

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HENRY J. COLLINS and DEPARTMENT OF THE AIR FORCE,
STRATEGIC AIR COMMAND, PLATTSBURG AIR FORCE BASE, N.Y.

*Docket No. 96-1002; Submitted on the Record;
Issued January 23, 1998*

DECISION and ORDER

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

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability as a result of his accepted November 11, 1988 cervical radiculitis.

On November 11, 1988 appellant, then a 43-year-old heating equipment mechanic, filed a claim for a pain in the left shoulder sustained that day while installing a garbage disposal under a kitchen sink. The Office of Workers' Compensation Programs accepted the claim for a cervical radiculitis.

On December 14, 1989 appellant filed a claim for recurrence of disability alleging that on December 2, 1989 he sustained a recurrence of disability. The Office accepted appellant's claim for recurrence of disability and paid benefits until May 1990.

In an attending physician's report dated December 22, 1989, Dr. Soham Patel, appellant's treating physician with a specialty in neurology, stated that appellant had sustained left C6 cervical radiculitis and that he was placed on total disability for an undermined time.

In a February 22, 1990 medical report, Dr. Patel stated that appellant had undergone a C6-7 anterior discectomy and anterior bone interbody bony fusion.

In an April 12, 1990 attending physician's report, Dr. Patel stated that appellant was totally disabled based on his left C6-7 disc herniation.

On May 1, 1990 Dr. Peter A. Tutschka, Board-certified in nuclear medicine and radiology, stated that x-rays taken on April 30, 1990 revealed "fusion of C2-C3 consistent with previous Cloward's procedure. There is degenerative narrowing of C5-C6 and C6-C7 disc space."

In an attending physician's report dated May 7, 1990, Dr. Patel released appellant to work with a restriction against heavy lifting.

In a medical report dated April 3, 1992, Dr. Michael E. Phillips, a Board-certified radiologist, stated that a magnetic resonance imaging (MRI) scan taken that day revealed mild central stenosis of the C5-6 level which were "quite similar to that seen on prior examination dated December 26, 1989."

In an attending physician's report dated May 1, 1992, Dr. Patel stated that appellant had C6-7 cloward fusion, but that he had advised appellant on April 6, 1992 that he could return to light duty with a restriction against heavy lifting.

On May 1, 1992 appellant filed a claim for recurrence of disability alleging that he had sustained a recurrence of disability on May 7, 1990 and stopped work as a result of the recurrence on March 8, 1992. Appellant stated that he was in constant pain since he returned to light duty.¹

In a June 26, 1992 letter, the Office advised appellant of the type of additional evidence needed to establish his claim.

By decision dated July 29, 1992, the Office denied appellant's claim for a recurrence of disability on the grounds that causal relationship was not established between the claimed recurrence of disability and the accepted November 11, 1988 injury.

In an August 12, 1992 letter, appellant requested an oral hearing, which was held on November 23, 1992.

At the November 23, 1992 hearing, appellant testified that he had surgery as a result of his employment-related injury on or about January 1990, and that he returned to work several months later. He stated that his position was terminated in March 1992, and he thereupon filed a claim for recurrence of disability noting that "his back was reinjured when I went back to work." Appellant also submitted a November 11, 1992 medical report from Dr. Patel which stated that appellant had had intermittent pain in the neck since his C6-7 disc herniation operation in February 1990 "which has worsened since March -- April 1992." He noted that appellant "suffers from cervical disc herniation on a recurrent basis, which is a result of his work-related injury of November 11, 1988."

By decision dated and finalized March 29, 1993, the Office hearing representative affirmed the Office's July 29, 1992 decision, finding that there was no rationalized medical evidence of record showing that appellant had sustained a C6-7 and/or C7-T1 disc herniation as a result of his November 11, 1988 employment-related injury, and noted further that the record failed to establish that appellant had sustained a recurrence of disability causally related to the employment-related injury.

¹ The record reflects that appellant returned to work on May 9, 1990.

