

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS J. DIAZ and U.S. POSTAL SERVICE,
POST OFFICE, Providence, RI

*Docket No. 97-2849; Submitted on the Record;
Issued January 10, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability as of December 22, 1995 causally related to his accepted June 5, 1991 lower back injury.

On June 5, 1991 appellant, a 35-year-old letter carrier, injured his lower back while lifting trays of mail; he filed a claim for benefits on the date of injury. In form reports dated June 6, 10 and 18, 1991, Dr. Robert L. Gianforcaro, an osteopath and appellant's treating physician, indicated that appellant had an acute lumbosacral strain back causally related to the June 5, 1991 employment injury, advised that he was totally disabled through June 17, 1991, and opined that he would be able to return to limited duty by June 24, 1991. The Office of Workers' Compensation Programs accepted appellant's claim for low back strain by letter dated June 28, 1991.

In a treatment note dated June 27, 1991, Dr. Gianforcaro indicated appellant would be unable to work due to a herniated disc until July 9, 1991. Dr. Gianforcaro stated in a report dated August 16, 1991 that appellant had related back complaints consistent with a computerized axial tomography (CAT) scan of his lumbosacral spine, which showed a disc bulging of L4-5 and a small right lateral disc herniation. Based on his findings on examination, the CAT scan results and his subjective symptoms, Dr. Gianforcaro recommended that appellant remain out of work for a sustained period of time.

On February 5, 1992 appellant filed a CA-2 claim for recurrence of disability, alleging that on November 6, 1991 he experienced an exacerbation of his lower back pain, which was causally related to the June 5, 1991 employment injury. The Office accepted this claim for recurrence of low back strain by letter dated February 25, 1992. During the next three and one-half years, appellant intermittently went off work for brief periods and filed claims due to residuals from his back condition, for which the Office paid appropriate compensation. He began working on limited duty on May 29, 1993.

On March 12, 1996 appellant filed a CA-2 claim for recurrence of disability, alleging that on December 22, 1995 he experienced an exacerbation of his lower back pain which was caused or aggravated by the June 5, 1991 employment injury. Appellant indicated that he stopped working on December 22, 1995.

Appellant subsequently submitted a March 18, 1996 report from Dr. Gianforcaro, his treating physician, in which he stated:

“[Appellant] sustained a work-related back injury in 1991 when he was found to have degenerative disc disease and herniated disc at L4-5. He was treated conservatively and returned to work with restrictions. Since that time there have been episodes of reoccurrences of his symptoms due to mechanical overuse and his conservative treatment has continued. He is followed on a routine basis.

“After an episode of pain in December 1995, he was found to have further herniation of the L4-5 disc. A neurological evaluation was done which confirmed the above and demonstrated a radiculopathy. He was referred to neurosurgery for intervention....

“[Appellant’s] current symptoms and herniation [are] an exacerbation of a previous work injury for which he has been routinely followed since 1991. He should undergo further testing ... as requested that will allow the neurosurgeon to further delineate the extent of the impingement of the nerve and then proceed with definitive treatment.”

In a report dated May 10, 1996, Dr. Gianforcaro stated:

“In my opinion there is a direct relationship between the initial injury of 1991 and the subsequent herniation of L4-5 found on [the] MRI [magnetic resonance imaging] [scan] [on] December 30, 1995. The initial findings on CAT scan in 1991 of a bulging disc and possible lateral herniation was consistent with the clinical findings and this was supported by an independent examination by neurology....

“The current herniated disc is not related to his degenerative disc disease because there is no significant difference or progression in the other lumbar discs when comparing the CAT of 1991 and the MRI of 1995. The bulging partially, herniated disc noted in 1991 has progressed to a fully ruptured disc with clinical symptoms, as is often the case. The current herniated disc is causally related to the previous injury.”

In a report dated February 1, 1996, Dr. Henry E. Laurelli, a Board-certified neurosurgeon, related a history of injury from appellant in which he indicated that he had experienced an abrupt onset of right leg pain, numbness, tingling and weakness which occurred after sneezing. Appellant also submitted a form report dated December 22, 1995, which indicated that on December 20, 1995 he had sneezed and developed severe pain into his right

leg, and rendering him unable to stand. The report indicated an initial impression of a herniated nucleus pulposus at L4-5.

By decision dated September 26, 1996, the Office denied the recurrence of disability claim, finding that appellant failed to submit evidence sufficient to establish that the claimed recurrence of disability was caused or aggravated by the June 5, 1991 employment injury.

