

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT GRIVEL and DEPARTMENT OF AGRICULTURE,
MODOC NATIONAL FOREST, Alturas, Calif.

*Docket No. 96-1211; Submitted on the Record;
Issued May 11, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant had any disability or medical condition after September 25, 1994 causally related to his September 20, 1994 employment injury.

On September 20, 1994 appellant, then a 25-year-old emergency firefighter, sustained a lumbar back strain, in the performance of duty when he picked up a heavy box.

In a report dated September 20, 1994, Dr. David Walls, D.O., related that appellant was lifting a box on that date and felt a sudden onset of pain in his back. He diagnosed back strain and indicated that appellant would be off work for at least one week.

In a report dated October 4, 1994, Dr. Noreen Freiling related that appellant seemed to be improving after his September 20, 1994 employment injury and went to work for a tire company on September 26, 1994, but began complaining of upper back pain after "lifting tires all week." She diagnosed acute thoracic strain.

In a report dated January 24, 1995, Dr. Chris Morgan, a family practitioner, related that appellant injured his back on September 20, 1994, when he lifted a tool box at work and had experienced mid-back pain after that. He related that appellant's condition began to improve so he went to work for a private employer on September 26, 1994 a tire company, but then developed worsening of his back pain. Dr. Morgan stated that appellant denied any back problems prior to the September 1994 injury, but that his review of chart notes revealed that appellant had been seen in June 1994 for a three to four month history of back pain. He stated that a computerized tomography (CT) scan of his thoracic spine on January 11, 1995, showed fractures on the spinous processes of T8, 9 and 10.

In a form report dated April 3, 1995, Dr. Morgan diagnosed chronic back pain and checked the block marked "yes" indicating the condition was related to his September 20, 1994 employment injury, but noted that appellant had preexisting thoracic spine fractures, which he

did not feel were related to the September 20, 1994 employment injury. He indicated that appellant was totally disabled through June 1, 1995.

In a memorandum of a telephone conversation with appellant's wife, an Office of Workers' Compensation Programs claims examiner noted that she related that appellant had experienced back pain in June 1994, but did not recall an injury at that time nor did she know how appellant sustained the thoracic spine fractures.

In a report dated May 15, 1995, Dr. Morgan noted that appellant had some back complaints prior to his September 20, 1994 employment injury. He stated:

“[Appellant] did have CT scan evidence of [thoracic] spine fractures of T8, 9 and 10 which were felt to preexist the [September 20, 19]94 injury because of their nonreactivity in that area on bone scan on [February 2, 19]95. My feeling is when he had his lifting injury [September 20, 19]94 he strained some muscles and ligaments.”

In a statement dated May 24, 1995, appellant related that he experienced back pain in June 1994 prior to the September 1994 employment injury. He stated that he began working at the tire company on September 26, 1994 and that his back pain became worse after “working on tires and lifting tires.”

By decision dated June 13, 1995, the Office denied appellant's claim for compensation benefits.

By letter dated July 9, 1995, appellant requested reconsideration of the denial of his claim and submitted additional evidence.

In a report dated June 15, 1995, Dr. Kevin John Lawson, a Board-certified orthopedic surgeon, related that appellant was complaining of thoracic back pain, which he felt was related to his September 20, 1994 employment injury. He noted that a January 1995 CT scan showed nondisplaced fractures involving the spinous processes of T8, 9 and 10. He provided findings on examination and stated that he was concerned that appellant might have a multi-level clay-shovelers type fracture pattern, which was mistakenly thought to be an old injury when the traditional bone scan was not sensitive enough to show this. He indicated that appellant should have a repeat bone scan and that if the bone scan showed increased “uptake” this would be consistent with an injury the previous year or the previous summer when appellant was firefighting.

In a report dated June 21, 1995, Dr. Lawson stated that a specialized bone scan performed on June 16, 1995 showed an impression of an abnormal study, a demonstration of a moderately increased uptake of activity in the thoracic spine at the T8-9 level. He stated that he was aware that appellant had a bone scan described as “normal” previously, but that he believed that this was

a reflection of the routine bone scan being less sensitive than the specialized bone scan and that a positive specialized bone scan was consistent with the history of injury. Dr. Lawson stated:

“It is my considered impression, after examining [appellant] and reviewing his [bone scan] image, that his current symptoms are related to the fractures of his spinous process and that these likely did occur in the past 1 [to] 2 years. With his history of having had onset of severe pain in September 1994 would correlate with this correctly. The magnitude of the fractures being relatively small anatomically is consistent with his direct muscle loading mechanism of injury which he gives by history.”

