

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD A. GUNNUFSON and DEPARTMENT OF THE ARMY,
U.S. ARMY, Fort Ord, CA

*Docket No. 03-1114; Submitted on the Record;
Issued August 8, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of total disability effective July 20, 1995.

On August 27, 1992 appellant, then a 45-year-old welder was struck on the head by a 200-pound steel support beam and was knocked unconscious. The Office of Workers' Compensation Programs accepted appellant's claim for a head laceration, concussion and subluxation at C1, 2, 3, 7 and L2, 3 and L4.

Appellant returned to light-duty work on October 15, 1992 with restrictions of no lifting over 15 pounds. In a November 11, 1992 report, Dr. Jay A. Kaiser interpreted a magnetic resonance imaging (MRI) scan of appellant's lumbar spine and diagnosed spondylosis at the C5-6 level with a broad based annular bulge and associated osseous ridging causing moderate broad based impingement upon the thecal sac as well as moderate bilateral intervertebral nerve root canal stenosis, greater on the right.

On August 29, 1995 appellant filed a recurrence of total disability claim effective July 20, 1995. He indicated that he experienced a recurrence of stiffness in his neck, across his left arm and towards his fingers. Appellant indicated that since the injury he has had recurring headaches, back, shoulder and neck pain. He remained off work until September 5, 1995, when he returned to light duty.

In an August 30, 1995 report, Dr. Vincent Bozzo, a chiropractor, wrote that on July 20, 1995 appellant presented with constant moderate cervical pain radiating to his left elbow, severely restricted cervical range of motion, positive orthopedic testing and disc degeneration at C5-6 and C6-7. He also indicated that past x-rays revealed subluxation at C1, C5, C6 and C7. Dr. Bozzo diagnosed brachial neuritis radiculitis, cervical disc degeneration, cervicalgia and myalgia/myositis which he opined to be a significant recurrence of his August 27, 1992 injury.

In a November 19, 1995 report, Dr. Richard Mattson, interpreting an MRI scan of the lumbar spine found a subligamentous central disc bulge/ prolapse at C6-7 with moderate contiguous anterior sac imprint.

In a January 15, 1996 report, Dr. Robert G. Aptekar, an orthopedic surgeon and Office referral physician, wrote that appellant presented with full cervical flexion, extension to 30 degrees, right and left, lateral flexion was 10 degrees, right and left lateral rotation was 45 degrees. He found a full range of motion of both shoulders, elbows, wrists and hands and normal reflexes at the biceps, triceps and radius. X-rays of the cervical spine revealed narrowing of the disc space, vertebral body irregularity and osteophyte formation. Dr. Aptekar diagnosed cervical spondylosis and cervical radiculopathy secondary to injury of August 27, 1992. He added that this injury became permanent and stationary as of November 1992, when appellant stopped receiving chiropractic treatments, noting that appellant had no significant treatments between November 1992 and July 1995. Dr. Aptekar opined that appellant's current problems were unrelated to the accident of August 27, 1992 and found no injury-related factors of disability. Appellant's subjective complaints related to the cervical spondylotic condition and not the August 27, 1992 injury.

In a January 3, 1996 report, Dr. Bozzo wrote that appellant's complaints of pain were consistent with a cervical degenerative disc which probably resulted from the August 1992 injury. He indicated that appellant's past medical history included a lumbar sprain in 1990. Dr. Bozzo further found that appellant responded well to chiropractic treatments but was left with some residual discomfort and that over the next few years his condition would continue to deteriorate as disc injuries commonly do.

In a May 13, 1996 decision, the Office denied appellant's recurrence of disability claim finding the medical evidence insufficient. The Office indicated that appellant lacked medical evidence bridging the period between 1992 and 1995 and that his subluxation was at a different location than in 1992.

On June 7, 1996 appellant requested an oral hearing. In a November 29, 1996 decision, an Office hearing representative, after reviewing the record, determined that there was a conflict in the medical evidence as to whether appellant continued to have residuals of the employment injury. The case was remanded for referral to an impartial medical specialist. The record indicates that the case was never referred to an impartial medical specialist.

On October 21, 1997 appellant, who was working light duty at the time, was sent home from work after being told there was no more light-duty work for him to perform. In a November 26, 1997 report, Dr. Ronald Fisher, a radiologist, wrote that x-rays revealed chronic degenerative disc arthropathy at C5-6.

In a March 3, 1998 report, Dr. Dale Helman, a neurologist, wrote that he had been treating appellant for severe neck pain, numbness and tingling in his arms and stiffness in his muscles around his neck. He indicated that appellant was disabled from certain activities due to damage in his lower portion of his cervical spine which was shown by an electromyogram (EMG) study and an MRI scan that revealed degenerative changes. Dr. Helman restricted appellant to lifting no more than 15 pounds. In an April 3, 1998 report, he wrote that MRI scans

and EMG tests very clearly identify that appellant has significant nerve damage and disc disease and that these conditions incapacitate him.

In a March 13, 1998 report, Dr. Bozzo reported that he has been treating appellant since August 28, 1992 for ongoing neck and low back pain associated with an August 27, 1992 injury. He further indicated that over the years following the original injury appellant's condition has worsened.

On July 26, 2001 a hearing was held. The Office hearing representative, in reviewing the history of the claim, explained that in 1996 a hearing representative determined that there was a conflict in the medical evidence and remanded the case to an impartial medical specialist. The Office subsequently determined that there was no conflict in the medical evidence. Appellant testified that he took medical retirement in 1998 and was receiving treatments from Dr. Helman since returning to work in 1992. He added that he stopped work in 1995 because the pain in his neck and arm was so severe he could not grab anything and the weight of his helmet was too much for his neck.