By letter dated October 10, 1996, appellant's attorney requested an oral hearing, which was held on April 2, 1997. Appellant testified that the recurrence of his back disability occurred on December 20, 1995, when he sneezed while walking to his car. He stated that after sneezing he experienced a sharp pain in his back, which caused him to fall to his knees. Subsequent to the hearing, appellant submitted several reports from Dr. William J. Golini, Board-certified in psychiatry and neurology, in which Dr. Golini noted appellant's complaints of back pain and stated findings on examination. In a report dated March 1, 1996, Dr. Golini indicated that the results of an MRI indicated a large L4-5 herniated disc. Appellant also submitted an April 24, 1997 report from Dr. Laurelli, who noted appellant's complaints of back pain and numbness of the right lower extremity.

In a deposition dated May 7, 1997, Dr. Gianforcaro testified that he examined appellant immediately after the alleged recurrence on December 20, 1995 and appellant related that he had sneezed and experienced a sudden onset of back pain radiating into his right leg, in addition to numbness in his right leg. Dr. Gianforcaro stated that he referred appellant for an MRI on December 30, 1995, the results of which indicated a herniated disc at L4-5. He stated:

“[Appellant] had a previous bulging disc at the same level that was determined in 1991. Through the years he had continued to be symptomatic from that bulging disc and the subsequent low back problems. In my opinion this herniated disc is related to that bulging disc. It was just the event of sneezing that caused it to rupture completely.”

Dr. Gianforcaro further stated that between 1991 and 1995 he examined appellant approximately 30 times, and that during that entire time there was never an extended period in which appellant was free of back complaints or symptoms. He testified that he considered the December 20, 1995 sneezing incident a recurrence of the June 5, 1991 employment injury based on reasonable degree of medical certainty, and then stated the basis of this opinion:

“In 1991 [appellant] sustained an injury to that disc level that was correlated with findings on MRI, as well as nerve conduction velocities by the neurologist showing radiculopathy. He remained symptomatic throughout the time period from 1991 to 1995, being treated frequently, almost on a monthly basis, for low back pain, and the events that occurred in 1995 are consistent with activities that would worsen a partially ruptured disc to a fully ruptured disc.”

Dr. Gianforcaro added that he considered the bulge appellant sustained in the 1991 work injury to be a partially ruptured disc.

In a decision dated May 30, 1997, an Office hearing representative affirmed the September 26, 1996 decision, finding that the evidence submitted was not sufficient to warrant modification.¹

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

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury, and who supports that conclusion with sound medical reasoning.²

In the present case, appellant filed a claim based on an employment-related low back injury on June 5, 1991, which was initially accepted by the Office for low back strain and subsequently for recurrence of low back strain in February 1992. Appellant was treated by Dr. Gianforcaro and returned to work in another position on May 29, 1993. The record indicates that appellant remained under treatment by Dr. Gianforcaro and was able to continue in his limited-duty job until December 20, 1995, when his sneeze triggered an alleged recurrence of his low back condition, following which he stopped work on December 22, 1995 and has claimed disability.

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 which is attributable to the employee's own intentional conduct.³ In discussing how far the range of compensable consequences is carried, once the primary injury is causally connected with the employment, Professor Larson states:

“When the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of ‘direct and natural results’ and of claimant’s own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the

¹ In the September 26, 1996 Office decision, the Office noted that, although appellant stated in his Form CA-2a, dated March 12, 1996, that his recurrence allegedly occurred on December 22, 1996, the history he gave to treating physicians indicated that the alleged recurrence of low back pain was triggered by a sneezing episode at home on December 20, 1995. In the Office’s May 30, 1997 decision, however, the Office apparently accepted the fact that appellant’s sneezing episode occurred at home on December 20, 1995, and that two days later appellant appeared at work on December 22, 1995, at which time he was allegedly unable to perform his regular job.