In a form report dated June 23, 1995, Dr. Lawson provided no physical findings or diagnosis but checked the block marked “yes” indicating that appellant was disabled from July 11, 1994 and that the disability was causally related to his September 20, 1994 employment injury.

In a form report dated August 1995, Dr. Lawson diagnosed thoracic spine compression at T8, 9 and 10 and checked the block marked “yes” indicating the condition was causally related to his September 20, 1994 employment injury. Dr. Lawson indicated that appellant was totally disabled from September 20, 1994 to October 1, 1995.

By decision dated October 5, 1995, the Office denied modification of its June 13, 1995 decision.

In an undated letter to appellant’s congressman, appellant’s wife related that the first week that appellant worked at the tire company, there was no major lifting but that after that appellant began lifting tires and then experienced back pain.

By letter dated November 20, 1995, appellant requested reconsideration of the denial of his claim and submitted additional evidence.

In a report dated November 7, 1995, Dr. Lawson stated that appellant had described a significant injury to his upper back, when he attempted to lift a heavy tool box with a sudden jerking motion using his arms. He stated that he believed appellant had injured himself by a sudden forceful contraction of the trapezius and upper back muscles, suffering small, avulsion type or minimally displaced fractures of the thoracic spine. Dr. Lawson stated that appellant initially had a standard planar bone scan, which did not show any increase in uptake, which suggested to his family physician and orthopedic, consultant that this was a preexisting injury, but that he believed that this was a mistake. He stated his opinion that appellant did not sustain any additional injury to his back while working at the tire company. Dr. Lawson stated that appellant had a specialized bone scan performed on June 16, 1995, which clearly showed abnormal study and demonstrated moderately increase uptake of activity in the thoracic spine at the T8 and T9 levels which was where the CT scan showed fractures. He stated that this would be consistent with an injury within the last two years or less.

By decision dated February 16, 1996, the Office vacated its June 13 and October 5, 1995 decisions and accepted appellant’s claim for a thoracic condition from September 20 through

September 26, 1994 when he began working for a private employer. The Office denied appellant's claim for any employment-related thoracic condition after September 25, 1994.¹

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained any disability or medical condition after September 25, 1994 causally related to his September 20, 1994 employment injury.

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.² Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that he sustained an injury in the performance of duty and that his disability was caused or aggravated by his employment.³ As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.⁴ The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁵ Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.⁶

In this case, appellant sustained a lumbar back strain on September 20, 1994, in the performance of duty while lifting a heavy box. He began working for a private employer, a tire company, on September 26, 1994 and subsequently claimed that he had continuing back problems, which he attributed to his September 20, 1994 employment injury.

In a report dated October 4, 1994, Dr. Freiling related that appellant seemed to be improving after his September 20, 1994 employment injury and went to work for a tire company on September 26, 1994, but began complaining of upper back pain after "lifting tires all week." She diagnosed acute thoracic strain. Appellant's employment injury was to a different part of the back, the lumbar region. As Dr. Freiling did not explain how the injury to appellant's thoracic spine was related to the September 20, 1994 employment-related lumbar spine injury, this report does not support appellant's claim. Furthermore, it appears from the factual background given by the physician, that appellant's back pain could be related to lifting tires at his new job, rather than to his former federal job.

¹ The Board notes that appellant submitted additional evidence subsequent to the February 16, 1996 Office decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

² *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537, 538-39 (1953).

³ *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

⁴ *Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

⁵ *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

⁶ *Joseph T. Gulla*, *supra* note 4.

In a report dated January 24, 1995, Dr. Morgan, a family practitioner, related that appellant injured his back on September 20, 1994, when he lifting a tool box at work and had experienced mid-back pain after that. He related that appellant's condition began to improve so he went to work for a tire company on September 26, 1994 but developed worsening of his back pain after that. Dr. Morgan stated that appellant denied any back problems prior to the September 1994 injury, but that his review of chart notes revealed that appellant had been seen in June 1994 for a three to four month history of back pain. He did not opine that appellant's back problems were causally related to the September 20, 1994 employment injury. In fact, he gave a history of back problems commencing in June 1994 prior to the September 20, 1994 employment injury and he also noted that appellant complained of back pain after commencing the job at the tire company. In a statement dated May 24, 1995, appellant related that he experienced back pain in June 1994 prior to the September 1994 employment injury and he also stated that his back pain became worse after he began lifting tires at the tire company subsequent to his September 20, 1994 employment injury. There is no rationalized medical opinion explaining how appellant's back problems were causally related to the September 20, 1994 employment injury, rather than to some incident in June 1994 or to appellant's job at the tire company on and after September 26, 1994. Therefore, this report is not sufficient to discharge appellant's burden of proof.

