left hip and leg. In support of his claim, appellant submitted an August 29, 1995 report from Dr. Robert A. James, a Board-certified family practitioner, who diagnosed lumbar strain and noted x-ray evidence of degenerative disc disease at L5-S1. Appellant also submitted a March 20, 1995 report from Dr. James A. Dautel, a chiropractor, who diagnosed sciatic neuritis affecting appellant's left leg. On February 16, 1996 the Office of Workers' Compensation Programs accepted appellant's claim for lumbar strain, and appellant was subsequently reimbursed for medical expenses incurred through April 26, 1996.

On February 10, 1997 appellant filed a notice of recurrence of total disability in order to secure continuing medical treatment for his accepted employment injury. In support of his claim, appellant submitted a February 27, 1997 narrative report from Dr. James as well as the doctor's relevant office records, which included various treatment notes and the results of diagnostic studies. In his February 27, 1997 report, Dr. James diagnosed lumbar spondylosis and chronic left hip girdle pain. Regarding the cause of appellant's condition, Dr. James explained

that lifting any heavy object could lead to back pain, although typically of a limited time period, such as six to eight weeks. He concluded that appellant had a chronic problem and that the lifting of a heavy book was merely an exacerbating factor. Dr. James further indicated that appellant's post-injury jogging apparently continued to flare the condition.

By decision dated May 28, 1997, the Office denied appellant's claim for recurrence of disability on the basis that appellant failed to establish that his current condition was caused by his previously accepted employment-related injury. Appellant subsequently filed an appeal with the Board on June 10, 1997.¹

It is an accepted principle of workers' compensation law 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.² Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.³ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury. The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated, or aggravated by the accepted injury.⁴ Moreover, the physician's conclusion must be supported by sound medical reasoning.⁵

In the instant case, the Office properly denied continuing medical treatment based on the assessment of appellant's treating physician, Dr. James, who indicated that the July 1992 employment incident, which the Office accepted as lumbar strain, merely exacerbated appellant's chronic back condition.⁶ Dr. James further indicated that the effects of the July 1992 incident should have lasted only for a limited period of approximately six to eight weeks. Moreover, Dr. James suggested that appellant's recreational jogging may have contributed to his condition. Inasmuch as the evidence of record fails to demonstrate that appellant's previously accepted condition of lumbar strain required continuing medical treatment, the Office properly denied compensation.

¹ Appellant has submitted several items of evidence on appeal that were not submitted to the Office prior to the issuance of its May 28, 1997 decision denying compensation. Inasmuch as the Board's review is limited to the evidence of record which was before the Office at the time of its final decision, the Board cannot consider appellant's newly submitted evidence. 20 C.F.R. § 501.2(c).

² 20 C.F.R. § 10.121(a); *Clement Jay After Buffalo*, 45 ECAB 707, 715 (1994).

³ *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁵ See *Robert H. St. Onge*, *supra* note 3.

⁶ As previously noted, Dr. James diagnosed appellant's current condition as lumbar spondylosis and chronic left hip girdle pain.

The May 28, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
May 7, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member