

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLEVELAND THOMAS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Albany, N.Y.

*Docket No. 96-1807; Submitted on the Record;
Issued May 11, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof that he sustained a recurrence of disability commencing May 18, 1993, causally related to his January 11, 1993 employment injury.

The Office of Workers' Compensation Programs accepted that appellant sustained a subluxation at C5-C6 on January 11, 1993 during his federal employment. On June 22, 1993 appellant filed a claim, Form CA-2a, for a recurrence of disability commencing May 18, 1993. Appellant indicated that he was able to perform his usual work after the January 11, 1993 employment injury, but his back never improved and he sought medical treatment for his back since that injury. Appellant stopped working on May 18, 1993 due to back pain.

Appellant submitted evidence to support his claim. In an attending physician's supplemental report, Form CA-20a, dated August 30, 1993, Dr. Leonard M. Venezia, a chiropractor, diagnosed lumbar disc degeneration and lumbosacral segmental somatic dysfunction and checked the No. 8 "yes" box indicating that the condition was related to appellant's January 11, 1993 employment injury.

In a report dated October 11, 1993, Dr. Valmore A. Pelletier, a Board-certified neurological surgeon, considered appellant's history of injury, performed a physical examination, and stated that appellant's distribution of pain suggested a radicular origin. He stated the source of appellant's pain needed to be clarified.

In Form CA-20a dated October 4, 1993, Dr. Jon T. Toussaint, a Board-certified orthopedic surgeon and one of appellant's treating physicians, diagnosed degenerative disc disease lumbar spine and dextroscoliosis and checked the No. 8 "yes" box that the condition was related to the January 12, 1993 employment injury. In a report dated December 1, 1993, Dr. Toussaint stated that appellant had preexisting degenerative disc disease based on x-rays. He stated that while he did not "appreciate any subluxation, the degenerative disc disease is

obviously present and in view of the fact that he was asymptomatic prior to this episode, I would have to think that this was the aggravating influence.”

By decision dated December 21, 1993, the Office denied appellant’s claim, stating that the evidence of record failed to establish that the claimed medical condition or disability was causally related to the January 11, 1993 employment injury.

By letter dated January 7, 1994, appellant requested an oral hearing before an Office hearing representative which was held on September 29, 1994. Appellant submitted additional evidence to support his claim including Forms CA-20a dated January 10 and January 31, 1994, from Dr. Venezia reiterating his diagnoses follow-up reports from Dr. Toussaint dated September 9 and October 1, 1993 and April 13 and August 10, 1994 a normal back x-ray dated October 11, 1993 and a report from Dr. Toussaint dated January 13, 1994 stating that appellant’s “being symptom-free prior to this, that it is my considered medical opinion that the trauma sustained aggravated his preexisting degenerative disc disease.” Appellant also submitted a narrative report from Dr. Venezia dated December 15, 1993, in which he reiterated his diagnoses, performed a physical examination, reviewed a magnetic resonance imaging (MRI) scan dated July 28, 1993 and stated that the prognosis was guarded whether appellant could return to work. In his September 9, 1993 report, Dr. Toussaint performed a physical examination, reviewed x-rays, reiterated his diagnoses and prescribed medicine and an exercise program.

At the hearing, appellant testified that prior to January 11, 1993 he did not have a problem with his back. Appellant testified that after the January 11, 1993 employment injury, he returned to work but his back worsened from the lifting -- up to 97 pounds -- he was required to perform. Appellant further testified that after May 18, 1993 his back hurt too much to work and his back as well as his leg continued to hurt him and he had trouble sitting, walking and standing for more than 15 minutes.

By decision dated December 9, 1994, the Office hearing representative affirmed the Office’s December 21, 1993 decision.

By letter dated January 9, 1995, appellant requested another oral hearing before an Office hearing representative.

By letter dated January 10, 1995, appellant requested reconsideration of the Office’s decision. He submitted additional evidence to support his claim. In a report dated November 22, 1994, Dr. Gary Schulte considered appellant’s history of injury, performed a physical examination and diagnosed chronic low back pain with mild osteoarthritis of the left sacrum spine. He prescribed medicine and physical therapy. In a report dated December 20, 1994, Dr. Schulte performed a physical examination and prescribed medicine.

In a report dated December 21, 1994, Dr. Richard Katz, an orthopedic surgeon and one of appellant’s treating physicians, considered appellant’s history of injury, performed a physical examination and opined that appellant “most likely has a radiculopathy from a higher neural level.” He stated that based on appellant’s history, “it certainly seemed that this is a work related injury to his back as he never had pain prior to the injury in January 1993.”

Appellant also submitted reports from a physical therapist covering the period from December 1994 through January 1995.

In a report dated January 12, 1995, Dr. Nicholas D. Filippone, a Board-certified surgeon, performed a physical examination and stated that there were two possibilities in that appellant might simply have a ligament strain in the groin or radiculopathy “secondary probably to some kind of disc disease.”

In a report dated January 30, 1995, Dr. Katz performed a physical examination and recommended further testing.

A nerve conduction study dated February 14, 1995 was normal and an electromyogram (EMG) dated February 14, 1995 showed right L5-S1 radiculopathy.

By decision dated February 25, 1995, the Office denied appellant’s request for a second hearing.

