

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of THOMAS STOELTING, II and DEPARTMENT OF THE ARMY,  
U.S. ARMY WESTERN COMMAND, Fort Richardson, Alaska

*Docket No. 96-1119; Submitted on the Record;  
Issued February 2, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained a recurrence of disability on and after August 22, 1995 causally related to his accepted July 1, 1993 lumbar and left calf contusions.

The Office of Workers' Compensation Programs accepted that appellant, then a 43-year-old warehouse worker, sustained a lumbar contusion and left calf contusion on July 1, 1993 when dropped by a hydraulic lift, causing steel canisters of liquid air to fall on him. In a June 1, 1993 report, an employing establishment physician restricted him to lifting less than 20 pounds until July 4, 1993.

In August 18, 1994 and November 20, 1994 letters, Dr. Robert Kent, a chiropractor, noted treating appellant at 61 office visits from August 2, 1993 to September 26, 1994 for the July 1, 1993 low back injury. In an attached itemized bill, he noted obtaining lumbosacral x-rays on December 1, 1994, but did not mention a spinal subluxation.

In a March 28, 1995 report, Dr. Declan R. Nolan, an attending Board-certified orthopedic surgeon, noted his December 1994 diagnosis of "advanced degenerative disc disease at L5-S1 with some nerve root irritation on an intermittent basis and a confirmed bulging disc on that level on MRI [magnetic resonance imaging]." Dr. Nolan restricted appellant from lifting more than 20 pounds and prolonged sitting as these activities aggravated lumbar disc problems. Dr. Nolan opined that appellant "had a significant injury in July 1993 which aggravated an underlying degenerative disc problem, bringing out" symptoms which did not respond to one-and-a-half years of conservative treatment. He submitted a May 19, 1995 report noting that appellant had not improved and continuing the work restrictions.

On August 22, 1995 appellant filed a notice of recurrence of disability which he related to the July 1, 1993 injury. The Office advised appellant by September 15, 1995 letter of the type of medical and factual evidence needed to establish his claim, including a detailed narrative report from his attending physician explaining how and why the July 1, 1993 injury would cause a disability for work on and after August 22, 1995.

In an August 22, 1995 report, Dr. Stephen Tower, a Board-certified orthopedic surgeon, provided a history of the July 1, 1993 injury. He noted that appellant experienced low back pain, with radiation into the right leg and up the spinal column while twisting or bending. He diagnosed chronic non-radicular low back pain and recommended a rehabilitation program.

In September 12, 1995 reports, Dr. Eric Carlsen, a Board-certified physiatrist, described the June 1, 1993 incident and noted appellant's complaints of "low-back and right-sided leg pain." Dr. Carlsen diagnosed an acute lumbar strain and "discogenic low back pain" related to the June 1, 1993 incident, and recommended physical therapy.<sup>1</sup> He indicated that appellant could resume light duty as of that day.

By decision dated October 16, 1995, the Office denied appellant's claim for recurrence of disability as causal relationship was not established. Appellant disagreed with this decision and by October 25, 1995 letter requested reconsideration. He enclosed additional evidence.<sup>2</sup>

In a July 21, 1993 report, Dr. Howard L. Katz, a radiologist, noted marked intervertebral "disc height loss with vacuum disc phenomenon, discogenic sclerosis, and osteophytosis at the L5-S1 interspace" and diagnosed "degenerative disc changes at L5-S1."

Dr. Kent submitted a series of one-line chart notes, dated October 20, 1993 to August 17, 1994. He noted obtaining x-rays on October 23, 1993, but did not state if those x-rays showed a spinal subluxation.

In a December 1, 1994 report, Dr. Nolan provided a history of the July 1, 1993 injury and noted appellant's complaints of intermittent left leg pain into the calf with numbness and some testicular pain. He found restricted lumbar motion, mild pain on percussion of the lumbar area, and a positive left straight leg raising test. Dr. Nolan diagnosed "[a]dvanced degenerative disc disease L5-S1 without radiculopathy," and recommended conservative treatment. Dr. Nolan stated in a February 10, 1995 follow-up report that two months of exercise and medication had not alleviated appellant's symptoms.

A February 20, 1995 MRI scan showed bony degenerative changes at L5-S1 "with an asymmetric disc bulge at that level on the right," with "slight flattening of the thecal sac." Dr. Nolan stated in a February 22, 1995 report that the bulging L5-S1 disc caused nerve root irritation causing radicular pain into the left leg and testicles.

