

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM VACANTI and DEPARTMENT OF THE NAVY, MARINE
CORPS AIR-GROUND COMBAT CENTER, Twentynine Palms, CA

*Docket No. 99-1933; Submitted on the Record;
Issued September 21, 2000*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has met his burden of proof in establishing that he had a recurrence of disability beginning March 24, 1998 causally related to his June 23, 1997 employment injury.

On June 23, 1997 appellant, then a 50-year-old utilities systems operator, was lifting a cylinder of chlorine down one step when he developed severe low back pain. He stopped working that day. The Office of Workers' Compensation Programs accepted appellant's claim for radiculitis. He returned to light-duty work on July 7, 1997 but stopped working for intermittent periods on the instructions of his treating physician. The Office paid compensation for some periods in which appellant used leave without pay.

On March 24, 1998 appellant was climbing a ladder to check water tank levels when he developed lower back pain. He filed a claim for compensation, which was denied in a May 18, 1998 decision, on the grounds that he had not established that he sustained a new injury on that date. The Office began to develop the record to determine whether appellant had a recurrence of disability due to the June 23, 1997 employment injury. In a June 29, 1998 decision, the Office terminated compensation benefits and rejected appellant's claim for recurrence of disability on the grounds that the weight of the medical evidence showed he no longer suffered residuals of his employment injury. Appellant requested a hearing before an Office hearing representative, which was conducted on November 16, 1998. In a January 19, 1999 decision, finalized January 20, 1999, the Office hearing representative found that none of the medical evidence of record related appellant's March 24, 1998 work stoppage to his June 23, 1997 employment injury. He, therefore, affirmed the Office's June 29, 1998 decision denying appellant's claim for recurrence of disability. In an April 29, 1999 letter, appellant requested reconsideration. In a May 21, 1999 merit decision, the Office denied appellant's request for modification of the Office's prior decisions.

The Board finds that appellant has not met his burden of proof in establishing that he had a recurrence of disability beginning March 24, 1998 causally related to his June 23, 1997 employment injury.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which he seeks compensation was causally related to his employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.¹

Dr. Rui A. Da Silva, an orthopedic surgeon, initially diagnosed radiculitis. In a December 1, 1997 report, Dr. James L. Amster, a Board-certified radiologist, indicated that a magnetic resonance imaging (MRI) scan showed broad-based disc protrusions at L4-5 and L5-S1, which appeared to about but not compress the nerve roots. Dr. Amster indicated appellant had minimal left neural foraminal stenosis at L5-S1 due to degenerative facet hypertrophic changes but no evidence of central canal stenosis at L4-5.

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Fredrick J. Lieb, a Board-certified orthopedic surgeon, for an examination and second opinion on the relationship of appellant's current condition to his employment injury and the extent of his work restrictions. In an April 30, 1998 report Dr. Lieb diagnosed a resolved muscular strain of the lower back, preexisting, nonindustrial degenerative disc disease of the lumbosacral spine and lumbar radiculitis by history. Regarding the low back strain, the doctor opined that it had resolved without residuals. He stated that there were no truly objective findings in his examination of appellant but noted that appellant demonstrated some nonorganic findings suggestive of symptom magnification. Dr. Lieb commented that appellant may have experienced a temporary aggravation of his preexisting degenerative disc disease at the time of the June 23, 1997 employment injury. However, he found no evidence of permanent residuals of the employment injury. Dr. Lieb indicated that there was no evidence of purely objective findings of a permanent aggravation of the preexisting condition. He stated that appellant was fully capable of performing the duties of his date-of-injury position.

Appellant, through his attorney, subsequently submitted reports from Dr. Satish K. Lal, a Board-certified orthopedic surgeon. In a March 30, 1998 report, Dr. Lal gave a history of appellant's June 23, 1997 employment injury and the March 24, 1998 incident. He diagnosed degenerative disc disease, possible lumbar sprain and possible herniated discs at L4-5 and L5-S1. In an April 17, 1998 report, Dr. Lal stated that appellant had severe lower back pain radiating down the right leg. He commented that, in view of appellant's persistent symptoms and MRI findings, he had discussed decompressive laminectomy and posterior spinal fusion with appellant. In a March 5, 1999 report, Dr. Lal stated that appellant was complaining of worsening pain in his lower back and right leg along the L5-S1 nerve root distribution. He commented that appellant had no history of disability or complaints of back pain prior to June 23, 1997. Dr. Lal indicated that all of appellant's symptoms relating to his back and right leg started after the June 23, 1997 employment injury. He noted that appellant had objective findings at the L4-5 and L5-S1 of disc degeneration, facet joint arthritis and acquired spinal stenosis. Dr. Lal stated that, even though the degenerative disc disease condition might have existed prior to the employment injury, appellant was working full time and was never disabled because of preexisting degenerative disc disease.

¹ *Dominic M. DeScala*, 37 ECAB 369 (1986).

Dr. Lieb concluded that appellant's condition was due solely to his preexisting degenerative disc disease and commented that the June 23, 1997 employment injury caused only a temporary aggravation of the preexisting, underlying condition and low back strain which had resolved without residuals. He stated that appellant was able to return to work. Dr. Lal stated that appellant's condition was due to the June 23, 1997 employment injury. His only rationale, however, was that appellant had no symptoms of a back condition prior to the June 23, 1997 employment injury but had severe symptoms after that time. The Board has held, however, that the mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.² Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions, which are alleged to have caused or exacerbated a disability.³ Dr. Lal has not provided any medical rationale to the physiological process by which the employment injury would have aggravated appellant's preexisting condition to the extent that he would be disabled after March 24, 1998 due to the June 23, 1997 employment injury. Dr. Lal's reports, therefore, fail to establish that appellant had a recurrence of disability beginning March 24, 1998 causally related to the June 23, 1997 employment injury.

The decisions of the Office of Workers' Compensation Programs, dated May 21, 1999 and dated January 19, 1999, finalized January 20, 1999 and dated June 29, 1998, are hereby affirmed.

Dated, Washington, DC
September 21, 2000

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

² *Juanita Rogers*, 34 ECAB 544, 546 (1983).

³ *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).