

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of THEODORE G. FOREMAN and DEPARTMENT OF THE AIR FORCE,  
ALABAMA AIR NATIONAL GUARD, St. Augustine, FL

*Docket No. 98-2188; Submitted on the Record;  
Issued September 12, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing a recurrence of disability on March 14, 1996 causally related to his October 22, 1990 employment injury.

The Board has duly reviewed the case on appeal and finds that the case is not in posture for decision due to a conflict of medical opinion.

Appellant, an electric integrated systems mechanic foreman, filed a claim on October 30, 1990 alleging that he was injured in a motor vehicle accident in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for fractured right ribs and fractured pelvis. The Office expanded appellant's claim to include degenerative disc disease L4-5. The Office entered appellant on the periodic rolls and on September 22, 1995 appellant accepted the light-duty position of personnel clerk, effective October 1, 1995. By decision dated November 28, 1995, the Office reduced appellant's compensation to reflect his wage-earning capacity as a personnel clerk. On March 14, 1996 appellant filed a notice of recurrence of disability alleging on that date he sustained a recurrence of disability causally related to his October 30, 1990 employment injury. The Office requested additional information by letter dated July 19, 1996. By decision dated August 20, 1996, the Office denied appellant's claim for disability causally related to his October 22, 1990 employment injury. Appellant requested reconsideration on February 24, 1997 and by decision dated May 16, 1997, the Office denied modification of its prior decision. Appellant again requested reconsideration on March 25 and April 2, 1998 and by decision dated May 4, 1998, the Office denied modification of its August 20, 1996 decision.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establish that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show a

change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.<sup>1</sup>

In this case, appellant returned to light duty on October 1, 1995. He claimed recurrence of total disability on March 14, 1996. Appellant has not submitted any evidence that the nature and extent of his light-duty work changed. He has submitted medical evidence regarding, whether the nature and extent of his injury-related condition had changed.

In a note dated March 14, 1996, Dr. Thomas M. Goodman, a Board-certified family practitioner and appellant's attending physician, stated that appellant had hip pain. He noted that, appellant reported that he was unable to sit on his right side due to pain down his leg. Dr. Goodman diagnosed, "right sciatic, worse today than usual with neurological deficit." He also completed a duty status report and diagnosed chronic sciatica. Dr. Goodman indicated that appellant was totally disabled. He completed a form report on April 9, 1996 and diagnosed chronic sciatica secondary to motor vehicle accident on October 22, 1990. Dr. Goodman indicated with a checkmark "yes" that appellant's condition was caused or aggravated by employment and stated, "sitting aggravated condition."

In a report dated February 14, 1997, Dr. Goodman noted appellant's history of injury and stated that appellant's symptoms of back pain had increased after his return to work as a personnel clerk. He stated that appellant's prolonged sitting prompted the symptoms. Dr. Goodman stated that the cause of appellant's chronic pain was degenerative joint disease and herniated disc. He attributed appellant's chronic pain to his accepted employment injury as well as prolonged sitting. On November 11, 1997 Dr. Goodman noted appellant's history of injury and stated that he had reviewed medical records. He stated, "it is my professional opinion that [appellant's] recurrent and chronic back pain is a direct result of his October 1990 motor vehicle accident. It is the only reasonable assumption that can be reached by me upon review of all submitted medical reports." In these reports, Dr. Goodman indicates that appellant sustained an increase in pain following his return to work and that he attributed this increase to the light-duty job requirements as well as appellant's accepted employment injuries. He opined in his later report that appellant's back pain was due to his accepted employment injury. Dr. Goodman attributed appellant's current condition to his employment.

Dr. Jon H. Widener, a Board-certified orthopedic surgeon and Office referral physician, completed a report on March 19, 1996. He noted appellant's history of injury and provided a physical evaluation. Dr. Widener stated that there were no objective findings on examination. He reviewed x-rays and computerized tomography scan, which demonstrated nonspecific degenerative changes involving the lower lumbar spine and sacroiliac joints. Dr. Widener diagnosed idiopathic osteoarthritis (degenerative) of the lower lumbar spine and sacroiliac joints. He stated:

"There is no objective evidence of a proximate connection between present complaints and the motor vehicle accident of October 22, 1990. There were no objective physical findings on physical examination. The question comes up as to whether or not the osteoarthritic findings are objective and most experts would say that indications of degenerative phenomenon of the low back and pelvis are

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<sup>1</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

nonspecific in that they tend not to correlate clinically (that is people with advance radiographic degenerative and arthritic changes in the SI joints may not hurt and others may hurt who have no changes whatsoever). Important in our rationale here is the observation that the degenerative and arthritic changes in the SI joints perfectly symmetrical, *i.e.*, the same when comparing the right with the left suggest that the process is idiopathic rather than trauma related. There is no known aggravation here as there was no known preexisting condition to be aggravated by the injury.”

Dr. Widener opined that there were no objective findings supporting appellant’s current disability and that, therefore, his current condition was not causally related to his employment.

Section 8123(a) of the Federal Employees’ Compensation Act,<sup>2</sup> provides, “if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.” In this case, appellant’s attending physician, Dr. Goodman, opined that appellant’s current condition was due to his employment. The Office second opinion physician, Dr. Widener, indicated that appellant had no objective findings and that his current disability was not related to his employment. Due to this conflict of medical opinion evidence regarding the causal relationship between appellant’s current condition and his employment injury, on remand, the Office should refer appellant, a statement of accepted facts and a list of specific questions to a Board-certified physician, for an impartial medical evaluation. After this and such other development as the Office deems necessary the Office should issue a new decision.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193, 8123(a).

The May 4, 1998 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for further development consistent with this opinion.

Dated, Washington, DC  
September 12, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member