

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRUNO FERRUCCI and DEPARTMENT OF VETERANS AFFAIRS,
WEST HAVEN VETERANS HOSPITAL, West Haven, Conn.

*Docket No. 96-1296; Submitted on the Record;
Issued February 20, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability on March 16, 1993 causally related to his May 12, 1992 employment injury.

On May 12, 1992 appellant filed a claim for a traumatic injury occurring on that date when he strained his back moving masonry blocks. The Office of Workers' Compensation Programs accepted appellant's claim for lumbar strain as a no time lost case.

In a progress note dated August 10, 1992, a physician noted that appellant currently had tightness in his back following a back strain several months ago but no other symptoms. The physician diagnosed stable muscular back strain.

On May 24, 1994 appellant filed a notice of recurrence of disability alleging, that on March 16, 1993 he sustained a recurrence of disability causally related to his May 12, 1992 employment injury. Appellant stated that he stopped work following his alleged recurrence of disability in July 1993, that his physician, released him to return to light-duty employment on September 29, 1993; but that the employing establishment had terminated him prior to that date.¹

In support of his claim, appellant submitted a chart note dated March 16, 1993, from his attending physician Dr. Martin L. Sumner, a Board-certified orthopedic surgeon. Dr. Sumner

¹ Appellant related that the employing establishment laid him off in October 1992. Appellant returned to work in the spring of 1993, and worked until the employing establishment terminated him effective August 6, 1993 due to the expiration of his employment contract.

stated that appellant related a history of an employment injury on May 12, 1992, while lifting a block. Regarding the original employment injury, Dr. Sumner stated:

“Apparently x-rays were taken and he was out of work for several days. He continued to have some discomfort but he went back to work. He has continued to have some pain in his right low back with occasional radiation to the other side. He stated that three weeks ago he was laid off and he is still concerned about the pain.”

Dr. Sumner noted that x-rays of appellant’s lumbar spine revealed “old degenerative disc disease at several levels with spurring.” He diagnosed a probable back strain, with some aggravation of preexisting degenerative disc disease and found that appellant could return to work.

In chart notes dated July 9 and 16, 1992, Dr. Sumner noted that appellant had returned to work but had complaints of pain in his leg and recommended a magnetic resonance imaging (MRI) study.

In a chart note dated July 30, 1993, Dr. Sumner stated that an MRI revealed a disc protrusion at L4-5 and opined that “the disc herniation is definitely causally related [to] the work injury of May 12, 1992.” Dr. Sumner found that appellant could continue to perform all but heavy work.

In a report dated August 12, 1993, Dr. Jeffrey M. Sumner, a Board-certified orthopedic surgeon, stated:

“[Appellant] is a 52-year-old who lift[ed] a cement block on May 12, 1992 and injured his back. He has had back pain fairly continuously with radiation to the right buttock since that time but about a month ago he began having more pain with this time radiation down the right leg along the medial aspect of the thigh to the medial portion of the foot with intermittent numbness. He was being taken care of by Dr. Martin Sumner and at that point in time, in July, underwent an MRI. MRI confirmed a lateral herniation at L4-5. He came out of work last week because the pain got to be too significant and he has not worked since.”

Dr. Sumner diagnosed a herniated disc and recommended physical therapy.

On September 29, 1993 Dr. Jeffrey Sumner, found that appellant could attempt limited-duty employment. Dr. Sumner continued to submit progress notes. In a progress note dated April 11, 1994, Dr. Sumner stated that the disc herniation would permanently prevent appellant from returning to heavy labor.

In a chart note dated May 13, 1994, Dr. Jeffrey Sumner, stated that appellant had an increase in back pain and pain in his right leg after he performed light-carpentry work.

By decision dated August 4, 1994, the Office denied appellant’s claim on the grounds that he had failed to establish a causal relationship, between his accepted employment injury and

the claimed condition or disability. In the accompanying memorandum to the Director, incorporated by reference, the Office found that the medical evidence did not adequately explain the seven-month gap between appellant's final treatment for his original employment injury in August 10, 1992 and his return for treatment on March 16, 1993.

In a report dated September 2, 1994, Dr. Martin Sumner, stated that appellant "has had no other injury to his back other than the documented injury on May 12, 1992 and his symptoms have increased and he has gone downhill since that time." Dr. Sumner opined that the Office was penalizing appellant because he continued to work even though he had back pain.

Appellant requested a review of the written record and, in a decision dated February 23, 1995, an Office hearing representative affirmed the Office's August 4, 1994 decision.

By letter dated March 30, 1995, appellant requested reconsideration of his claim. In support of his request, appellant submitted a chart note from Dr. Jeffrey Sumner, dated February 24, 1995, in which he indicated that appellant aggravated his herniated disc during a long period of standing. Appellant further submitted a statement indicating that he did not work between the time that he was laid off in the fall of 1992, to the time he returned to work in the spring of 1993. He also submitted affidavits from coworkers noting his continued complaints of pain.

By decision dated July 3, 1995, the Office denied appellant's request for reconsideration of his claim on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision.

In a letter dated September 25, 1995, appellant again requested reconsideration of his claim, and submitted a chart note dated August 17, 1995 from Dr. Jeffrey Sumner, who stated:

"[Appellant's] herniation was precipitated by the lifting injury in 1992. He was lifting a cement block, he felt sudden pain and his clinical course has decayed since that time. He is unable to work right now and while one can argue the presence of preexisting degenerative disc disease, one cannot argue the lifting injury is the pivotal incident here and has to be considered the primary cause of his herniation."

In a report dated September 6, 1995, Dr. Jeffrey Sumner opined that appellant had degenerative disc disease, stating:

"Normally discs do not herniate completely, though they can spontaneously, and they can resolve but the added injury damaged the L4-5 disc [left] him with a herniated disc and what is called a motion segment instability. [Appellant's] level of employment in construction also contributed to his as this leads to the wear and tear changes that finally resulted in the disc failure."

