

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MATTHEW ZANG and ARCHITECT OF THE CAPITOL,
RAYBURN HOUSE OFFICE BUILDING, Washington, DC

*Docket No. 00-651; Submitted on the Record;
Issued March 28, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability on October 27, 1998, causally related to his August 26, 1992 injury.

On August 26, 1992 appellant, then a 38-year-old carpenter and locksmith, injured his low back and right buttock while inspecting doors in the performance of duty. He was treated for L5-S1 disc herniation and returned to regular duty on November 30, 1992.

In an August 31, 1992 report, Dr. William Tham, Board-certified in physical medicine and rehabilitation, stated that appellant had a work related, ruptured L5 disc in 1981 for which he had surgery. Thereafter, appellant injured his back again, sustaining a recurrent¹ L5 herniation and a new L4 herniation while playing ball. Appellant had a second operation and "apparently" did well until August 26, 1992 when he hurt his back lifting a door at the employing establishment. Dr. Thamr diagnosed a probable recurrent herniated disc at L5-S1 with radiculopathy.

On April 8, 1993 the Office of Workers' Compensation Programs accepted appellant's claim for herniation at L5-S1.

In an October 26, 1998 report, Dr. F. Donald Cooney, a Board-certified neurological surgeon, noted that appellant had a history of back discomfort and two prior surgical procedures. He diagnosed a recurrent disc on the right.

In a November 6, 1998 report, Dr. Cooney noted that appellant's magnetic resonance imaging (MRI) scan revealed that appellant had a rather large recurrence of the disc with a free fragment at L4-5 and S1. In a November 10, 1998 operative report, he indicated that appellant

¹ Appellant began working for the employing establishment on July 27, 1987.

underwent a right-sided hemilaminotomy at L4 and total hemilaminectomy at L5 with removal of free fragment of disc and discectomy.

On November 20, 1998 appellant filed a notice of recurrence of disability alleging that on August 5, 1998 his low back started hurting, with light pain down his right leg. He stopped work from October 27 to December 9, 1998.

In a November 30, 1998 report, Dr. William P. Jones, a family practitioner, diagnosed a reoccurrence of a ruptured disc at L4, noting that the disability was related to the August 5, 1998 injury. He checked a box "yes" to indicate that appellant's condition was employment related. Dr. Jones referred appellant to Dr. Cooney.

In a December 2, 1998 report, Dr. Cooney diagnosed a recurrent disc on the right. In the box for history of injury, he wrote, initial injury August 26, 1992, recurrent disc on the right -- August 5, 1998." Dr. Cooney diagnosed lumbar intervertebral disc (degeneration). He also checked the box "yes" on whether the condition was caused or aggravated by an employment injury and noted, "see my report of October 26, 1998."

On February 12, 1999 the Office advised appellant of the type of medical evidence needed to establish his claim for a recurrence of disability on August 5, 1998.

By decision dated March 26, 1999, the Office denied appellant's claim on the grounds that he failed to establish that his back condition was related to his August 26, 1992 injury.

In a May 10, 1999 letter, appellant stated that the disc he herniated in his original employment injury was actually at the L4 level and the L5 disc was from a ruptured disc in 1980. He noted that an MRI scan would have disclosed that the herniated disc was actually at the L4 level. Appellant enclosed an April 12, 1999 report from Dr. Tham. He noted that appellant was under his care in 1992 and stated he was correcting his treatment records. Dr. Tham noted that they actually treated his L4 disc rather than the L5 disc. He did not explain why his records incorrectly stated L5 instead of L4 or opine that appellant's current condition was related to his previously accepted condition.

In a June 4, 1999 request for reconsideration, appellant enclosed another copy of Dr. Tham's April 12, 1999 letter. He again noted that Dr. Tham treated him in 1992 for his L4 disc rather than the L5 disc as his L5 disc was surgically removed in 1981.

In an August 2, 1999 merit decision, the Office denied modification of its prior decision.

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability beginning on October 27, 1998, causally related to his August 26, 1992 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.² 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.³ An award of compensation may not be made on the basis of surmise, conjecture or speculation or on an appellant's unsupported belief of causal relation.⁴

In this case, the Office accepted that appellant sustained a herniation at L5-S1 in the performance of duty on August 26, 1992. In support of his notice of recurrence of disability, commencing August 5, 1998, appellant was advised to provide medical evidence that would establish a causal relationship between his current back conditions and his work-related herniation. He did not submit any reasoned medical evidence that his present condition was causally related to his August 26, 1992 employment injury. In none of Dr. Cooney's three reports, did he provide any explanation or medical rationale discussing why appellant's surgeries and current condition were causally related to the August 26, 1992 employment injury and not to the prior injuries in 1981 and 1986 for which surgery had been performed.

Dr. Jones noted that appellant had a herniated nucleus pulposus at L4, but did not explain why this condition was related to the August 26, 1992 injury. In his November 30, 1998 report, Dr. Jones indicated that appellant's disability was related to the August 5, 1998 incident but did not explain how it was related to the 1992 employment injury.

In his December 2, 1998 report, Dr. Cooney checked "yes" that appellant's condition was caused or aggravated by an employment injury and referred to his October 26, 1998 report. However, checking of the "yes" box that the disability was causally related to employment is insufficient, without further explanation or rationale, to establish causal relationship.⁵ Dr. Cooney did not offer a rationalized medical opinion to show how appellant's employment caused or aggravated his condition.⁶

Finally, the April 12, 1999 report from Dr. Tham merely indicated that he was correcting his records and what he actually treated appellant for was the L4 disc. This statement without further explanation as to why his original reports were inaccurate or how the claimed continuing

² *Lourdes Davila*, 45 ECAB 139 (1993); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

³ *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁴ *Ausberto Guzman*, 25 ECAB 362 (1974).

⁵ *Barbara J. Williams*, 40 ECAB 649 (1989).

⁶ The opinion of the physician must be based upon a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion. *See James Mack*, 43 ECAB 321 (1991).

condition would be related to the August 5, 1998, injury is insufficient⁷ to meet appellant's burden of proof.

The decisions of the Office of Workers' Compensation Programs dated August 2 and March 26, 1999 are hereby affirmed.

Dated, Washington, DC
March 28, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁷ *Id.*