

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of AFTON J. SIMMONS and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, North Little Rock, Ark.

*Docket No. 96-479; Submitted on the Record;  
Issued November 27, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing a recurrence of disability on or after March 8, 1993 causally related to his accepted employment injuries.

On February 10, 1978 appellant, then a 39-year-old licensed practical nurse, filed a claim alleging that on February 3, 1978 he injured his knee by bumping it on a desk and that he periodically bumped his knee while working.<sup>1</sup> The Office of Workers' Compensation Programs accepted appellant's claim for a contusion of the right knee, prepatellar bursitis, exogenous depressive reaction and herniated nucleus pulposus at L5-S1. On May 23, 1978 appellant developed a flare-up of his back injury and was hospitalized. He stopped work October 1978. On December 15, 1978 appellant was approved for civil service disability retirement effective January 17, 1979. After the Office requested that he make an election between his civil service retirement and his Federal Employees' Compensation Act benefits, appellant elected the Act benefits on November 18, 1980. Appellant received appropriate compensation throughout this time period.<sup>2</sup> On May 12, 1995 appellant notified the Office that he was totally disabled again. By letter dated June 16, 1995, the Office advised appellant that he needed to file a claim for recurrence of disability and informed him of what type of evidence he needed to support his claim. On July 12, 1995 appellant filed a claim for recurrence of disability, alleging that he had recovered from his back injury and major depression since his injury in 1976 and work stoppage in 1979. In a decision dated August 24, 1995, the Office denied appellant's claim for recurrence of disability on the grounds that the evidence failed to demonstrate a causal relationship between

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<sup>1</sup> Appellant had filed an earlier claim for an injury to his back in August 1975. He reinjured his back in 1976 and had surgery.

<sup>2</sup> A review of the record reveals that the Office declared an overpayment of benefits on April 19, 1982 due to appellant's failure to initially report earnings from work with the Conway Human Development Center. Subsequently, the Office reached a compromise settlement with appellant for the overpayment.

the claimed condition and the February 3, 1978 accepted injuries of herniated disc and exogenous depressive reaction.

The Board finds that appellant has not met his burden of proof to establish a recurrence of total disability.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which he seeks compensation was causally related to his employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.<sup>3</sup>

In the present case, appellant submitted medical reports by Drs. J. Tod Ghormley, a Board-certified orthopedic surgeon and T. Stuart Harris, a Board-certified psychiatrist, in support of his claim. In a report dated October 11, 1993, Dr. Ghormley indicated that appellant had low back pain and shoulder pain for several years. He reported that appellant recently fell off a roof and sustained several comminuted fractures of his right ankle, right tibia, right fibula and an intra-articular fracture of his left wrist. Dr. Ghormley stated that it was unlikely appellant would be able to return to his previous occupation. In a report dated September 20, 1993, Dr. Harris noted that appellant had been under his care for several years for a chronic depressive illness. He reported that appellant fell off a roof in March 1993, had sustained several orthopedic injuries and had subsequently become severely depressed and nonfunctional. Dr. Harris indicated that appellant's psychological state was very similar to his prior psychological state when he had been injured and medically disabled from the employing establishment. In a report dated July 13, 1995, Dr. Harris stated that the medications that he prescribed for appellant's depression from his earlier accepted back injury were a major factor in his falling off the roof in 1993 as many patients fell while on these medications. He reported that appellant's depressive state had not fully resolved at the time he accepted a position outside of the federal government in 1982, that appellant continued under treatment for his depression and that the relationship between the medication and appellant's fall provided a causal connection between the fall and his 1976 injury. Appellant also submitted office notes from Dr. Ghormley from June 1990 to June 1995 which showed continuous treatment for appellant's back condition.

The Boards finds that the reports of Drs. Ghormley and Harris are not sufficient to establish that appellant's fall, orthopedic injuries and depression are causally related to his earlier accepted employment injuries. In their reports, appellant's physicians relate that appellant sustained an injury in March 1993 when he fell from the roof of his house. It is a well-accepted principle of workers' compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequences that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause.<sup>4</sup> As noted by Professor Larson: "[o]nce the work-connected character of any injury, such as a back injury, has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an

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<sup>3</sup> *Dominic M. DeScala*, 37 ECAB 369 (1986).

<sup>4</sup> Larson, *The Law of Workmen's Compensation* § 13.00.

independent nonindustrial cause.”<sup>5</sup> The reports of appellant’s physicians do not establish that appellant’s disability in 1993 was due to the natural progression of his accepted knee or low back conditions. Rather, the medical evidence reveals that in March 1993 appellant was involved in an accident at home when he fell from his roof and sustained extensive injuries. Appellant’s injury in March 1993 constitutes an independent intervening nonindustrial cause of his claimed disability. The medical evidence of record is insufficient to establish that appellant’s disability is attributable to the natural progression of his accepted conditions or that the fall can be attributed to his medication. Therefore, his disability commencing in 1993 is not compensable under the Act.

The decision of the Office of Workers’ Compensation Programs dated August 24, 1995 is affirmed.

Dated, Washington, D.C.  
November 27, 1998

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>5</sup> *Id.* at § 13.11(a).