

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FRANKLIN E. WHITSEL and DEPARTMENT OF ENERGY,  
BONNEVILLE POWER ADMINISTRATION, Vancouver, WA

*Docket No. 02-1179; Submitted on the Record;  
Issued September 16, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability causally related to his accepted work injury.

Appellant's claim, filed on January 24, 1984 after he ruptured a disc in his lower back while carrying support ties, was accepted as a recurrence of a 1982 claim for ruptured lumbar discs.<sup>1</sup>

Appellant had lumbar discectomie in December 1982 and in February 1984 as well as a fusion on May 9, 1989 and disc surgery on December 12, 1992. He participated in extensive vocational rehabilitation in the late 1980s and early 1990s and worked part-time for the employing establishment but sustained two heart attacks in 1997. Following further vocational counseling, appellant returned to work as an estimator with a private employer on May 30, 2000 under an assisted reemployment program and the Office adjusted his wage-loss compensation accordingly.

On November 15, 2000 appellant filed a notice of recurrence of disability, stating that his increasing leg and back pain made remaining on the job "very difficult." He stopped work on October 24, 2000. Appellant explained that he injured his back again on June 25, 2000 when he bent down to pick up a puppy that had been killed on the road. He first sought treatment on July 13, 2000.

On March 22, 2001 the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that his recurrence of disability was related to work factors. The Office noted that the intervening act of picking up a dead puppy on June 25, 2000 was the cause of appellant's current back condition.

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<sup>1</sup> Appellant was terminated from his temporary position on January 27, 1984.

Appellant requested reconsideration and submitted reports from Dr. Jeffrey I. Gerry, Board-certified in physical medicine and rehabilitation, and Dr. Oisin R. O'Neill, a Board-certified neurological surgeon. On June 6, 2001 the Office denied modification of its prior decision. The Office found that Dr. Gerry failed to provide medical rationale for his opinion that appellant's current back condition was work related and Dr. O'Neill stated that the June 25, 2000 nonwork injury was the precipitating incident of appellant's present disability.

The Board finds that appellant has failed to meet his burden of proof to establish that his current back condition is causally related to his accepted work injuries.

A recurrence of disability is defined as a spontaneous material change in the employment-related condition without an intervening injury.<sup>2</sup> A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he claims compensation is causally related to the accepted employment injury.<sup>3</sup> To meet this burden of proof, a claimant must furnish 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.<sup>4</sup>

Causal relationship is a medical issue<sup>5</sup> and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. This consists of a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.<sup>6</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>7</sup>

In this case, the medical reports from appellant's treating physicians are insufficient to establish that work factors or appellant's accepted work injuries caused a recurrence of disability. In a chart note dated July 13, 2000, Dr. Gerry stated that he had last seen appellant on January 5, 2000<sup>8</sup> and that he had been doing well until some increased spasms and pain in his left leg over the past four days. A week later, Dr. Gerry reported that appellant's symptoms were

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<sup>2</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997).

<sup>3</sup> *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

<sup>4</sup> *Helen K. Holt*, 50 ECAB 279, 282 (1999).

<sup>5</sup> *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

<sup>6</sup> *Duane B. Harris*, 49 ECAB 170, 173 (1997).

<sup>7</sup> *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>8</sup> In a January 5, 2000 report, Dr. Gerry stated that appellant had bent over to lift something and had an acute onset of severe pain in his left back, buttock and leg. X-rays that day showed that the "hardware" in appellant's back was intact.

“perhaps worse” with more pain in his left leg caused by almost any activity. Based on a computerized tomography (CT) scan done on August 2, 2000, Dr. Gerry diagnosed spinal stenosis at L4-5 and referred appellant for a surgical consultation.

In a September 15, 2000 report, Dr. O’Neill provided a history of appellant’s back injuries, stating that in June 2000 he lifted something at home and felt a pop in his back. Appellant noted increasing pain down both legs since that time. Following diagnostic tests, Dr. O’Neill noted a possible nonunion at L5-S1 and stenosis at L4-5, for which he recommended decompression.

