

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ISAUL H. GUERRA and DEPARTMENT OF THE ARMY,  
Corpus Christi, TX

*Docket No. 03-2045; Submitted on the Record;  
Issued November 26, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

The issue is whether appellant has established that he sustained a recurrence of disability on or after January 22, 2001, causally related to his September 19, 1972 employment injury.

On September 21, 1972 appellant, then a 29-year-old sheet metal worker, filed a claim alleging that on September 19, 1972 he experienced pain in the lower part of his back down into his legs, while pulling off a door rail that became loose and jerked him.<sup>1</sup>

The Office of Workers' Compensation Programs accepted appellant's claim for a mild lumbosacral strain. The Office subsequently expanded the acceptance of appellant's claim to include a bulging soft disc at L4-5 and a protruded disc at L4 and S1. The Office authorized back surgeries that were performed in 1973 and 1975.

On March 25, 2001 appellant filed a claim alleging that he sustained a recurrence of disability on January 22, 2001. By letter dated January 10, 2002, the Office advised appellant about the type of factual and medical evidence he needed to submit to establish his claim. Appellant did not respond.

By decision dated March 7, 2002, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on or after January 22, 2001. The Office stated that appellant did not submit any factual or medical evidence to support his claim. The Office issued subsequent decisions dated May 6, August 22 and December 13, 2002 and February 20 and July 1, 2003, denying appellant's requests for modification based on a merit review of the claim.

A person 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

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<sup>1</sup> The record reveals that appellant retired from the employing establishment on February 15, 1977.

evidence that the disability, for which he claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish 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 reasoning.<sup>2</sup>

The Board finds that appellant has failed to establish that he sustained a recurrence of disability on or after January 22, 2001, causally related to his September 19, 1972 employment injury.

In support of his recurrence claim, appellant submitted numerous medical opinion and laboratory reports and treatment notes regarding the treatment of his back and right leg. The relevant medical evidence includes a September 25, 2001 report of Dr. Juan E. Bahamon, a Board-certified neurologist, revealing that appellant had a new onset of radiculopathy at L5-S1 on the right side and that he was disabled from his work as a car salesman.<sup>3</sup> Dr. Bahamon's March 21, 2002 report, indicated that appellant had permanent L5-S1 radiculopathy especially on the right side, which was a consequence of his prior spinal injury. In his May 20, 2002 report, Dr. Bahamon opined that appellant has had back pain since 1972 and that he had a recurrence of the pain in February 2001, developing very symptomatic right L5-S1 radiculopathy, for which he underwent surgery to decompress the nerve roots due to a larger herniated disc. Dr. Bahamon opined that appellant had been symptomatic all along from the lumbar spine since 1972.

The June 17, 2002 treatment notes of Dr. Victor Kareh, a Board-certified neurosurgeon, revealed appellant's symptoms of pain in his right leg and lower back and that he limped with his right leg. Dr. Kareh stated that appellant had decreased right ankle reflex and he noted appellant's medical treatment. Dr. Kareh opined that appellant's problems were caused by the original injury he sustained and that he suffered from an aggravation of the original injury.

The June 17, 2002 report of Dr. Warran A. Ross, an orthopedic surgeon, noted appellant's symptoms of pain in his right leg and lower back. Dr. Ross stated that appellant was having decreased right ankle reflex. He opined that appellant's problem was caused by the original injury and he was experiencing an aggravation of this injury. Dr. Ross' September 16, 2002 report provided a history of appellant's employment injury and medical treatment. Dr. Ross noted his findings on orthopedic examination and a review of objective test results. He diagnosed herniation on lumbar L3-4, L4-5 and L5-S1 intervertebral discs with neuropathy, post-traumatic instability of the lumbar spinal joints and complications from surgery. Dr. Ross stated that appellant continued to suffer from symptoms related to his September 1972 employment injury that caused intervertebral disc herniations at L4-5 and L5-S1 and required two surgeries. He noted the neurological damage to appellant's back as a result of surgery. Dr. Ross opined that with medical certainty appellant's present symptoms were related to his September 1972 injury, with resulting progressive degenerative changes in the lumbar spinal joints that produce painful symptoms related to instability and increased mobility. He further opined that

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<sup>2</sup> *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

<sup>3</sup> The record reveals that appellant worked as a car salesman subsequent to his retirement from the employing establishment.

appellant's condition would not significantly improve and that he had at least an 80 percent impairment of the functional capacity of his lumbar spine. Dr. Ross concluded that appellant required continued physical restrictions and medical treatment. In his December 30, 2002 report, Dr. Ross opined that without any known contravening injury other than surgery and ineffective nonsurgical measures, appellant's back condition was as a result of his September 19, 1972 employment injury. Dr. Ross reiterated his opinion that appellant's current back condition was caused by the September 19, 1972 employment injury in his April 14, 2003 report.

The reports of Drs. Bahamon and Ross and the treatment notes of Dr. Kareh, are insufficient to establish appellant's burden because they failed to provide medical rationale explaining how or why appellant's back condition and disability were caused by the September 19, 1972 employment injury. Inasmuch as appellant has failed to submit rationalized medical evidence establishing that his current back condition is causally related to the September 19, 1972 employment injury, the Board finds that he has failed to satisfy his burden of proof in this case.

The July 1 and February 20, 2003 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
November 26, 2003

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member