In a report dated April 13, 1995, Dr. Barton L. Sachs, a Board-certified orthopedic surgeon, performed a physical examination, reviewed diagnostic tests, and diagnosed, *inter alia*, lumbar spondylosis. He recommended surgery.

A lumbar x-ray received by the Office on May 17, 1995, showed degenerative disc disease at the L5-S1 level.

In a report dated July 10, 1995, Dr. Katz considered appellant’s history of injury, performed a physical examination and reviewed an MRI and an electromyogram showing evidence of L5-S1 radiculopathy. He stated that appellant’s injury to his L5-S1 disc is directly related to his January 11, 1993 employment injury. Dr. Katz felt that the January 18, 1993 employment injury worsened, when appellant reinjured himself on May 8 [*sic*], 1993.

By decision dated February 20, 1996, the Office denied appellant’s reconsideration request.

The Board finds that appellant has not met his burden of establishing that he sustained a recurrence of disability on May 18, 1993 causally related to the January 11, 1993 employment injury.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which she seeks compensation was causally related to his employment injury.¹ 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 employment factors and supports that conclusion with sound medical reasoning.²

¹ *Dominic M. DeScala*, 37 ECAB 369 (1986).

² *Louise G. Malloy*, 45 ECAB 613, 617 (1994).

In the present case, the medical reports of Dr. Venezia dated December 15, 1993 and of Dr. Toussaint dated September 9 and October 1, 1993 and April 13 and August 10, 1994 are not relevant as they do not address causation. Similarly, the medical reports of Dr. Schulte dated November 22 and December 20, 1994, Dr. Katz's January 30, 1995 report and Dr. Sachs April 13, 1995 are also not relevant, because they do not address causation. The reports of the physical therapist covering the time period from December 1994 through January 1995 are not probative, because a physical therapist is not considered a physician within the meaning of the Federal Employees' Compensation Act.³ The attending physician's reports, Forms CA-20a, completed by Dr. Venezia dated August 30, 1993, January 10 and 31, 1994 and by Dr. Toussaint dated October 4, 1993, in which the doctors checked the "yes" box that appellant's condition of degenerative disc disease was related to the January 11, 1993 employment injury are not sufficient to establish causation as the Board has held that a physician's checking "yes" to the form's question of whether appellant's condition was related to the original employment injury without any explanation or rationale, has little probative value.⁴

Dr. Pelletier's October 11, 1993 report and Dr. Filippone's January 12, 1995 reports, are not probative, because they are speculative or vague as to what caused appellant's current condition of degenerative disc disease and do not relate appellant's condition to his employment.⁵ In his October 11, 1993 report, Dr. Pelletier stated that the distribution of appellant's pain suggested a radicular origin and the source of the pain needed to be clarified. In his January 12, 1995 report, Dr. Filippone stated that appellant might either have a ligament strain in the groin or radiculopathy probably secondary to some kind of disc disease.

Dr. Toussaint's December 1, 1993 and January 13, 1994 reports, in which Dr. Toussaint stated that because appellant was free of symptoms prior to the January 11, 1993 employment injury, he believed the trauma from that injury aggravated his preexisting degenerative disc disease is not probative, because it is not sufficiently rationalized in explaining how the recurrence of disability is causally related to the January 11, 1993 employment injury.⁶ Further, while an employee is entitled to compensation for periods of disability related to an aggravation to an underlying condition, an employee is not entitled to compensation for periods of disability where the aggravation is temporary and leaves no permanent residuals.⁷ This is true even through the employee is found medically disabled to continue in such employment, because of the effect that the employment factors might have on the underlying condition.⁸ Under such circumstances, the employee's disqualification for continued employment is due to the underlying condition without any contribution by the employment.⁹ In this case, Dr. Toussaint's

³ See *Barbara J. Williams*, 40 ECAB 649, 657 (1988).

⁴ See *Robert J. Krstyen*, 44 ECAB 227, 230 (1992).

⁵ See *William S. Wright*, 45 ECAB 498, 504 (1994); *Connie Johns*, 44 ECAB 560, 571 (1993).

⁶ See *Louise G. Malloy*, *supra*, note 2 at 617.

⁷ See *Marion Thornton*, 46 ECAB 899, 906 (1995).

⁸ *Id.*

⁹ *Id.*

opinion does not establish that appellant sustained a permanent aggravation to his preexisting degenerative disc disease.

Dr. Katz's opinions dated December 21, 1994 and July 10, 1995, in which Dr. Katz stated that appellant's L5-S1 radiculopathy was directly related to his January 11, 1993 employment injury and that injury worsened when appellant reinjured himself on May 18, 1993 is not probative in establishing that appellant's current condition is work related, because he does not provide a rationalized explanation for his conclusion. The Board has held that medical reports consisting solely of conclusory statements without supporting rationale are of little probative value.¹⁰ Dr. Katz's opinion is therefore of diminished probative value and is insufficient to establish appellant's claim.

Inasmuch as appellant has failed to submit evidence sufficient to establish that his recurrence of disability on May 18, 1993 is causally related to the January 11, 1993 employment injury, appellant has failed to meet his burden of proof in establishing his claim.

Accordingly, the decision of the Office of Workers' Compensation Programs dated February 20, 1996 is hereby affirmed.

Dated, Washington, D.C.
May 11, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

¹⁰ *William C. Thomas*, 45 ECAB 591, 594 (1994).