In an October 19, 1995 report, Dr. Carlsen noted "MRI findings of an L5-S1 asymmetric bulge of moderate size." Dr. Carlsen postulated that without imaging studies prior to July 1, 1993, it was "difficult to say with 100 percent certainty that this bulge [was] the direct result of his July 1, 1993 injury. However, given that he was asymptomatic in his back prior to this date, and that he has continued low-back pain with occasional right-sided findings consistent with [the disc bulge], ... it would be quite possible to assume that the two are related."

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<sup>1</sup> Appellant submitted physical therapy progress notes dated September 13 to 28, 1995.

<sup>2</sup> Appellant also submitted a copy of a July 1, 1993 form report previously of record.

By decision dated November 20, 1995, the Office denied modification on the grounds that the evidence submitted was insufficient to warrant modification. The Office found that Dr. Kent did not qualify as a physician under the Federal Employees' Compensation Act as, although he obtained x-rays, he did not diagnose a spinal subluxation, and his opinion was of no probative value. The Office further found that the July 1, 1993 radiology report and Dr. Carlsen's report were insufficiently rationalized.

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability on and after August 22, 1995 related to the accepted July 1, 1993 lumbar and left calf contusions.

When an employee claims a recurrence of disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed recurrence of disability is causally related to the accepted injury. This burden includes the necessity of 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 employment factors and supports that conclusion with sound medical reasoning.<sup>3</sup> An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's unsupported belief of causal relation.<sup>4</sup>

In this case, to meet his burden of proof, appellant would have to submit sufficient rationalized medical evidence from his attending physicians explaining a pathophysiologic link between the accepted July 1, 1993 lumbar and left calf contusions, and his condition on and after August 22, 1995. The Board notes that appellant was advised by September 15, 1995 letter of the necessity, of furnishing a detailed narrative report from his attending physician explaining how and why the July 1, 1993 injury would cause a disability for work on and after August 22, 1995. Although appellant submitted reports from several physicians, their opinions were not supported by sufficient medical rationale to establish causal relationship.<sup>5</sup>

Dr. Nolan, an attending Board-certified orthopedic surgeon, submitted a December 1, 1994 report providing a history of injury and treatment, and diagnosing advanced L5-S1 degenerative disc disease without radiculopathy. He opined in a March 28, 1995 report that the July 1, 1993 incident aggravated appellant's underlying degenerative disc disease and brought on his pain symptoms. As Dr. Nolan's reports do not pertain directly to the period on and after August 22, 1995 at issue in this case, they are of diminished relevance. Also, Dr. Nolan did not set forth his medical reasoning as to how and why the July 1, 1993 incident would cause appellant's quiescent degenerative disc disease to become symptomatic, or otherwise cause a change in his medical condition. Without such supporting rationale, his opinion on causal relationship is of lessened probative value.<sup>6</sup>

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<sup>3</sup> See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>4</sup> *Ausberto Guzman*, 25 ECAB 362 (1974).

<sup>5</sup> The July 21, 1993 and February 20, 1995 imaging studies reports, as well as Dr. Tower's August 22, 1995 report, do not address causal relationship, and are therefore of little relevance on this issue.

<sup>6</sup> *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

Dr. Carlsen, a Board-certified physiatrist, submitted September 12, 1995 reports diagnosing an acute lumbar strain and “discogenic low back pain” related to the June 1, 1993 incident. In an October 19, 1995 report, Dr. Carlsen opined that as appellant had no back symptoms prior to the July 1, 1993 injury, “it would be quite possible to assume that the two are related.” This opinion on causal relationship is of diminished probative value as it is speculative in nature.<sup>7</sup>

The Board further finds that the Office properly determined that Dr. Kent did not qualify as a physician under the Act for the purposes of this case. Section 8101(2) of the Act provides that the term “‘physician’ ... includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist...”<sup>8</sup> Dr. Kent submitted August 18 and November 20, 1994 letters, an itemized bill and one-line chart notes dated October 20, 1993 to August 17, 1994. Although he noted obtaining lumbosacral x-rays on October 23, 1993, he did not diagnose a spinal subluxation by x-ray, or otherwise mention the presence of a spinal subluxation.

Consequently, appellant has failed to meet his burden of proof, as he submitted insufficient rationalized medical evidence to establish that his condition beginning August 22, 1995 was causally related to his July 1, 1993 injury or other factors of his federal employment.

The decisions of the Office of Workers’ Compensation Programs dated November 20 and October 16, 1995 are hereby affirmed.

Dated, Washington, D.C.  
February 2, 1998

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>7</sup> See *Leonard J. O’Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

<sup>8</sup> 5 U.S.C. § 8101(2); see also *Linda Holbrook*, 38 ECAB 229 (1986).