

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD R. ANDRUS and DEPARTMENT OF DEFENSE,
DEFENSE CONTRACT AUDIT AGENCY, New Orleans, LA

*Docket No. 01-2089; Submitted on the Record;
Issued July 25, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on or about August 16, 2000 as a result of his March 6, 1989 employment injury.

On March 6, 1989 appellant, then a 44-year-old auditor, injured his low back at work when he stood up from a seated position. The Office of Workers' Compensation Programs accepted his claim for lumbar strain and herniated nucleus pulposus (HNP) at the L3-5 levels. Appellant underwent a lumbar laminotomy and discectomy at L3-5 in April 1990. He received compensation for temporary total disability on the periodic rolls and a schedule award for an 18 percent permanent impairment of the left leg.

In February 1994, appellant returned to full-time duty as a systems accountant. He sustained a lumbosacral strain on October 21, 1996 but lost no time from work.

On September 7, 2000 appellant filed a claim asserting that he sustained a recurrence of disability on or about August 16, 2000 as a result of his May 6, 1989 employment injury. He described the recurrence as follows:

"On the evening of August 16, 2000 as I stood up from a sitting position, I felt a sharp pain in my lower back. The pain and discomfort increased and I did not return to work for four days. I believe my present condition is directly related to my original injury because it is in my lower back -- the same area of my permanent disability injury."

To support his claim, appellant submitted an August 22, 2000 report from Dr. James C. Butler, his attending orthopedic surgeon, who recommended that he work four hours a day for a trial period of six months.

In an October 21, 2000 report, Dr. Butler explained this recommendation:

“Over the past year’s time, subjectively, [appellant’s] symptoms with respect to his lower back and thoracic areas has been increasing with regards to the intensity of his low back pain and frequency of his low back pain.

“On August 16, 2000 he attempted to rise from a chair at work and noticed further subjective increasing of his complaints of low back pain. Objectively, he has a further restriction of motion of the lumbar spine over time, suggesting that he is guarding his movements because of complaints of pain.

“X-rays as recently as October 10, [2000] show evidence of multilevel degenerative disc disease and residuals of his previous lumbar surgery.¹

“It is because of his increased subjective complaints of back pain that I recommended that he limit his workday to four hours a day instead of eight hours a day. During his evaluation on August 22, [2000] the above mentioned incident where he had increased back pain when he attempted to stand from a sitting position on August 16[, 2000] further supported the recommendation that he limit his workday. I am sure that [appellant] has given you his own account of how his workday affects his complaints of back pain. As you know, he is taking medication consisting of antiinflammatory and muscle relaxers on a daily basis. As you know, [appellant’s] long history of chronic back pain will not likely resolve ever. He has limited flexibility and is limited with regards to his ability to sit, stand, bend, stoop or lift objects. Due to his increased complaints of low back pain, since August 16, [2000], he is not able to perform all of his regular duties on the job on an eight[-]hour[-]a[-]day basis, in my opinion. According to [appellant], after working a period of up to four hours a day, his back pain intensifies to a point where he has to get relief by lying down and getting some rest. All of these factors have weighed into my decision to recommend that he diminish his workday to four hours a day instead of eight hours a day.”

In a decision dated November 17, 2000, the Office denied appellant’s claim of recurrence. The Office found that the weight of the medical evidence failed to establish that the claimed recurrence for reduced work hours was caused by an objective worsening of appellant’s work-related conditions.

Appellant requested a review of the written record by an Office hearing representative.

In a January 23, 2001 report, Dr. Butler reviewed his previous reports and added that he had prescribed a functional capacity evaluation to determine how many hours a day appellant

¹ On May 12, 2000 Dr. Butler diagnosed lumbar degenerative disc disease.

could work. The functional capacity evaluation recommended that appellant work no more than four hours a day and alternate sitting and standing as needed. Dr. Butler reported:

“Based on my observations since August of 1997, objective testing such as x-rays, MRI [magnetic resonance imaging] studies and the functional capacity evaluation dated December 22, 1990, I feel that the August 16, 2000 incident where [appellant] noticed significant pain and discomfort while rising from his chair and since that time the continued intensity and frequency of pain and discomfort while on the job represent not only my findings but a definite worsening of the conditions previously noted since my initial examination of [him] in August 1997.”