On December 26, 2000 the Office asked Dr. O’Neill to opine whether the requested surgery was caused by the work-related back condition and provide medical rationale for his conclusions. Dr. Gerry responded that appellant’s low back condition produced clinical findings of decreased range of motion, with bone and CT scans showing abnormalities. He added that the surgery was secondary to appellant’s back condition from 1982 to 1989 and not to the “work injury” of June 25, 2000.

The Office requested clarification on February 7, 2001 and Dr. Gerry replied that appellant had ongoing pain since 1989 and no significant work injury on June 25, 2000. He added: “No question that problem from [19]82 [and or 19]89 is [the] primary cause of treatment at this time.” Dr. O’Neill stated in a December 12, 2000 note that he had “no idea” of the relationship of appellant’s recommended surgery with his work injuries.

Dr. O’Neill elaborated in response to an Office inquiry that appellant had had back pain on and off since the original injury in 1982 and had never been completely free of back pain. He added that the precipitating event in June 2000 was “irrelevant” and just an exacerbation of his underlying condition. Dr. O’Neill opined that the recommended surgical fusion was related to the original injury because appellant had been symptomatic ever since that initial event and the June 2000 event was not relative to his clinical condition at all.

In a chart note dated March 28, 2001, Dr. Gerry reiterated that appellant’s back and leg pain was related to his underlying back condition from 1982 and not to any work injury on June 25, 2000. He stated: “[Appellant] clearly has had ongoing back problems since 1982. I have seen him since October of 1995 and symptoms have been ongoing. This is not even a close call in my opinion. The symptoms are clearly related to his underlying back condition from his 1982 injury.”

Responding to the Office’s request for additional evidence because of the intervening June 25, 2000 incident, Dr. Gerry opined that it was “patently absurd” that the major cause of appellant’s need for treatment was this event and not his original work injury. Dr. Gerry had seen appellant in 1996, 1998, 1999 and 2000, all prior to “what was a minor exacerbation of his underlying condition in June of 2000.” He added that it was “clear-cut” that appellant’s current diagnosed condition and need for treatment were related to his original work injury.

Dr. O’Neill initially admitted that he did not know whether the condition he diagnosed was causally related to appellant’s accepted herniated discs and subsequent surgeries. He then found such a relationship but failed to explain how the stenosis shown on the diagnostic tests

resulted from herniated discs or the fusion surgery. Further, Dr. O'Neill admitted that the June 2000 event was the precipitating factor and "just an exacerbation" of appellant's underlying condition. Such an exacerbation is considered the equivalent of an injury, but this exacerbation was not work related. Therefore, if the June 2000 event precipitated appellant's subsequent symptoms, as Dr. O'Neill opined, then the resultant disability and need for surgery were not work related and therefore not compensable under the Act.

Dr. Gerry dismissed the June 25, 2000 incident as merely an exacerbation of appellant's underlying back condition but also provided no medical explanation of how appellant's diagnosed stenosis was causally related to the herniated discs accepted as work injuries. Dr. Gerry offered no rationale showing how the work injuries resulted in stenosis. Nor did he discuss how appellant's unchanged symptoms of back pain since October 1995 supported his conclusion that appellant's stenosis and "reason for treatment" were related to "his original work injury." Therefore, Dr. Gerry's reports have little probative value in meeting appellant's burden of proof.<sup>9</sup>

The medical record shows that appellant was treated for a nonspecific, nonwork injury in January 2000 but thereafter returned to work in May 2000. He was again treated following a nonwork lifting incident in June 2000 but subsequently worked until October 25, 2000. Inasmuch as a recurrence of disability is defined as the spontaneous reemergence of symptoms without intervening cause and the medical record establishes such an intervening incident on June 25, 2000 the Board finds that appellant's recurrence of disability and need for surgery are not causally related to the accepted work injuries or subsequent work factors.<sup>10</sup>

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<sup>9</sup> See *Michael E. Smith*, 50 ECAB 313, 316 (1999) (finding that appellant failed to submit a rationalized medical opinion on causal relationship).

<sup>10</sup> See *Carlos A. Marrero*, 50 ECAB 117, 119 (1998) (finding that use of an exercise machine constituted an intervening cause of appellant's disability and thus the Office properly denied appellant's recurrence of disability claim).

The June 6, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
September 16, 2002

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member