

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WALTER L. DILLMAN and DEPARTMENT OF AGRICULTURE,
FOREST SERVICE, Baker, OR

*Docket No. 99-1425; Submitted on the Record;
Issued September 26, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on or after May 23, 1998 due to his November 19, 1984 employment injury.

The Board finds that the case is not in posture for decision regarding whether appellant sustained a recurrence of disability on or after May 23, 1998 due to his November 19, 1984 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.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 the employment injury and supports that conclusion with sound medical rationale.² Where no such rationale is present, medical evidence is of diminished probative value.³ However, it is well established that proceedings under the Federal Employees' Compensation Act are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, the Office of Workers' Compensation Programs shares responsibility in the development of the evidence.⁴

¹ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

² *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

³ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁴ *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1983).

On November 19, 1984 appellant, then a 40-year-old engineering aide, sustained a disc herniation at L4-5 and a left radiculopathy at L5 due to a fall at work. In May 1985, the Office authorized a microsurgical discectomy at L4-5 which was performed by Dr. Perry E. Camp, an attending Board-certified neurosurgeon. In August 1985, appellant returned to light-duty work for the employing establishment and in August 1986 he voluntarily left the employing establishment. Appellant later began to manage an automobile service and repair station. The Office accepted that appellant sustained an employment-related recurrence of disability in January 1995⁵ and authorized Dr. Camp to perform a repeat discectomy at L4-5 in March 1995 and another discectomy at L4-5 with repair of a muscle hernia in June 1995.

In June 1998, appellant filed a claim alleging that he sustained a recurrence of disability on May 23, 1998 due to his November 19, 1984 employment injury. By decision dated September 23, 1998, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence in support thereof. By decision dated December 18, 1998, the Office affirmed its September 23, 1998 decision.

The Board notes that, while none of the reports of appellant's attending physicians is completely rationalized, they are consistent in indicating that appellant sustained a recurrence of disability on or after May 23, 1998 due to his November 19, 1984 employment injury, and are not contradicted by any substantial medical or factual evidence of record. Therefore, while the reports are not sufficient to meet appellant's burden of proof to establish his claim, they raise an uncontroverted inference between appellant's claimed recurrence of disability and the November 19, 1984 employment injury, and are sufficient to require the Office to develop the medical evidence and the case record further.⁶

In a form report dated July 23, 1998, Dr. Camp diagnosed mild recurrent left L4-5 disc herniation with radiculopathy and indicated that this condition was related to the November 19, 1984 employment injury.⁷ In a report dated October 5, 1998, Dr. Camp noted that appellant had been seen on July 13, 1998 and was treated with two epidural injections which diminished his low back pain. Dr. Camp stated:

"The exacerbation of symptoms seem to be clearly secondary to his long-standing abnormality which has been both surgically and conservatively treated before in our office. Although there have been various events attributed to the exacerbation of cause, the overall history is one to suggest that there is continuing degeneration, begun at the time of the original injury which has become more and more symptomatic and has now required invasive intervention for control."

⁵ The Office paid compensation for periodic disability beginning in January 1995.

⁶ See *Robert A. Redmond*, 40 ECAB 796, 801 (1989).

⁷ In a report dated July 10, 1998, Dr. Camp indicated that appellant reported experiencing a recurrence of left radiculopathy in late May 1998 without reinjury.

In a report dated October 2, 1998, Dr. Charles E. Hofmann, an attending Board-certified internist, discussed appellant's November 1984 injury, his medical treatment and his recurrence of January 1995. Dr. Hofmann stated:

"He did well until this year when he developed recurrent low back pain, again radiating down his left leg. His symptoms were similar to those he was experiencing at the time of his injury in 1984 and in 1995. He was referred back to Dr. Camp, who found a small recurrence of subarticular stenosis."

Dr. Hofmann concluded: "It is my opinion that his problem this year is directly and materially related to his injury in 1984."⁸

Accordingly, the case will be remanded to the Office for further evidentiary development regarding whether appellant sustained a recurrence of disability on or after May 23, 1998 due to his November 19, 1984 employment injury. The Office should prepare a statement of accepted facts and obtain a medical opinion on this matter.⁹ After such development of the case record as the Office deems necessary, an appropriate decision shall be issued.

The decisions of the Office of Workers' Compensation Programs dated December 18 and September 23, 1998 are set aside and the case remanded to the Office for proceedings consistent with this decision of the Board.

Dated, Washington, DC
September 26, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

⁸ In a note dated June 25, 1998, Dr. Hofmann stated that appellant reported experiencing a left radiculopathy while dancing. The note does not contain an opinion that appellant sustained a back or leg condition due to his dancing activities.

⁹ The factual statement should include information regarding appellant's physical activities around the time of his claimed recurrence of disability.