

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEONARD L. PALMER and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Knoxville, IA

*Docket No. 03-1782; Submitted on the Record;
Issued November 20, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a recurrence of his accepted condition causally related to his employment injury of September 6, 1994.

On September 12, 1994 appellant, then a 45-year-old certified nursing assistant filed a notice of traumatic injury and claim for continuation of pay/compensation alleging that, on September 6, 1994, while turning a patient, he sustained a slipped vertebrae and pinched nerve. Appellant's claim was accepted for cervical and thoracic strain, aggravation of herniated disc at C5-6 and herniated disc L5-S1. Appellant returned to work on May 15, 1995 with lifting restrictions. However, in his position, appellant still had to do considerable walking, bending, stooping and pushing as well as frequent lifting of patients. Appellant commenced disability retirement on or about August 1, 2001.

On April 11, 2003 appellant filed a claim for recurrence. Appellant listed the date of recurrence as "ongoing" and noted that he was on disability retirement. By letter dated May 1, 2003, the Office of Workers' Compensation Programs requested that appellant submit further information. In response thereto, appellant submitted medical reports by Dr. Debra A. Benjamin, a neurologist, dated from March 30, 2001 to March 27, 2003. Dr. Benjamin noted that appellant had chronic pain syndrome, cervical degenerative disease, status post disc herniations, lumbar degenerative disease, lumbar spondylosis, lumbar radiculopathy, idiopathic tremors, "history of TIAs" and status post carotid endarterectomy.

By decision dated June 12, 2003, the Office denied appellant's claim for recurrence, as the factual and medical evidence provided did not establish that the claimed recurrence resulted from the accepted work injury.

The Board finds that appellant has not established that he sustained a recurrence of disability due to his September 6, 1994 work-related injury.

When an employee claims a recurrence of disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed recurrence of disability is causally related to the accepted injury. As part of this burden, appellant 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 and supports that conclusion with sound medical reasoning.¹ An award of compensation may not be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causation.²

Office procedures regarding a claimed recurrence of a medical condition explain that, while the claimant is responsible for submitting an attending physician's report which contains a description of the objective findings and supports causal relationship between the claimant's current condition and the accepted condition, the claims examiner must evaluate the medical evidence in terms of any intervening injuries or newly acquired medical conditions as described on Form CA-2a. If the information provided with the Form CA-2a is not sufficient to obtain a clear picture of the employee's activities and health during the period since release from medical care, the claims examiner should request clarification or additional information as indicated.³

In the instant case, in support of his claim for recurrence, appellant submitted reports wherein Dr. Benjamin indicated that, from March 30, 2001 through March 27, 2003, appellant suffered from, *inter alia*, chronic pain syndrome, cervical degenerative disease, lumbar degenerative disease, lumbar spondylosis and lumbar radiculopathy. However, Dr. Benjamin did not relate these conditions to appellant's work-related injury of September 6, 1994. This is especially significant when one considers the apparent six-year gap in appellant's medical treatment. Accordingly, as there is no medical evidence that these conditions are causally related to appellant's employment, appellant has failed to meet his burden of proof and the Office properly denied appellant's claim for recurrence of medical benefits.

¹ *Alfredo Rodriquez*, 47 ECAB 437, 441 (1996).

² *Id.*

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (January 1995).

The decision of the Office of Workers' Compensation Programs dated June 12, 2003 is hereby affirmed.

Dated, Washington, DC
November 20, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member