² *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

³ Larson, *The Law of Workers’ Compensation* § 13.00.

original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.”⁴

Thus, it is accepted that once the work-connected character of any condition is 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.”⁵

Compensability under the Federal Employees’ Compensation Act continues so long as the disability is in any part caused by the employment-related injury.⁶ In the instant case, the facts are clearly distinguishable from two other cases in which the Board found that an intervening independent cause occurred and resulted in a break in the chain of causation. In both *John R. Knox*⁷ and *Clement Jay After Buffalo*,⁸ the employees filed a claim after sustaining left knee injuries in the performance of duty. In both cases, the employees reinjured their left knees while playing basketball. The Board held that given the circumstances of the cases, disability was not the natural result of the accepted employment injuries. The Board held there was an intervening independent cause where there was medical evidence the employees used poor judgment by playing basketball against medical advice. The Board found that given the employees’ knowledge of their left knee conditions and given the medical advice received, playing basketball was not a reasonable activity. The Board reasoned that, as the triggering activity for the subsequent injury was itself rash in light of the employees’ knowledge of their conditions, the disability could not be deemed to have arisen out of the employment but rather was the result of an independent intervening cause attributable to the employees’ own intentional conduct. The Board therefore found that the subsequent injuries did not arise from the natural consequence or progression of the accepted employment injuries; rather, the basketball injury constituted an independent intervening cause attributable to the employees’ own intentional conduct.

The facts of the present case are clearly distinguishable. Appellant has submitted probative medical evidence, which is unrefuted, indicating that his disability commencing December 22, 1995 was the direct and natural result of his employment-related lower back condition, and that he still suffered residual pain from his June 5, 1991 employment injury. The reports and deposition of Dr. Gianforcaro indicate that appellant’s alleged recurrence of his accepted, employment-related low back condition resulted from a sneezing episode on December 20, 1995, which occurred when appellant was not engaged in any unreasonable activity contrary to medical advice. Unlike the fact patterns in *Knox* and *After Buffalo*, therefore, appellant’s injury was not the result of an independent intervening cause attributable to his own intentional conduct. Instead, the medical evidence submitted by appellant indicates that the December 20, 1995 injury arose from the natural consequences or progression of his

⁴ *Id.* at § 13.11.

⁵ *Id.* at § 13.11(a); *see also* *Stuart K. Stanton*, 40 ECAB 859 (1989); *Robert R. Harrison*, 14 ECAB 29 (1962).

⁶ *See* *Charlet Garrett Smith*, 47 ECAB 562 (1996); *Charles R. Hollowell*, 8 ECAB 352 (1955).

⁷ 42 ECAB 193 (1990).

⁸ 45 ECAB 707 (1993).

employment injury. Dr. Gianforcaro's medical reports addressed appellant's progression from partial disability to total disability for work due to residuals of his accepted employment-related injury.⁹ Dr. Gianforcaro stated in his March 18, 1996 report that appellant's current symptoms and disc herniation constituted an exacerbation of a previous work injury for which he had been routinely followed since 1991. In his May 10, 1996 report, Dr. Gianforcaro opined that there was a direct relationship between the initial injury of June 1991 and the subsequent disc herniation of L4-5 as reflected by the December 30, 1995 MRI. He noted that the initial findings as shown by the CAT scan in 1991 of a bulging disc and possible lateral herniation were consistent with clinical findings and supported by an independent neurological examination, and advised that the bulging partially herniated disc noted in 1991 had progressed to a fully ruptured or herniated disc, which was due to the accepted employment injury. In his May 7, 1997 deposition, Dr. Gianforcaro stated that appellant remained symptomatic from the bulging disc initially noted in 1991, which was the cause of his subsequent low back problems, and for which he received frequent treatment on an almost monthly basis. He testified that the herniated disc detected by the MRI in 1995 was related to that bulging disc, and that the incident of sneezing in 1995 was sufficient to worsen a partially ruptured disc to the extent that it became fully ruptured.

The Board finds that the evidence submitted by appellant, which contains a history of the development of the condition and a medical opinion that the condition found was consistent with the history of development, given the absence of any opposing medical evidence, is sufficient to require further development of the record.¹⁰ Although the medical evidence submitted by appellant is not sufficient to meet his burden of proof, the medical evidence of record raises an uncontroverted inference of causal relationship between appellant's June 5, 1991 work injury and his alleged December 22, 1995 recurrence of disability. For this reason, the Board will set aside the May 30, 1997 decision of the Office. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

⁹ Compare *Sandra Dixon-Mills* 44 ECAB 882 (1993), in which appellant failed to submit medical evidence which discussed or explained how the alleged, subsequent recurrence constituted a natural progression from the original, accepted employment injury, and did not submit any reports providing a medical rationale to relate the condition after the alleged recurrence to the accepted injury.

¹⁰ *John J. Carlone*, 41 ECAB 354 (1989).

The September 26, 1996 and May 30, 1997 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.
January 10, 2000

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member