

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MATIAS LONGORIA and DEPARTMENT OF THE ARMY,
CORPUS CHRISTI ARMY DEPOT, Corpus Christi, TX

*Docket No. 00-1593; Submitted on the Record;
Issued March 16, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability beginning July 23, 1996 causally related to his December 21, 1993 employment injury.

On January 10, 1994 appellant, then a 40-year-old equipment cleaner, filed a traumatic injury claim alleging that on December 21, 1993 he sprained his right foot while walking towards a table. The Office of Workers' Compensation Programs accepted his claim on October 28, 1994 for right foot sprain. Appellant eventually underwent surgery for his condition.

On August 9, 1996 appellant alleged that on July 23, 1996 he suffered a recurrence. By decision dated September 18, 1996, the Office denied his claim since the evidence failed to demonstrate that the claimed recurrence was causally related to the accepted employment injury.

On September 23, 1997 appellant requested reconsideration. By decision dated December 22, 1997, his request for modification of the prior decision was denied since the record did not contain any medical evidence.

By letter dated November 10, 1998, appellant requested reconsideration. He submitted two medical reports from Dr. Charles W. Breckenridge, a Board-certified orthopedic surgeon, dated August 28 and October 22, 1998, a medical history report from an HMO physician and copies of laboratory results. By decision dated November 25, 1998, appellant's request for modification of the prior decision was denied since the medical evidence submitted was speculative in nature.

By letter received on March 26, 1999, appellant requested reconsideration. He submitted a report from Dr. Breckenridge dated December 7, 1998 and a letter from appellant's union representative dated January 5, 1999. By decision dated April 19, 1999, appellant's request for modification was denied since the medical evidence of record did not establish that his right ankle condition was causally related to the December 21, 1993 employment injury.

By letter received on November 14, 1999, appellant requested reconsideration. With his request he submitted a report from Dr. Breckenridge dated May 6, 1999. By decision dated December 2, 1999, appellant's request for modification was denied since the record did not contain any rationalized medical opinion evidence supporting continuing work-related residuals of appellant's right foot condition.

The Board finds that appellant has not established that he sustained a recurrence of disability beginning July 23, 1996 causally related to his December 21, 1993 employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.¹ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

The Office accepted that appellant sustained a sprain of the right foot on December 21, 1993, which ceased on November 19, 1994.

Appellant claimed he suffered a recurrence of his original injury on July 23, 1996.³ He submitted various medical reports from Dr. Breckenridge dated subsequent to July 23, 1996. In a report dated August 28, 1998, Dr. Breckenridge stated that appellant "had questions regarding whether or not this (his condition of bilateral osteochondral lesion) could be related to his injury while at work." He opined: "It is possible, because [appellant] does have bilateral osteochondral lesions in the ankles that the inversion injury could have exacerbated a preexisting condition and therefore may be a covered injury." In his report dated October 22, 1998, Dr. Breckenridge stated:

"It is within reasonable medical probability that if [appellant] did have evidence of a previous osteochondral lesion, that the inversion injury could have caused an exacerbation of a preexisting condition and therefore, would be considered a compensable injury. This is within reasonable medical probability."

In his December 7, 1998 report, Dr. Breckenridge referred to an x-ray taken by another physician following appellant's original injury and stated that per appellant, the x-ray did not show evidence of an osteochondral lesion. He opined: "the suggestion to [appellant] would be to obtain these x-rays and if these were in fact negative, one could then infer that the

¹ *Jose Hernandez*, 47 ECAB 288 (1996).

² *Id.*

³ In a letter dated January 5, 1999, appellant's union representative opined that appellant's claim for recurrence should have actually been a claim for continuation of the original injury.

osteochondral lesion was not a preexisting condition and may have been due to the work-related injury.” Lastly, in his report dated May 6, 1999, Dr. Breckenridge viewed the x-ray films from appellant’s original injury and stated:

“A lateral x-ray of the ankle was available along with an oblique view of the ankle. From these two views no evidence of a significant osteochondral lesion was appreciated. This does suggest that the osteochondral lesion occurred after his injury. This would, therefore, be within reasonable medical probability that the inversion-type injury that [appellant] sustained could have led to an injury to the talus and therefore an osteochondral lesion. I would consider this, therefore, a work-related injury.”

The report from Dr. Breckenridge dated May 6, 1999 most closely addresses the causal relationship between appellant’s recurrence and his employment, yet ultimately fails to provide a rationalized medical opinion that his current condition was caused by the initial work-related injury. The Board notes that initially Dr. Breckenridge opined that if appellant had a osteochondral lesion before the 1993 injury, then the 1993 injury could have aggravated the condition. Upon review of x-rays taken soon after the injury, which were negative for such lesion, Dr. Breckenridge opined with “reasonable medical probablity” that the initial injury “could have led to an injury to the talus and therefore an osteochondral lesion.” He did not indicate why initially he opined causal relationship would be dependant upon a preexisting condition. Furthermore, Dr. Breckenridge does not provide an explanation as to how or why appellant’s current bilateral condition was caused by the initial injury. He offered no mention of whether appellant had a talus injury and if so when the talus injury was first documented. In addition, his statements were speculative and did not state with any medical certainty that appellant’s recurrence was caused by the original incident. The Board has held that a medical opinion which is equivocal or speculative is of diminished probative value.⁴

Therefore, the medical reports from Dr. Breckenridge do not meet appellant’s burden of establishing by reliable and probative evidence that his subsequent disability is causally related to the accepted employment injury.

⁴ *Alberta S. Williamson*, 47 ECAB 569 (1996).

The April 19, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 16, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member