

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EARNEST FREEMAN and DEPARTMENT OF THE NAVY,
NAVAL AIR DEPOT, Alameda, Calif.

*Docket No. 96-2647; Submitted on the Record;
Issued June 9, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant was not entitled to a schedule award; and (2) whether appellant has established that he sustained a recurrence of disability on or after September 5, 1995.¹

On December 13, 1993 appellant, then a 45-year-old production controller, filed a claim for compensation alleging that on December 10, 1993 he injured his back and neck while in the performance of duty.

In an attending physician's report dated December 14, 1993, Dr. Donald S. Bowes, appellant's treating chiropractor, stated that appellant had sustained cervical and thoracic sprain and strain and segmental dysfunction based on a December 10, 1993 work-related injury.

In a medical report dated January 31, 1994, Dr. Bowes released appellant to regular duty effective February 2, 1994.

On April 18, 1996 appellant filed a claim for compensation alleging that he became aware on December 12, 1993 that his back and neck pain, hearing loss and stress were caused by factors of federal employment.

On April 19, 1996 appellant filed a claim for compensation alleging that on September 5, 1995 he sustained a recurrence of disability based on his original injury of December 10, 1991.

By letter dated April 30, 1996, the Office advised appellant that he needed to submit additional information regarding his claimed recurrence of disability including medical records

¹ In an appeal to the Board received on August 27, 1996 appellant requested oral argument. On June 30, 1998 and on January 13, 1999 the Board notified appellant that an oral argument was scheduled for February 17, 1999. Appellant failed to appear for the oral argument. The Board therefore decided the case on the written record.

of all treatment that he received for his cervical and thoracic strain since December 20, 1993 and a narrative medical report containing a supporting explanation as to the relationship between his current condition and the original injury.

In a Form CA-7 dated April 29 and received by the Office on May 14, 1996 appellant filed a claim for a schedule award and wage loss from December 10, 1993 and continuing, noting that he was receiving an annuity.

In a decision dated May 17, 1996, the Office denied appellant's claim for a schedule award on the grounds that the Federal Employees' Compensation Act² does not provide for a schedule award for cervical and thoracic sprain and strain.

In a decision dated May 31, 1996, the Office denied appellant's claim for recurrence of disability on the grounds that the evidence of record failed to establish that the claimed September 5, 1995 recurrence of disability was causally related to the accepted injury.

On May 21, 1996 appellant requested reconsideration.

By decision dated June 11, 1996, the Office denied appellant's application for review finding that the evidence submitted in support of the application was cumulative in nature and not sufficient to warrant review of the prior decision.³

The Board finds that the Office properly determined that appellant was not entitled to a schedule award.

The schedule award provision of the Act and its implementing regulations provide for compensation to employees sustaining impairment from loss, or loss of use of, specified members of the body.⁴ The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determinations is a matter which rests in the sound discretion of the Office. As a matter of administrative practice and to ensure consistent results to all claimants, the Office has adopted and the Board has approved the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.⁵

In the present case, none of the medical reports addressed whether appellant suffered a permanent impairment due to his accepted employment injury. After diagnosing appellant with a cervical and thoracic sprain and strain and segmental dysfunction, Dr. Bowes, appellant's

² 5 U.S.C. §§ 8101-8193.

³ The Board notes that appellant's request for reconsideration did not state whether he was requesting reconsideration of the Office's May 17, 1996 decision, denying his claim for a schedule award or the Office's May 31, 1996 decision denying his claim for recurrence of disability. The Office, in its June 11, 1996 nonmerit decision, addressed only the recurrence of disability claim.

⁴ 5 U.S.C. § 8107; 20 C.F.R. § 10.304.

⁵ *James A. England*, 47 ECAB 115 (1995).

treating chiropractor, to regular duty effective February 2, 1994. Dr. Bowes did not describe an impairment to a member of the body enumerated under 5 U.S.C. § 8107 or its implementing regulations. Accordingly, the Board finds that appellant has not established entitlement to a schedule award pursuant to section 8107 of the Act.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability causally related to the accepted December 10, 1993 accepted 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. This burden includes the necessity of furnishing medical evidence from a qualified 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 reasoning.⁶

In this case, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his alleged recurrence of disability on or after September 5, 1995 and the accepted December 10, 1993 accepted injury or other employment factors.⁷

In support of his claim for recurrence of disability, appellant submitted a copy of his employment application and narrative statements regarding his back and stress conditions as well as a copy of his medical record. However, none of the reports included a rationalized medical opinion establishing that appellant's current condition was causally related to his accepted injury. The Board notes that a treatment note dated May 5, 1995, stated that appellant related neck and back pain occurring over a year from the treatment date, but does not address the cause of appellant's condition nor its relationship to appellant's accepted injury. The Board further notes that appellant's treating chiropractor, Dr. Bowes, released appellant to return to full duty on January 31, 1994 effective February 2, 1994. Appellant failed to submit medical evidence sufficient to establish that he had sustained a recurrence of disability on or after September 5, 1995 based on his December 10, 1993 accepted injury.

⁶ *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1993); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁷ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

The decisions of the Office of Workers' Compensation Programs dated June 11, May 31 and 17, 1996 are hereby affirmed.⁸

Dated, Washington, D.C.
June 9, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁸ Appellant requested an oral hearing on August 20, 1996. In a letter dated October 30, 1996, the Office denied appellant's request for an oral hearing on the grounds that the request was untimely, and that the issues in the claim could be equally well resolved through reconsideration.