

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLEVELAND THOMAS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Albany, NY

*Docket No. 01-635; Submitted on the Record;
Issued November 8, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on May 5, 2000 causally related to the January 11, 1993 employment injury.

The Office of Workers' Compensation Programs accepted appellant's claim for subluxation at C5-6 on January 11, 1993 during his federal employment. The case is on appeal to the Board for the second time.¹ In the first appeal, the Board affirmed the Office's February 20, 1996 decision, in which the Office found that appellant did not submit rationalized medical evidence establishing that he sustained a recurrence of disability on May 18, 1993 causally related to the January 11, 1993 employment injury.

On June 16, 2000 appellant filed a recurrence of disability alleging that on May 5, 2000 he sustained a recurrence of disability causally related to the January 11, 1993 employment injury.

By letter dated August 24, 2000, the Office informed appellant that he must submit additional evidence showing that there was a change in the nature and extent of his injury-related condition or a change in the nature and extent of the light-duty requirements.

By letter dated September 18, 2000, a program specialist from the employing establishment stated that appellant went on disability retirement effective October 27, 1994 and the employing establishment had employed him as a housekeeping aid. She attached a description of the job.

In a report dated May 24, 2000, appellant's treating physician, Dr. Barton L. Sachs, a Board-certified orthopedic surgeon, stated that he had not seen appellant since December 1998 and that appellant had not been treated for pain management. Dr. Sachs performed a physical

¹ Docket No. 96-1807 (issued May 11, 1998). The facts and history surrounding the prior appeal are set forth in a prior decision and are hereby incorporated by reference.

examination and reviewed x-rays, which showed motion between flexion and extension between L5-S1 and a well-healed solid fusion between L5-S1. He stated that, overall, there was no instability above more cephalad and slight excessive retrolisthesis at L4-5. Dr. Sachs diagnosed lumbar spondylo-arthropathy and recommended an epidural steroid injection and obtaining a magnetic resonance imaging (MRI) scan of the lumbar spine.

In an attending physician's report dated June 21, 2000, Dr. Sachs considered appellant's history of injury, noting "[illegible] back pain, worse in the evening and at the end of the day." He diagnosed lumbar spondylo-arthropathy, reiterated his prescription for treatment and stated that appellant was totally disabled from May 18, 1993 and continuing. Dr. Sachs checked the "yes" box that appellant's back condition was work related.

In a report dated July 24, 2000, Dr. Sachs stated that he treated appellant for a follow-up for lumbar derangement syndrome, status post previous surgery L5-S1 ventrally. He reviewed an MRI scan, which was normal and diagnosed lumbar derangement syndrome with osteoarthritis and spondylo-arthropathy. Dr. Sachs prescribed pain management and epidural steroid injections. In an attending physician's report dated August 4, 2000, Dr. Sachs described appellant's history as status post previous surgery at L5-S1 ventrally and diagnosed lumbar derangement syndrome with osteoarthritis and spondylo-arthropathy. He checked the "yes" box that appellant's back condition was work related and stated that appellant was totally disabled from May 18, 1993 to the present.

In a report dated September 6, 2000, Dr. Sachs considered appellant's history of injury, noting that appellant began having back problems in 1993 and underwent lumbar discectomy in 1995. Upon finding that appellant had a herniated disc and discogenic pain at L5-S1, appellant underwent further surgery consisting of a posterior lumbar hemi-laminectomy and partial decompression at L5-S1. He stated that appellant initially improved but then his symptoms returned and worsened. In December 1995 appellant underwent an anterior lumbar interbody implant arthrodesis and fusion with cage insertion and bone grafting followed by posterior fusion of the facet joints with internal fixation. Dr. Sachs stated that appellant initially showed some improvement but his symptoms returned and he had been treating appellant on a regular basis from 1995 through December 1998 and most recently treated him in May and July 2000.

