

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES D. CLUCK and DEPARTMENT OF THE ARMY,
INFORMATION SYSTEMS COMMAND, Warren, Mich

*Docket No. 97-99; Submitted on the Record;
Issued September 11, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant sustained a recurrence of disability as of July 17, 1994 causally related to his accepted October 28, 1992 lower back injury.

On October 28, 1992 appellant, a 51-year-old supervisory contract specialist, injured his lower back when he stood up from a chair at his work site. Appellant filed a Form CA-1 claim for benefits based on traumatic injury to his lower back on November 13, 1992, which the Office of Workers' Compensation Programs ultimately accepted for lumbar strain. Appellant did not miss any time from work due to his employment injury.

On September 15, 1994 appellant filed a CA-2 claim for recurrence of disability, alleging that on July 17, 1994 he experienced an exacerbation of his lower back pain, which was caused or aggravated by the accepted October 28, 1992 employment injury.

In support of his claim, appellant submitted a Form CA-16 from Dr. Bruno Burgess noting an occupational injury, lower back strain, and a Form CA-20 and September 6, 1994 medical report from Dr. Edward J. Nebel, a specialist in orthopedic surgery. In his September 6, 1994 medical report, Dr. Nebel noted appellant's history that he had sustained a back injury on September 30, 1992, was "having trouble" and needed to know whether his most recent back injury was related to the September injury. Dr. Nevel noted appellant's complaints of persistent low backache, diagnosed a lumbar bilateral L5-S1 facet syndrome, and stated that x-rays of the lumbosacral spine indicated L5-S1 degenerative changes.

By decision dated October 26, 1994, the Office denied appellant compensation for a recurrence of disability due to his accepted October 28, 1992, employment-related low back condition. In a memorandum incorporated by reference into the decision, the Office found that appellant failed to submit rationalized medical evidence sufficient to establish that the claimed recurrence of disability was caused or aggravated by the October 28, 1992 employment injury.

By letters to the Office dated November 14, 1994, appellant requested an oral hearing, which the Office scheduled for August 1, 1995 by letter dated July 8, 1995.

In a decision dated August 30, 1995, an Office hearing representative affirmed the Office's previous decision finding that appellant failed to submit rationalized medical evidence sufficient to establish that the claimed recurrence of disability was caused or aggravated by the October 28, 1992 employment injury.

By letter to the Office dated July 7, 1996, appellant requested reconsideration of the Office's decision. Accompanying the letter was a May 18, 1993 letter from Dr. Nebel, and an "Opinion Statement" written by appellant to Dr. Nebel, which was essentially a statement by appellant indicating a causal relationship between his October 28, 1992 and his alleged recurrence of disability on July 17, 1994, for which appellant requested Dr. Nebel's signature. Dr. Nebel did not sign appellant's statement.

In response to appellant's letter and "Opinion Statement," which was prepared for his signature, Dr. Nebel stated in his April 15, 1996 letter:

"I reviewed your correspondence of April 8, 1996 and reviewed my office examination notes of you of September 6, 1996 as well as the x-ray C[A]T [computerized axial tomography] scan report of September 9, 1996. My diagnosis stands as per September 6, 1996 and in essence you sustained a back strain as per your history of September 30, 1992 superimposed on preexisting mild L5-S1 facet joint physiologic degenerative arthritis, found early changes, is not properly adequate for me to conclude that your strain as you reported to me of September 1994 as the sole reason for prolonged low back complaints. The underlying bilateral L5-S1 facet arthritis could well substantiate you symptom complex. I realize you feel it logical to incriminate the September 30, 1992 incident as sole cause for chronologically it appears that way."

In a decision dated August 5, 1996, the Office denied appellant's request for reconsideration, finding that the evidence submitted was not sufficient to warrant modification of the prior decision. In an accompanying memorandum, the Office found that Dr. Nebel's April 15, 1996 letter, the only medical evidence appellant submitted in support of reconsideration, did not support a causal relationship between appellant's accepted October 28, 1992 employment injury and his current condition.

The Board finds that appellant has not sustained a recurrence of disability as of July 17, 1994 causally related to the October 28, 1992 employment injury.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires 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 the employment injury, and who supports that conclusion with sound medical reasoning.¹

The record contains no such medical opinion. Indeed, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates his disability for work as of July 17, 1994 to his October 28, 1992 employment injury. For this reason, he has not discharged his burden of proof to establish his claim that he sustained a recurrence of disability as a result of his accepted employment injury.

The only new and relevant medical evidence appellant submitted was Dr. Nebel's April 15, 1996 letter, in which Dr. Nebel indicated that his September 6, 1994 diagnosis of a back strain superimposed on preexisting arthritis was not a sufficient basis on which to conclude that his 1992 employment injury was the sole cause of his current condition or disability, and refused appellant's request to sign his "opinion statement" and provide an unequivocal opinion that there was a causal relationship between appellant's 1992 employment injury and his alleged July 17, 1994 recurrence. As Dr. Nebel's letter was the only evidence appellant submitted in support of his request for reconsideration, appellant failed to provide a rationalized, probative medical opinion indicating that his current condition was caused or aggravated by the accepted October 28, 1992 employment injury.²

As there is no medical evidence addressing and explaining why the claimed condition and disability as of July 17, 1994 was caused or aggravated by his October 28, 1992 employment injury, appellant has not met his burden of proof in establishing that he sustained a recurrence of disability.

The August 5, 1996 decision of the Office of Workers' Compensation Programs is therefore affirmed.

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

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

¹ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

² *William C. Thomas*, 45 ECAB 591 (1994).

Bradley T. Knott
Alternate Member