Dr. Sumner found that appellant was disabled from his usual employment as a heavy laborer.

By decision dated February 15, 1996, the Office, in a merit decision, denied appellant's request for reconsideration.

The Board finds that appellant has not established that he sustained a recurrence of disability on March 16, 1993, causally related to his May 12, 1992 employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.² 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 sustained an employment injury on May 12, 1992, which the Office accepted for lumbar strain which resulted in no time lost from employment. In a progress note dated August 10, 1993, a physician, noted that appellant had no continuing symptoms from his lumbar strain other than some muscle tightness. Appellant performed his regular employment until he was laid off from the fall of 1992 to the spring of 1993. He resumed his usual employment in the spring of 1993 and worked until July 1993. The employing establishment terminated appellant effective August 6, 1993, due to the expiration of his employment contract. On May 24, 1994 appellant filed a notice of recurrence of disability, contending that he sustained a recurrence of disability on March 16, 1993 causally related to his May 12, 1992 employment injury.

Although appellant has submitted medical evidence in support of his claim, the evidence submitted is insufficient to establish causal relationship between his condition and disability as of March 16, 1993 and his May 12, 1992 employment injury. In support of his claim, appellant submitted various reports from Dr. Martin Sumner, a Board-certified orthopedic surgeon, who diagnosed appellant's condition as a probably back strain with aggravation of preexisting degenerative disc disease and a disc herniation at L4-5. Appellant further submitted reports from Board-certified orthopedic surgeon Dr. Jeffrey Sumner, who diagnosed a herniated disc. The Board notes that the Office accepted lumbar strain as resulting from the May 12, 1992 employment injury. The Office did not accept appellant's claim for any other condition and it is appellant's burden to establish causal relationship for conditions not accepted by the Office.⁴ In the instant case, appellant has not submitted a rationalized medical opinion, establishing that his herniated disc and disability therefrom is causally related to his accepted employment injury.

In a report dated March 16, 1993, Dr. Martin Sumner, noted appellant's history of a May 12, 1992 employment injury and diagnosed a probably back strain and aggravation of degenerative disc disease. He found that appellant could perform his regular employment. As

² *Robert H. St. Onge*, 43 ECAB 1169 (1992).

³ *Id.*

⁴ *Charlene R. Herrera*, 44 ECAB 361, 370 (1993).

Dr. Sumner does not address the cause of the diagnosed conditions or find appellant disabled from employment, his report is of little probative value.

In a chart note dated July 30, 1993, Dr. Martin Sumner, stated that an MRI revealed a disc protrusion at L4-5 and opined that “the disc herniation is definitely causally related [to] the work injury, of May 12, 1992.” Dr. Sumner’s opinion, however, consists solely of a conclusory statement without supporting rationale. Medical reports not containing rationale on causal relationship are entitled to little probative value and are generally insufficient to meet a claimant’s burden of proof.⁵

In a report dated September 2, 1994, Dr. Martin Sumner related appellant’s herniated disc to his employment injury, because there was no history of another injury and as his symptoms had progressively increased. However, the fact that symptoms mirror those following an employment injury, does not establish that the employing injury was the cause of those symptoms,⁶ nor does the fact that a condition manifests itself or worsens during a period of federal employment raise an inference of causal relationship between the two, as the symptoms could be revelatory of an underlying condition.⁷ As Dr. Sumner provided no further rationale for his causation finding, his report is of diminished probative value.

In a report dated August 12, 1993, Dr. Jeffrey Sumner, a Board-certified orthopedic surgeon, noted that appellant sustained an employment injury in May 1992 and that his back pain increased until “he came out of work last week because the pain got to be too significant....” Dr. Sumner diagnosed a herniated disc. Dr. Sumner’s opinion is of little probative value as he does not address the cause of appellant’s herniated disc and also relies on a history of appellant ceasing work due to back pain rather than being terminated from employment.⁸

In a chart note dated August 17, 1995, Dr. Jeffrey Sumner opined that appellant’s 1992 employment injury, precipitated his herniated disc. He stated, “[Appellant] was lifting a cement block, he felt sudden pain and his clinical course has decayed since that time. He is unable to work right now and while one can argue the presence of preexisting degenerative disc disease, one cannot argue the lifting injury is the pivotal incident here and has to be considered the primary cause of his herniation.” However, Dr. Sumner’s report is of diminished probative value due to his failure to explain the lack of bridging medical evidence between August 1992 and March 1993, a period of approximately seven months during which appellant did not seek medical treatment and performed his regular employment duties when work was available without apparent difficulty.

In a report dated September 6, 1995, Dr. Sumner opined that appellant’s work in construction caused “wear and tear changes that finally resulted in the disc failure,” and that “the

⁵ See *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

⁶ See *Dominic M. DeScala*, 37 ECAB 369 (1986).

⁷ *Steven R. Piper*, 39 ECAB 312 (1987).

⁸ *Daniel J. Overfield*, 42 ECAB 718 (1991).

added injury damaged the L4-5 disc leaving him with a herniated disc and what is called a motion segment instability.” However, Dr. Sumner does not adequately explain, with reference to the specific facts of this case, how an employment injury which apparently resolved in August 1992 such that appellant could resume heavy labor and not seek medical treatment for seven months, could cause a herniated disc and subsequent disability. Appellant, therefore, has not submitted probative medical evidence sufficient to establish that he sustained a recurrence of disability causally related to his employment injury.

The decisions of the Office of Workers’ Compensation Programs dated February 15, 1996 and July 3, 1995 are hereby affirmed.

Dated, Washington, D.C.
February 20, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member