In a form report dated April 3, 1995, Dr. Morgan diagnosed chronic back pain and checked the block marked "yes" indicating the condition was related to his September 20, 1994 employment injury, but noted that appellant had preexisting thoracic spine fractures, which he did not feel were related to the September 20, 1994 employment injury. He indicated that appellant was totally disabled through June 1, 1995. However, the Board has held that an opinion on causal relationship, which consists only of checking "yes" to a form report question on whether the claimant's disability was related to the history given is of little probative value.⁷ Without any explanation or rationale, such a report has little probative value and is insufficient to establish causal relationship.⁸

In a report dated May 15, 1995, Dr. Morgan noted that appellant had some back complaints prior to his September 20, 1994 employment injury. He stated that there was CT evidence of thoracic spine fractures but that he believed these fractures preexisted the September 20, 1994 employment injury. As Dr. Morgan did not attribute the thoracic spine fractures to the September 20, 1994 employment injury, this report does not support appellant's claim.

In a report dated June 21, 1995, Dr. Lawson, a Board-certified orthopedic surgeon, stated that a specialized bone scan performed on June 16, 1995 showed an impression of an abnormal study in the thoracic spine at the T8-9 level. He stated that he was aware that appellant had a bone scan described as "normal" previously but that he believed that this was a reflection of the routine bone scan being less sensitive than the specialized bone scan. Dr. Lawson stated:

⁷ *Deborah S. King*, 44 ECAB 203 (1992); *Donald W. Long*, 41 ECAB 142, 146 (1989).

⁸ *Id.*

“It is my considered impression, after examining [appellant] and reviewing his [bone scan] image, that his current symptoms are related to the fractures of his spinous process and that these likely did occur in the past 1 [to] 2 years. With his history of having had onset of severe pain in September 1994 would correlate with this correctly. The magnitude of the fractures being relatively small anatomically is consistent with his direct muscle loading mechanism of injury which he gives by history.”

However, Dr. Lawson provided insufficient medical rationale explaining how appellant’s back problems were causally related to the September 20, 1994 employment injury rather than to the job lifting tires which he began on September 26, 1994. Therefore, this report is not sufficient to discharge appellant’s burden of proof.

In a form report dated June 23, 1995, Dr. Lawson provided no physical findings or diagnosis but checked the block marked “yes” indicating that appellant was disabled from July 11, 1994 and that the disability was causally related to his September 20, 1994 employment injury. He did not explain how appellant could be disabled in July 1994 from a traumatic injury, which did not occur until two months later in September 1994. This report does not support appellant’s claim.

In a form report dated August 1995, Dr. Lawson diagnosed thoracic spine compression at T8, 9 and 10 and checked the block marked “yes” indicating the condition was causally related to his September 20, 1994 employment injury. Dr. Lawson indicated that appellant was totally disabled from September 20, 1994 to October 1, 1995. As noted above, an opinion on causal relationship which consists only of checking “yes” to a form report question on whether the claimant’s disability was related to the history given is of little probative value.

In a report dated November 7, 1995, Dr. Lawson stated that appellant had described a significant injury to his upper back when he attempted to lift a heavy tool box, with a sudden jerking motion using his arms. He stated that he believed appellant had injured himself by a sudden forceful contraction of the trapezius and upper back muscles, suffering small fractures of the thoracic spine. Dr. Lawson stated his opinion that appellant did not sustain any additional injury to his back while working at the tire company. He stated that appellant had a specialized bone scan performed on June 16, 1995, which clearly showed abnormal study and demonstrated moderately increase uptake of activity in the thoracic spine at the T8 and T9 levels which was where the CT scan showed fractures. Dr. Lawson stated that this would be consistent with an injury within the last two years or less. However, Dr. Lawson provided insufficient medical rationale explaining why he believed that appellant’s thoracic fractures were caused by the September 20, 1994 employment-related lumbar strain rather than to his work lifting tires commencing on September 26, 1994. He noted that appellant’s thoracic fractures could have occurred within the last two years. This period of time would encompass his time at the tire company. Therefore, this report is not sufficient to establish that appellant’s back problems after September 25, 1994 were causally related to his September 20, 1994 employment injury.

The decision of the Office of Workers' Compensation Programs dated February 16, 1996 is affirmed.

Dated, Washington, D.C.
May 11, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member