

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL KONECSNI and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Brecksville, Ohio

*Docket No. 97-2010; Submitted on the Record;
Issued April 16, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability beginning September 23, 1994 causally related to his accepted July 31, 1992 lower back injury.

On July 31, 1992 appellant, a 68-year-old boiler operator/engineer, fell and struck the floor when the chair on which he was sitting collapsed. Appellant injured his back, tailbone and right hip, and on August 4, 1992 he filed a Form CA-1 claim for benefits based on traumatic injury, which the Office of Workers' Compensation Programs accepted for lumbar sprain by letter dated January 7, 1993.

On August 5, 1995 appellant filed a Form CA-2a claim alleging that he sustained a recurrence of disability beginning September 23, 1994, which was caused or aggravated by his July 31, 1992 employment injury. In support of his claim, appellant submitted a February 7, 1995 report from Dr. Peter B. Sinks, a specialist in internal medicine and appellant's treating physician. Dr. Sinks stated that he had been treating appellant for right shoulder pain, right hip and low back pain resulting from prior industrial accidents sustained while appellant was employed with the employing establishment. Dr. Sinks opined that appellant would not be able to return to work at any time in the foreseeable future due to the severe limitations in his range of motion of the right shoulder, right hip and low back as a result of his industrial accidents, including a right rotator cuff tear of the right shoulder sustained in 1987 and a low back and right hip injury sustained in 1989. Dr. Sinks advised that appellant had reached maximum medical improvement and was no longer able to handle the duty requirements of his job as boiler operator/engineer. Appellant has not returned to work since September 23, 1994.

By letter dated October 17, 1995, the Office advised appellant that it required additional medical evidence, including a comprehensive medical report, to support his claim that his current condition/or disability was causally related to his accepted July 31, 1992 employment injury. The Office also requested that appellant submit a factual statement explaining the circumstances of his alleged recurrence.

In response, appellant submitted a November 28, 1995 opinion from Dr. Sinks. Dr. Sinks stated that appellant had injured his back while working for the employing establishment on July 31, 1992, which resulted in spondylolisthesis with back pain and that appellant had also sustained an injury to his right rotator cuff while at work on August 2, 1989. Dr. Sinks advised that appellant had significant degenerative joint disease and osteoarthritis of the lumbar spine including a grade 1 to 2 spondylolisthesis at the L5-S1 level, plus a chronic rotator cuff tear arthropathy, as demonstrated by x-rays and magnetic resonance imaging (MRI) scan. Dr. Sinks stated that appellant's physical examination had consistently shown reduction of lumbar lordosis as well as reduction in lumbar range of motion and in range of motion of the right shoulder. Dr. Sinks opined that because of these work-related injuries, appellant would not be able to return to work at any time in the foreseeable future. Dr. Sinks reemphasized that appellant's injuries were the result of employment accidents; *i.e.*, the 1989 right rotator cuff tear and the 1992 low back injury.

By decision dated January 8, 1996, the Office denied appellant compensation for a recurrence of disability due to his accepted July 31, 1992, employment-related low back condition. The Office stated that Dr. Sinks's November 28, 1995 report was not probative because it did not address how appellant's concurrent conditions resulted in his alleged total disability and did not provide a reasoned explanation as to how appellant's accepted medical condition of lumbar sprain prevented him from performing his duties as a boiler operator. The Office found Dr. Sink's opinion to be speculative and equivocal. The Office, therefore, found that appellant failed to submit medical evidence sufficient to establish that the claimed condition or disability beginning September 23, 1994 was caused or aggravated by the July 31, 1992 employment injury.

By letter to the Office dated January 28, 1996, appellant requested an oral hearing, which was held on July 31, 1996.

In a decision dated October 11, 1996, an Office hearing representative vacated the Office's previous decision, and remanded the case for a second opinion medical examination to determine whether appellant had sustained a recurrence of disability beginning September 23, 1994, which was caused or aggravated by the accepted, July 31, 1992 low back injury. The hearing representative found that although Dr. Sinks failed to provide medical rationale for his opinion, the case needed to be referred for a second opinion evaluation given appellant's inability to understand the type of medical evidence he needed to submit. The hearing representative further stated that the record contained uncontroverted medical evidence that appellant's current condition and/or disability was causally related to the accepted, employment-related conditions, although this evidence was not sufficient to establish appellant's entitlement to compensation. The hearing representative, therefore, remanded the case to the district office and instructed the Office to refer the case for a second opinion examination. The hearing representative stated that after any further development the Office deemed necessary, it should issue a *de novo* decision.

Pursuant to the hearing representative's remand order, the Office referred the case file and a statement of accepted facts to Dr. Moses Leeb, a Board-certified orthopedic surgeon, for a

second opinion examination on January 23, 1997. In a report dated January 27, 1997, Dr. Leeb reviewed the medical history and stated findings on examination. Dr. Leeb stated:

“On the basis of the present findings, his initial treatment apparently was for a lumbar strain. He was able to return to work. At the present time, insofar as his lumbar spine is concerned, he has only mild to moderate limitation of motion and shows no evidence of radiculopathy. The principal impairment, with regard to his gait and pain in the right hip region, which is due to advanced osteoarthritic changes of the right hip, which is unrelated to the described injury in this claim. It is, therefore, my opinion that, based on the residual findings in the lumbar spine, this individual could return to his former occupation as an Engineer.”

In a decision dated February 20, 1997, the Office, relying on Dr. Leeb’s opinion, found that appellant failed to establish that he sustained a recurrence of disability on September 23, 1994 caused or aggravated by his July 31, 1992 employment injury.

The Board finds that appellant has not established that he sustained a recurrence of disability beginning September 23, 1994 causally related to his July 31, 1992 employment injury.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires 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 who supports that conclusion with sound medical reasoning.¹

The record contains no such medical opinion. Indeed, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates his disability for work as of September 23, 1994 to his July 31, 1992 employment injury. For this reason, he has not discharged his burden of proof to establish his claim that he sustained a recurrence of disability as a result of his accepted employment injury.

In the present case, an Office hearing representative remanded the case to the district office and instructed that it be referred to a second opinion physician for a determination regarding whether appellant sustained a recurrence of disability beginning September 23, 1994. The case was referred to Dr. Leeb, who examined appellant and found that, with regard to his accepted lumbar strain injury, he had only mild to moderate limitation of motion in his lumbar spine and showed no evidence of radiculopathy. Dr. Leeb advised that appellant’s principal impairment, pain in his right hip, was attributable to advanced osteoarthritic changes of the right hip, which was unrelated to the described injury in this claim; *i.e.*, his lumbar sprain. Dr. Leeb concluded that, based on the residual findings in the lumbar spine, appellant could return to his former occupation as a boiler room operator/engineer.

¹ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

Dr. Leeb's opinion on causal relationship was sufficiently probative and well rationalized and he provided adequate medical rationale in support of his conclusions.² Accordingly, as the weight of the medical evidence is represented by Dr. Leeb's opinion negating a causal relationship between appellant's claimed recurrence of disability beginning September 23, 1994 and his July 31, 1992 employment injury, appellant has not met his burden of proof.

The February 20, 1997 decision of the Office of Workers' Compensation Programs is, therefore, affirmed.

Dated, Washington, D.C.
April 16, 1999

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

² *Id.*