

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD P. BINDER and DEPARTMENT OF THE ARMY,
SENECA ARMY DEPOT, Romulus, N.Y.

*Docket No. 96-1747; Submitted on the Record;
Issued July 24, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant sustained a recurrence of disability on June 20, 1995 causally related to his August 9, 1988 employment injury.

In this case, the Office of Workers' Compensation Programs has accepted that on August 9, 1988 appellant, then a 39-year-old automotive mechanic, sustained a "mild back injury" and an aggravation of a preexisting arthritic condition while carrying a stretcher during a disaster drill and that the arthritis aggravation ceased as of October 3, 1988. Appellant returned to full duty on October 3, 1988. The Office subsequently accepted that appellant sustained a recurrence of disability in January 1992.

In a report dated July 13, 1992, Dr. Olaf U. Lieberg, a Board-certified orthopedic surgeon, provided findings on examination and recommended that appellant consult a neurosurgeon as he continued to have pain. He stated that appellant had a mild to moderate disability relating to his neck and back. Dr. Lieberg stated "his degenerative arthritis in his cervical spine was preexisting but [was] very likely aggravated by his job."

In a report dated August 21, 1992, Dr. Curtis N. Nelson, a Board-certified neurosurgeon, provided a history of appellant's condition and findings on examination and noted that a magnetic resonance imaging (MRI) scan of the neck showed a ruptured disc at the midline at C5-6 with more minor disc abnormalities at C4-5 and C6-7.

In a report dated September 21, 1992, Dr. Lieberg provided findings on examination and diagnosed cervical disc syndrome at C5-6 and low back pain with left sciatica, resolved, and recommended intermittent chiropractic manipulation.

In a report dated March 2, 1993, Dr. Nelson stated that appellant had a disc herniation in the neck and he prescribed chiropractic treatment.

In a report dated November 1, 1993, Dr. Christopher P. Ryan, a chiropractor, stated that appellant was being treated for subluxation at the cervical spine at C5-6. He did not indicate that the subluxation had been shown on x-rays nor did he provide copies of any x-ray reports.

On August 17, 1995 appellant submitted a claim for a recurrence of disability on June 20, 1995 which he attributed to his August 9, 1988 employment injury.

By decision dated November 29, 1995, the Office denied appellant's claim for a recurrence of disability.

By letter dated December 18, 1995, appellant requested reconsideration of the denial of his claim and submitted a report from Dr. Ryan.

In a report dated December 8, 1995, Dr. Ryan stated that appellant was being treated for subluxation of the cervical spine at C5-6. He did not provide a copy of any x-ray report nor did he state that the diagnosis of subluxation was based upon x-rays.

By decision dated February 28, 1996, the Office denied modification of its determination that appellant had not established that he sustained an employment-related recurrence of disability on June 20, 1995.¹

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability on June 20, 1995 causally related to his August 9, 1988 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 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.³ Where no such rationale is present, medical evidence is of diminished probative value.⁴

In this case, the Office accepted that appellant sustained a mild back injury and a temporary aggravation of a preexisting arthritic condition on August 9, 1988 at work while carrying a stretcher during a disaster drill and that the temporary arthritis aggravation ceased as

¹ In this decision the Office also noted that it had previously accepted the conditions of a herniated disc and a subluxation. The Office vacated its acceptance of these two conditions stating that it had erred because the evidence of record did not establish that these two conditions were employment related.

² *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

³ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁴ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

of October 3, 1988. He returned to full duty on October 3, 1988. The Office accepted that appellant sustained a recurrence of disability in January 1992.

In a report dated July 13, 1992, Dr. Lieberg, a Board-certified orthopedic surgeon, provided findings on examination and recommended that appellant consult a neurosurgeon as he continued to have pain. He stated that appellant had a mild to moderate disability relating to his neck and back and opined that appellant had degenerative arthritis in his cervical spine that was preexisting but was “very likely” aggravated by his job. However, the Office accepted only a temporary aggravation of appellant’s arthritis, resolved as of October 3, 1988, and Dr. Lieberg provided insufficient rationale explaining how appellant’s arthritis problem in July 1992 was causally related to the 1988 employment injury. Therefore, this report is not sufficient to establish that appellant sustained a recurrence of disability causally related to his 1988 employment injury.

In a report dated August 21, 1992, Dr. Nelson, a Board-certified neurosurgeon, provided a history of appellant’s condition and findings on examination and noted that an MRI scan of the neck showed a ruptured disc at the mid line at C5-6 with more minor disc abnormalities at C4-5 and C6-7. However, this report is not sufficient to establish an employment-related recurrence of disability as Dr. Nelson did not explain how the disc problems in 1992 were causally related to the 1988 employment injury, nor did he opine that appellant was disabled as a result of his disc problems.

In a report dated September 21, 1992, Dr. Lieberg provided findings on examination and diagnosed cervical disc syndrome at C5-6 and low back pain with left sciatica, resolved and recommended intermittent chiropractic manipulation. However, cervical disc syndrome is not an accepted condition and Dr. Lieberg did not explain how this condition was causally related to the 1988 employment injury nor did he find that appellant was disabled. Therefore, this report is not sufficient to discharge appellant’s burden of proof.

In a report dated March 2, 1993, Dr. Nelson stated that appellant had disc herniation in the neck and he had prescribed chiropractic treatment. However, no medical rationale was given by Dr. Nelson explaining how this condition was causally related to the 1988 employment injury and therefore it does not support appellant’s recurrence of disability claim.

In a report dated November 1, 1993, Dr. Ryan, a chiropractor, stated that appellant was being treated for subluxation at the cervical spine at C5-6. He did not indicate that the subluxation had been shown on x-rays nor did he provide copies of any x-ray reports. In a report dated December 8, 1995, Dr. Ryan stated that appellant was being treated for subluxation of the cervical spine at C5-6. He did not provide a copy of any x-ray report nor did he state that the diagnosis of subluxation was based upon x-rays. Under section 8101(2) of the Act, chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.⁵ However, Dr. Ryan did not indicate in his report that his findings of subluxations were demonstrated by x-rays to exist.

⁵ 5 U.S.C. § 8107(a); *see Jack B. Wood*, 40 ECAB 95, 109 (1988).

Therefore, his reports have no probative value on the issue of whether appellant sustained an employment-related recurrence of disability or medical condition.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁶ Appellant failed to submit rationalized medical evidence establishing that his claimed recurrence of disability was causally related to the accepted employment injury and, therefore, the Office properly denied his claim for compensation.

The November 29 and February 28, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
July 24, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

⁶ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).