

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL W. MILLER and DEPARTMENT OF THE ARMY,
BLUE GRASS DEPOT, Lexington, Ky.

*Docket No. 96-2483; Submitted on the Record;
Issued December 21, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant sustained a recurrence of disability beginning in March 1994 causally related to his September 5, 1991 employment injury.

Appellant submitted a claim for compensation pertaining to an injury sustained on September 5, 1991, which was accepted by the Office of Workers' Compensation Programs on March 17, 1992 for a low back strain and herniated nucleus pulposus at L4-5. Appellant returned to full duty on June 22, 1992.

On July 18, 1994 the employing establishment notified the Office that appellant was employed in a full-duty position from June 22, 1992 to June 21, 1994 at which time he was placed on a leave-without-pay status pending his decision to accept either disability retirement or workers' compensation benefits. The employing establishment attached a copy of appellant's signed July 27, 1992 position description as a full performance supply technician.

On July 25, 1994 appellant filed a claim alleging a recurrence of disability which he indicated began in March 1994 although he noted that his pay stopped following the recurrence of disability on June 21, 1994. Appellant noted that he was restricted to light duty after he returned to work following his original injury and that his recurrence of disability had been a gradual process.

On August 22, 1994 the Office advised appellant that he was required to submit additional information regarding his claimed recurrence of disability including a narrative medical report from his treating physician containing a well-rationalized medical opinion as to the relationship between his September 5, 1991 employment injury and his present condition. The Office noted that appellant had 30 days from the date of the notice to submit such information and that the Office would, on the basis of the information contained in the file, proceed to issue a decision on appellant's claim.

On October 3, 1994 the Office issued a decision denying appellant's claim on the grounds that appellant had not submitted sufficient medical evidence to establish a causal relationship between his claimed condition and his accepted injury.¹

Following this decision, appellant requested reconsideration and submitted an August 8, 1995 medical report from Dr. Rahul Dixit, appellant's treating physician who is Board-certified in physical medicine and rehabilitation. He noted that appellant had lower back pain "status post L4-5 discectomy which was done for his back and right leg pain in May 1993." Dr. Dixit noted that appellant's back pathology was a result of a September 1991 employment-related injury and that he had given appellant a "work excuse" from April 13 through 25, 1994 based on an aggravation of lower back pain. He stated that appellant had reached maximum medical improvement, and can "resume his duties with the restrictions *** if and when he gets a suitable job."²

The Office in a merit decision dated October 12, 1995 denied appellant's request for reconsideration on the grounds that Dr. Dixit's medical report failed to establish a causal relationship between appellant's claim condition and his employment-related injury.

Following this decision, appellant, on January 8, 1996 requested reconsideration of the Office's October 12, 1995 decision denying modification of its October 3, 1994 decision. In support of his request, appellant submitted a January 16, 1995 medical report from Dr. Henry P. Tutt, Board-certified in neurological surgery. He stated that appellant noted his employment-related injury two years earlier and opined that, upon examination, "there is a question of some recurrent disc herniation at [L4-5]." Dr. Tutt also noted further degenerative changes, and opined that he may be a candidate for additional discectomy. Appellant also submitted a November 24, 1995 medical report from him stating that on November 22, 1995 he had reopened the L4-5 laminotomy; performed a bilateral radical L4-5 discectomy, and a decompression of the cauda equina and L5 nerve roots. In a December 28, 1995 medical report, Dr. Tutt noted that although appellant was relieved completely of his leg pain some back pain remained.

The Office, in a merit decision dated May 14, 1996, denied appellant's request for reconsideration on the grounds that the evidence did not address whether appellant's medical condition in June 1994 was causally related to the September 1991 employment-related injury.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability beginning in March 1994 causally related to his September 5, 1991 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

¹ In a separate decision issued the same day, the Office denied appellant's claim for lost wages. However, appellant did not raise this issue in subsequent requests for reconsideration or in his appeal to the Board.

² Dr. Dixit stated that appellant could go back to light physical demand type work with a maximum lifting restriction of up to 28 pounds from floor to waist. He stated that appellant could carry up to 15 pounds frequently, 20 pounds on a regular basis and 38 pounds on an occasional basis.

evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury. 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.³

In the present case, appellant presented several medical reports from Drs. Dixit and Tutt indicating that appellant had sustained employment-related low back pain; that he had had surgery on November 22, 1995; and that his post surgical status was good. Although Dr. Dixit noted in his August 8, 1995 medical report that appellant's disc condition at L4-5 was attributable to his September 1991 employment injury, this report was not well rationalized, was speculative and was of limited probative value.⁴ Dr. Tutt did not provide any rationalized medical opinion causally relating appellant's condition on or after March 1994 to the accepted employment injury.

As appellant has not submitted any rationalized medical evidence which substantiates that his back condition on or after March 1994 is causally related to the accepted employment injuries, appellant has not met his burden of proof.

The decisions of the Office of Workers' Compensation Programs dated May 14, 1996 and October 13, 1995 are affirmed.

Dated, Washington, D.C.
December 21, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

³ *Lourdes Davila*, 45 ECAB 139 (1993).

⁴ *Philip J. Deroo*, 39 ECAB 1294 (1988); *see Jennifer Beville*, 33 ECAB 1970 (1982)