

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BOBBY HILL and DEPARTMENT OF THE AIR FORCE,  
TINKER AIR FORCE BASE, Oklahoma City, Okla.

*Docket No. 96-944; Submitted on the Record;  
Issued February 17, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained a recurrence of disability on or after September 29, 1994 causally related to his accepted January 18, 1994 employment injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to establish that he sustained a recurrence of disability on or after September 29, 1994 causally related to his accepted January 18, 1994 employment injury.

On January 19, 1994 appellant, an aircraft sheet metal worker, filed a traumatic injury claim (Form CA-1) alleging that on January 18, 1994 he sustained an acute lumbar strain while "loosening a hold down screw on a B52 wrap cowl alignment fixture" and that he felt a twinge in his lower back.

The Office of Workers' Compensation Programs accepted appellant's claim for lumbar strain.

On October 3, 1994 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that after his return to work following the January 18, 1994 employment injury, he experienced occasional discomfort in the lower back area, but not intense or continual pain. Appellant further alleged that subsequently the pain grew worse and that he was unable to stand and walk without pain on September 29, 1994. Appellant stopped work on that date.

By letter dated October 20, 1994, the Office advised appellant to submit factual<sup>1</sup> and medical evidence supportive of his recurrence claim.

By decision dated November 22, 1994, the Office found the evidence of record insufficient to establish that appellant's current back condition was causally related to the January 18, 1994 employment injury.

In a letter dated March 27, 1995, appellant, through his representative, requested reconsideration of the Office's decision.

By decision dated October 6, 1995, the Office denied appellant's request for modification based on a merit review of the claim.

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. This burden includes the necessity of furnishing medical evidence from a qualified 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>

In this case, appellant has not submitted rationalized medical evidence sufficient to establish that he sustained a recurrence of disability on or after September 29, 1994 causally related to the January 18, 1994 employment injury. In support of his recurrence claim, appellant submitted a September 29, 1994 authorization to return to work status from Mr. Robert Havener, a physician's assistant from the office of Dr. Richard J. Hess, a Board-certified internist and appellant's treating physician, indicating that appellant could return to work on October 3, 1994 with physical restrictions. However, this authorization is of little probative value on the issue of whether appellant's current back condition was causally related to the January 18, 1994 employment injury inasmuch as a physician's assistant is not a "physician" as defined under the Federal Employees' Compensation Act and cannot render competent medical evidence in support of a claim.<sup>3</sup>

Appellant also submitted Dr. Hess' September 29, 1994 medical report revealing that appellant was having some recurrence of pain in his lower back, and that he had treated appellant in January, February and March for a back injury. Dr. Hess stated that appellant's physical

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<sup>1</sup> In its October 20, 1994 letter, the Office advised appellant that he had stated in his Form CA-2a that he had sustained no other injury to the best of his knowledge. The Office further advised appellant that the employing establishment had submitted a letter indicating that appellant had reinjured his back while at home on October 6, 1994 based on a telephone conversation with appellant's wife on that date. The Office then advised appellant to explain the discrepancy.

<sup>2</sup> *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1993); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>3</sup> See *Barbara J. Williams*, 40 ECAB 649 (1988); *John D. Williams*, 37 ECAB 238 (1985); *Curtis L. Lord*, 33 ECAB 1481 (1982).

examination was essentially unchanged since the last evaluation and noted appellant's medical treatment. Dr. Hess further stated that appellant could return to work on October 3, 1994 with physical restrictions. Dr. Hess' report is insufficient to establish appellant's burden because he failed to provide any medical rationale to support his finding that appellant sustained a recurrence of his back condition causally related to the January 18, 1994 employment injury.

Dr. Hess' October 6, 1994 medical report indicated his findings on physical examination and medical treatment, and a diagnosis of acute lumbar strain. In an October 11, 1994 medical report, Dr. Hess noted his findings on physical examination and his recommendation that appellant continue with physical therapy. Similarly, in an October 19, 1994 medical report, Dr. Hess noted his findings on physical examination and recommended that appellant continue physical therapy. Dr. Hess opined that appellant could return to limited duty. Dr. Hess' October 25, 1994 medical report revealed his findings on physical examination, his recommendation that appellant continue physical therapy and his medical treatment of appellant. Dr. Hess' reports are insufficient to establish appellant's burden because he failed to address causal relationship.

Appellant submitted the October 6, 1994 treatment notes regarding the emergency treatment of his back condition on that date from a physician whose signature is illegible.<sup>4</sup> These notes are insufficient to establish appellant's burden because they fail to address whether appellant's current back condition was causally related to the January 18, 1994 employment injury.

Additionally, appellant submitted the October 7, 1994 medical report of Dr. J. Patrick Evans, a Board-certified orthopedic surgeon, noting a history of appellant's onset of back pain on October 6, 1994 when he rose to go to the bathroom and emergency medical treatment. Dr. Evans also noted his findings on physical and x-ray examination. Dr. Evans diagnosed acute lumbar muscle spasm, recommended medical treatment and opined that appellant would be unable to return to work until at least October 10, 1994. Dr. Evans' report is insufficient to establish appellant's burden because he failed to address causal relationship.

In support of his request for reconsideration, appellant submitted Dr. Hess' November 18 and December 8, 1994 medical reports which indicated his findings on physical examination, appellant's medical treatment and appellant's physical restrictions for light-duty work. These reports are insufficient to establish appellant's burden because Dr. Hess failed to address whether appellant's current back condition was caused by the January 18, 1994 employment injury.

The medical evidence of record does not contain rationalized medical opinion evidence establishing that appellant sustained a recurrence of disability on or after September 29, 1994 causally related to the January 18, 1994 employment injury. Although the Office advised appellant of the type of medical evidence needed to establish his claim for a recurrence of disability, appellant failed to submit medical evidence responsive to the request.

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<sup>4</sup> See *supra* note 1.

Accordingly, the Board finds that appellant has not established that he sustained a recurrence of disability on or after September 29, 1994 causally related to the January 18, 1994 employment injury.

The October 6, 1995 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
February 17, 1998

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member