In an October 19, 2001 decision, the hearing representative denied appellant's recurrence of disability claim finding that he had not met his burden of proof to establish a recurrence of disability as of July 20, 1995.

In an October 3, 2002 letter, appellant requested reconsideration through his representative. On October 8, 2002 he filed two recurrence claims, one effective August 16, 1995 and the other effective October 21, 1997.¹ In an October 24, 2002 letter, the Office requested more information.

In a November 11, 2002 report, Dr. Helman reported that he had been treating appellant regularly since 1997² and he had complaints of neck pain the entire time. He indicated that there was objective evidence, including an MRI scan, that showed appellant suffered from herniated disc syndrome with nerve root impingement at C6, 7 and 8. Dr. Helman diagnosed cervical radiculopathy and opined that appellant sustained a recurrence of total disability due to his 1992 injury. He causally related appellant's current condition to the 1992 accepted injury because appellant did not have neck and arm pain prior to the incident but did subsequently.

In a December 27, 2002 decision, the Office denied modification finding that the weight of the medical evidence rested with Dr. Aptekar the second opinion referral finding that the reports of Dr. Helman did not establish that appellant's degenerative disc syndrome was causally related to the accepted injury.

The Board finds that appellant has not met his burden of proof to establish that he sustained a recurrence of total disability effective July 20, 1995.

¹ The August 16, 1995 recurrence claim appears to be for the same medical condition as the recurrence claim he filed on August 25, 1995; in both claims appellant returned to work on September 5, 1995. There is no indication from the record that the Office adjudicated the 1997 recurrence claim.

² The record shows that Dr. Helman first treated appellant on September 28, 1992.

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.³ 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 rationale.⁴ Where no such rationale is present, the medical evidence is of diminished probative value.⁵

In the present case, appellant testified that his pain never entirely went away and gradually worsened to the point that he could no longer grab objects or hold his head up due to the weight of helmet causing him to stop work on July 20, 1995. In support of his claim, appellant submitted an January 3, 1996 report from Dr. Bozzo, a chiropractor, who wrote that, on July 20, 1995, appellant presented with constant moderate cervical pain radiating to his left elbow, severely restricted cervical range of motion, positive orthopedic testing and disc degeneration at C5-6 and C6-7. He also indicated that x rays taken August 28, 1995 revealed subluxation at C1, C5, C6 and C7. The Office had accepted subluxations at C1, 3, 7 and L2-4. Dr. Bozzo was a physician under the Act as there were subluxations at C1, 5, 6 and 7 as demonstrated by x-ray.⁶ However, Dr. Bozzo diagnosed brachial neuritis radiculitis, cervical disc degeneration, cervicgia and mylagia/myositis, which he opined to be a significant recurrence of appellant's August 27, 1992 injury. As a chiropractor his opinion on the causal relationship between appellant's conditions of degenerative disc disease and brachial neuritis, among other conditions, is of diminished probative value as a chiropractor is limited to treatment consisting of manuel manipulation of the spine to correct a subluxation.⁷ Dr. Bozzo did not explain how appellant's current condition was causally related; a critical issue as appellant had gone nearly three years without any medical treatment prior to the alleged recurrence.

Dr. Helman's reports, while generally supportive that appellant has degenerative disc disease and other back conditions, do not explain with sufficient rationale why these conditions are causally related to the accepted 1992 injury. In his March 3, 1998 report, Dr. Helman does not discuss causal relationship and, in his April 3, 1998, report he simply attributed appellant's condition to the accepted injury. In his November 11, 2001 report, Dr. Helman causally related appellant's condition to his accepted injury because appellant did not have neck and arm pain prior to the injury and he does now. However, the Board has held that the mere fact that a disease manifests itself during a period of employment does not raise the inference that there is a causal relationship between the two.⁸

³ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

⁴ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁵ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁶ 20 C.F.R. § 10.400(e); *see also Bruce Chameroy*, 42 ECAB 121, 126 (1990).

⁷ 5 U.S.C. § 8101(2); *see Thomas R. Horsfall*, 48 ECAB 180 (1996).

⁸ *Ernest St. Pierre* 51 ECAB 623 (2000).

In a January 15, 1996 report, Dr. Aptekar, an orthopedic surgeon and Office referral, diagnosed cervical spondylosis and cervical radiculopathy secondary to the injury of August 27, 1992. He added that this injury became permanent and stationary as of November 1992, when appellant stopped receiving chiropractic treatments, noting that appellant had no significant treatments between November 1992 and July 1995. Dr. Aptekar opined that appellant's current problems were unrelated to the accident of August 27, 1992 and found no injury-related disability. He related appellant's subjective complaints to the cervical spondylotic condition and not the August 27, 1992 injury.

The Board has carefully reviewed the opinion of Dr. Aptekar and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. His opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, and accurately summarized the relevant medical evidence. Moreover, Dr. Aptekar provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant's condition which comported with this analysis.⁹ He provided medical rationale for his opinion by explaining that appellant's injury became stationary in November 1992 when appellant stopped receiving chiropractic treatments and that his current condition is related to the nonindustrial cervical spondylotic condition.

The Board finds that the Office properly gave the weight of the medical evidence to Dr. Aptekar.

⁹ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

The decisions of the Office of Workers' Compensation Programs dated December 27, 2002 and October 19, 2001 are affirmed.

Dated, Washington, DC
August 8, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member