Dr. Sachs stated that appellant was permanently impaired with moderate to significant restrictions in his activity based on significant pain component from chronic lumbar deteriorative pain and disease process. He stated that appellant "started his disability from this process in 1993, which was significantly impacted in 1995 and then again on two occasions, first with the first surgery and the second surgery" but appellant did not regain complete function after the surgeries.

On August 2, 2000 in response to the Office's request for more information, appellant submitted another claim for the May 5, 2000 recurrence of disability and stated that after the January 11, 1993 employment injury he had been on limited duty from February 8 through March 18, 1993. Appellant stated that his back condition "never got better" and "just kept getting worse." He stated that he had increased pain in his back which also went into his shoulders and legs.

In a statement dated August 28, 2000, appellant stated that he woke up on May 5, 2000 and “could not get out of bed due to pain.” He stated that the pain began down the middle of his back and down his right leg through his right knee. Appellant stated that he had surgery for the same area of his back in 1997 and 1998 and was in continuous pain since those surgeries. Appellant stated that after the January 11, 1993 employment injury, he returned to full-duty status, worked for approximately two weeks but the pain increased. He stated that he retired on May 18, 1993.

By decision dated December 7, 2000, the Office denied the claim, stating that the evidence of record failed to establish that the claimed recurrence of disability was causally related to the January 11, 1993 employment injury.

The Board finds that appellant failed to establish that he sustained a recurrence of disability on May 5, 2000 causally related to the January 11, 1993 employment injury.

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.² 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 establishes 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.³ As part of this burden, the employee must show a change in the nature and extent of the light-duty job requirements or a change in the nature and extent of the injury-related condition.⁴ This burden includes the necessity of 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 supports that conclusion with sound medical reasoning.⁵ An award of compensation may not be made on the basis of surmise, conjecture, or speculation or an appellant’s unsupported belief of causal relation.⁶

In this case, appellant did not present any medical evidence showing that the alleged recurrence occurring on May 5, 2000 was causally related to the January 11, 1993 employment injury. In his May 24 and June 21, 2000 reports, Dr. Sachs diagnosed lumbar spondyloarthropathy and stated that appellant was disabled but he did not refer to any recurrence of disability on May 5, 2000 and provided no rationalized medical explanation explaining how appellant’s back condition was causally related to the accepted condition of subluxation at C5-6. The Board has held that a medical opinion not fortified by medical rationale is of little probative

² *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

³ *George DePasquale*, 39 ECAB 295, 304; *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁴ *Id.*

⁵ *See Nicolea Bruso*, 33 ECAB 1138 (1982).

⁶ *See William S. Wright*, 45 ECAB 498, 503 (1994).

value.⁷ Similarly, in his July 24 and August 4, 2000 reports, Dr. Sachs additionally diagnosed lumbar derangement syndrome and osteoarthritis but provided no rationalized medical opinion explaining how appellant's alleged recurrence of disability on May 5, 2000 was work related. Dr. Sachs' checking the "yes" box in the attending physician's report to indicate appellant's back condition was work related is insufficient by itself to establish the requisite causation.⁸

In his September 6, 2000 report, Dr. Sachs reiterated his diagnoses, opined that appellant was permanently partially impaired and stated that appellant's disability which started in 1993 was "significantly impacted in 1995," and then again with the first and second surgeries from which appellant did not completely recover. Dr. Sachs, however, did not refer to the May 5, 2000 alleged recurrence of disability or explain how appellant's back condition was related to the subluxation at C5-6. Appellant did not show that there was a change in the nature and extent of his light-duty job requirements or a change in the nature and extent of the injury-related condition. Although the Office advised appellant of the evidence necessary to establish his claim, appellant did not submit the requisite evidence. He has, therefore, failed to establish that he sustained a recurrence of disability on May 5, 2000 causally related to the January 11, 1993 employment injury.

The December 7, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 8, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ See *Ronald C. Hand*, 49 ECAB 113 (1997).

⁸ See *Ruth S. Johnson*, 46 ECAB 237, 242 (1994).