

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of ARTURO R. CARREJO and DEPARTMENT OF THE AIR FORCE,  
SAN ANTONIO AIR LOGISTICS CENTER, KELLY AIR FORCE BASE, Tex.

*Docket No. 96-2092; Submitted on the Record;  
Issued July 7, 1998*

---

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained a recurrence of disability commencing December 28, 1995, causally related to his January 12, 1993 accepted employment injuries.

On January 12, 1993 the bottom of the ladder upon which appellant, then a 50-year-old door systems mechanic, was standing, slipped causing him to fall 15 feet, strike a metal conveyor, and land on concrete. The Office of Workers' Compensation Programs accepted that appellant sustained a left inguinal hernia and cervical, thoracic and lumbar strains. The record supports that appellant also sustained a concussion, two left rib fractures, blunt abdominal trauma, and lower extremity radiculopathy, which were repeatedly diagnosed following his fall, but which were not accepted by the Office as being employment injury related. Surgical repair of the left inguinal hernia was performed on February 26, 1993.

On September 24, 1993 the Office issued appellant a notice of proposed termination of compensation. The Office found that the weight of the medical evidence established that appellant had no objective residuals of the accepted conditions of left inguinal hernia and cervical, thoracic and lumbar spine strains, which prevented him from returning to work. Appellant's treating physician, Dr. Harry Hernandez, an osteopath, objected to the notice of proposed termination in an October 9, 1993 letter stating that appellant had unresolved neurological deficits as demonstrated by positive electromyography and an abnormal magnetic resonance imaging (MRI) scan of the cervical spine showing "several lesions affecting the ventral aspect of the thecal sac."

Appellant returned to light-duty work effective October 18, 1993.

On February 24, 1994 appellant underwent a cervical and lumbar myelogram and post-myelogram computerized tomography scanning which demonstrated a posterolateral disc herniation to the right at L5-S1 encroaching on the right S1 nerve root and right neural foramin

and mild posterior central disc herniations at C4-5 and C5-6 with borderline acquired canal stenosis at C5-6 due to the mild herniation. No medical opinion discussing the causation of these abnormalities was provided.

On January 24, 1996 appellant filed a claim alleging recurrence of disability commencing December 28, 1995. Appellant claimed that the pain had returned to his back, that it was starting to hurt more and more each day, and that his back was hurting the same as it did at the time of the January 12, 1993 injury. He additionally stated that his left shoulder was also hurting but that he did not claim it, and stated that the doctor had found a new hernia.

By letter dated April 26, 1996, the Office requested that appellant describe his duties upon his return to work, describe his physical condition from his return to the present, describe any other illnesses or injuries during the period, and explain why he believed his current condition was related to the original injury. The Office also requested that appellant submit medical records regarding all treatment received for his cervical, thoracic and lumbar conditions for the period since June 6, 1994.

On May 13, 1996 the Office received three pieces of evidence: a May 8, 1996 message from Corpus Christi Army Depot withdrawing a job offer made to appellant due to his physical restrictions; a duplicate copy of Dr. Hernandez's October 9, 1993 letter; and a statement in which appellant claimed that his light duty only lasted for three to four weeks and then he was returned to his regular duty former job as a door mechanic, but that in February 1995 he was changed to a bench work position working with aircraft electrical components. Appellant stated that since his return to duty he had experienced back pain for which drugs did very little, and that in December 1995 he developed a hernia for which he underwent surgery. Appellant stated that he believed his present condition was related to his original injury because originally he had injured his back in three places and those were the places hurting him today. He claimed that he had to return to work before he was really cured.

By decision dated June 3, 1996, the Office rejected appellant's recurrence claim finding that the evidence of record failed to establish that his claimed recurrence of disability was causally related to the accepted employment injuries. The Office noted that appellant had been advised of the specific deficiencies in the factual and medical evidence, and had been afforded the opportunity to provide adequate clarifying, supportive evidence, but had not done so.

Following the issuance of the Office's June 3, 1996 decision, further evidence was received by the Office. As this evidence was not submitted to and considered by the Office for its June 3, 1996 final decision it is not now before the Board on appeal.<sup>1</sup>

The Board finds that appellant has not met his burden to establish his recurrence claim.

An employee returning to light duty, or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability by the weight of reliable, probative and substantial evidence and to show that he cannot perform

---

<sup>1</sup> See 20 C.F.R. § 501.2(c).

the light duty.<sup>2</sup> As part of his burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.<sup>3</sup>

In the instant case in support of his recurrence claim appellant submitted a message from Corpus Christi Army Depot, which did not address a change in the nature and extent of his light-duty job requirements or a change in the nature and extent of his injury-related conditions and hence is irrelevant and has no probative value. He also submitted a duplicate copy of an October 9, 1993 letter from Dr. Hernandez which was previously of record, and which failed to address a December 1995 change in the nature and extent of either appellant's job requirements or physical condition, and hence had greatly diminished probative value. Appellant further submitted a statement that alleged a 1993 change in his light-duty job requirements which consisted of returning him to his former regular duty, but then he noted that in February 1995 he was removed from this regular duty and given sedentary bench work which fell within the light-duty job activities contemplated by his physician. Appellant did not provide any explanation of how the sedentary bench work job activities of an aircraft electrical components repairer that he had performed starting in February 1995 caused or contributed to a recurrence of total disability commencing December 28, 1995. Therefore his personal statement does not support that his alleged recurrence of disability was due to a change in the nature and extent of his light-duty job requirements. Appellant vaguely alluded to a change in the nature and extent of his medical condition by stating that the same three places in his back that were originally injured were now hurting him more and more each day, but he provided no further information, specifics or explanation and he failed to provide any probative medical evidence to support that any such a change in his medical condition actually occurred. Consequently, appellant's personal statement does not support that he sustained a change in the nature and extent of his medical condition. As appellant has failed to establish that he sustained a change in the nature and extent of his medical condition, and has failed to provide sufficient information to establish that there was a change in the nature and extent of his light-duty job requirements, either of which caused or contributed to a recurrence of total disability commencing December 28, 1995, he has failed to meet his burden of proof to establish his claim.

---

<sup>2</sup> *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>3</sup> *Id.*

Accordingly, the decision of the Office of Workers' Compensation Programs dated June 3, 1996 is hereby affirmed.

Dated, Washington, D.C.  
July 7, 1998

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member