On July 2, 1993 appellant requested reconsideration of the hearing representative's decision and submitted a May 12, 1993 medical report from Dr. Patel in support of his request.² In that report, Dr. Patel stated: he had treated appellant since his work-related injury of left C6 radiculitis. He then stated that: "I believe that the left C6 radiculitis could have been caused by the injury to the intervertebral disc in the cervical spine and this subsequently led to a disc herniation. To my mind this would allow me to logically conclude that he probably had a work-related injury to his cervical spine and intervertebral disc resulting into C6-7 disc herniation which subsequently led to surgical treatment." Dr. Patel added: "[P]eople who have bony fusion for cervical disc disease after discectomy can develop further disc problems either above or below the level of the fusion." He then stated that he believed "with a reasonable degree of medical certainty that [appellant's] cervical disc herniation syndrome requiring surgery in 1990, and subsequently disc herniation at C7-T1 on the right side in 1992, is a result of his work-related injury to the cervical spine."

On November 15, 1993 the Office referred appellant's medical records and a statement of accepted facts to an Office medical consultant who stated on November 20, 1995 that Dr. Patel had failed to medically explain how the employment-related injury could have caused appellant's current medical condition because appellant's MRI did not establish a herniation at C7-T1, nor did Dr. Patel present other objective findings to support multiple disc herniations.

In a decision dated December 12, 1995, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of his claim was insufficient to warrant modification of the March 29, 1993 decision of the hearing representative. In an accompanying memorandum, the Office stated that the claim had been accepted for cervical radiculitis, but that appellant's evidence from Dr. Patel described a herniated cervical disc. The Office noted that the claim was reviewed by an orthopedic consultant who found that Dr. Patel failed to medically support how the employment-related cervical radiculitis evolved into multiple cervical herniations. The consultant noted that, although Dr. Patel "refers to a C7-T1 lesion, the April 3, 1992 MRI refers only to C5-6 lesion," which the consultant noted had not changed since the initial MRI. Further, the consultant stated that Dr. Patel failed to submit additional objective findings to support his opinion.

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability causally related to the accepted November 11, 1988 injury.

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 the 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 complete and accurate factual and medical history,

² On July 27, 1993 the Board, in Docket Number 93-1608, dismissed appellant's petition for appeal filed on May 13, 1993 pursuant to appellant's motion.

concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.³

In this case, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his alleged recurrence of disability and his accepted November 11, 1988 employment-related injury.⁴

Appellant must establish that his current condition was causally related to the employment-related injury and caused total disability after March 8, 1992. However, the medical evidence of record is insufficient to establish that appellant's accepted cervical radiculitis evolved into multiple herniations which required surgery in 1990 and right side herniation at C7-T1 in 1992. Dr. Patel's medical report of May 12, 1993 is speculative in that he stated that appellant's work-related injury "could have been caused" by injury to the intervertebral disc which led to herniation. He failed to explain, however, how appellant's employment-related injury of cervical radiculitis would have physiologically caused disc herniation. Further, Dr. Patel failed to establish a causal relationship between appellant's medical condition and his employment-related injury in either his February 22, 1990 post-surgery report on appellant's anterior discectomy and bony fusion, or his April 12, 1990 report in which he stated that appellant was totally disabled as a result of disc herniation. Further, Dr. Patel stated in his May 1, 1992 attending physician's report that, appellant had sustained a C6-7 cloward fusion but did not establish any causal relationship between that condition and appellant's employment injury. In addition, neither Dr. Tutschka's report on appellant's April 30, 1990 x-rays nor Dr. Phillips' report on appellant's April 3, 1992 MRI scan established a causal relationship between appellant's employment-related injury and his diagnosed conditions.

The Board has held that a physician's opinion is not dispositive merely because it is offered by a physician.⁵ To be of probative value to appellant's claim, the physician must provide a proper factual background and must provide medical rationale which explains the medical issue at hand, be that whether the current condition is disabling or whether the current condition is causally related to the accepted employment injury. Where no such relationship is present, the medical opinion is of diminished probative value.

In light of the above, the Board finds that appellant has not met his burden of proof, as he submitted insufficient rationalized medical evidence demonstrating that he had sustained a recurrence of disability on March 8, 1992 due to residuals of his accepted November 11, 1988 injury, or other factors of his federal employment.

³ *Lourdes Davila*, 45 ECAB 139 (1993); *Louise G. Malloy*, 45 ECAB 613 (1994).

⁴ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

⁵ See *Michael Stockert*, 39 ECAB 1186 (1988).

The decision of the Office of Workers' Compensation Programs dated December 12, 1995 is affirmed.

Dated, Washington, D.C.
January 23, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member