Dr. Butler noted appellant’s history of injury and surgery. He reported that appellant’s current diagnosis was lumbar spondylosis. Although it appeared that his March 6, 1989 condition had improved, as he was able to return to work in 1994, Dr. Butler cautioned that he could only use the starting time of August 1997, when appellant came under his care. Dr. Butler reported:

“Based on that date I find that the objective findings of x-rays, MRI and the functional capacity evaluation dated December 22, 2000 convinced me that his condition since August of 1997 has worsened, is work related and would certainly substantiate his inability to perform the duties he was performing prior to the date of August 16, 2000.”

* * *

“My findings based on my examinations of [appellant] as his attending physician since August of 1997, [his] complaints of low back pain, x-rays done on October 10, 2000 and the functional capacity evaluation performed on December 22, 2000 are that he exacerbated his chronic low back condition on August 16, 2000, that his condition is work related and that the prolonged sitting experienced while working beyond four hours a day is causing him much pain and discomfort and I feel is adversely affecting his well being.”

On March 14, 2001 Dr. Butler reported that appellant had difficulty sleeping because of leg pain. He noted that an MRI scan on February 28, 2001 showed a small left foraminal disc protrusion at L3-4 causing narrowing of the left neural foramen. There was evidence of degenerative disc disease at L4-5 and postoperative changes from L3-S1 without evidence of recurrent disc herniation. Dr. Butler stated:

“It is my opinion [appellant] has symptomatic lumbar degenerative disc disease and also a symptomatic protrusion at the L3-4 level accounting for his left leg pain. The changes at L3-4 have occurred since his last MRI [scan] December 1997. The changes at L3-4 may be secondary to the incident that occurred on August 16, 2000. His options at this point are to continue working at four hours [a] day work schedule or to consider lumbar surgery.”

In a decision dated June 13, 2001, the hearing representative affirmed the November 17, 2000 denial of appellant's claim of recurrence. The hearing representative found that appellant failed to establish either a change in the nature of his injury-related condition or a change in the nature of his duties.

The Board finds that appellant has not met his burden of proof to establish that he sustained a recurrence of disability on or about August 16, 2000 as a result of his March 6, 1989 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.²

To support his claim of recurrence, appellant submitted, among other things, reports from Dr. Butler, his attending orthopedic surgeon. In his January 23, 2001 report, he diagnosed lumbar spondylosis³ and stated that appellant's condition since August 1997 had worsened, was work related and would certainly substantiate his inability to perform the duties he was performing prior to August 16, 2000. This is the most probative medical evidence submitted by appellant to support his claim of recurrence, but it is insufficient to discharge his burden of proof.

The record shows that appellant sustained a lumbar strain and HNP at L3-5 when he stood up from a seated position at work on March 6, 1989. The record further shows that appellant underwent a lumbar laminotomy and discectomy at L3-5 in April 1990. To establish his claim of recurrence, therefore, appellant must submit a well-reasoned medical opinion explaining how the lumbar strain or herniated discs of March 6, 1989, or the surgery in April 1990 caused disability for work on or about August 16, 2000.

Dr. Butler did not report that the March 6, 1989 lumbar strain disabled appellant. He did not report that the March 6, 1989 herniated discs disabled appellant, nor did he report that the residuals of the April 1990 surgery disabled appellant. Dr. Butler attributed appellant's disability instead to a lumbar spondylosis and to an intervening incident that occurred on the evening of August 16, 2000.⁴ Although Dr. Butler indicated that appellant's lumbar spondylosis was work related, he offered no medical explanation of how this condition arose from the incident of

² *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.104(b) (1999).

³ "Lumbar spondylosis" is a degenerative joint disease affecting the lumbar vertebrae and intervertebral discs, causing pain and stiffness, sometimes with sciatic radiation due to nerve root pressure by associated protruding discs or osteophytes. DORLAND'S ILLUSTRATED MEDICAL DICTIONARY 1567 (27th ed. 1988).

⁴ Because appellant's regular work hours ended at 3:00 PM, it is not clear that the incident of August 16, 2000 occurred in the course of appellant's federal employment. Regardless, a recurrence of disability means an inability to work, after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. 20 C.F.R. § 10.5(x) (1999).

March 6, 1989 or from the surgery of April 1990. His opinion is, therefore, of diminished probative value.⁵ Without a causal connection to the March 6, 1989 employment injury or the April 1990 surgery, any demonstrated worsening of appellant's chronic lumbar degenerative disc disease is insufficient to establish his claim of recurrence.

Because the medical opinion evidence of record does not adequately explain the relationship between appellant's disability on or about August 16, 2000 and his March 6, 1989 employment injury or April 1990 surgery, the Board will affirm the denial of appellant's claim of recurrence.

The June 13, 2001 and November 17, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
July 25, 2002

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).