

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SCOTT C. HAVELKA and U.S. POSTAL SERVICE,
POST OFFICE, Pittsburgh, Pa.

*Docket No. 97-1863; Submitted on the Record;
Issued April 9, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a recurrence of disability commencing July 15, 1996, causally related to his January 18, 1995 accepted lumbosacral soft tissue muscular strain injury.

The Office of Workers' Compensation Programs accepted that on January 18, 1995 appellant sustained lumbar strain. Appellant was off work from the date of injury and returned to full work activities without restrictions on March 9, 1995.

On July 25, 1996 appellant filed a claim alleging that on July 15, 1996 he sustained a recurrence of disability, causally related to his previously accepted employment injury.

In support of his claim, appellant submitted multiple authorizations for medical attention, a limited-duty assignment offer, paperwork related to his initial claim, notifications of absence, prescriptions predating the July 15, 1996 claimed recurrence, medical records predating the July 15, 1996 claimed recurrence and a July 15, 1996 emergency room report which noted appellant's complaints of "back spasm," noted that appellant had a history of chronic back pain for several years and noted a history of a herniated disc at L5-S1. The diagnoses given were lumbar strain, chronic spasm and herniated disc. No mention of appellant's January 18, 1995 lumbar strain injury was made. No causation of the back spasms was discussed.

Appellant submitted a July 17, 1996 report from Dr. Mitchell E. Antin, an osteopath, which noted subjective complaints of pain without accompanying objective findings. He reported appellant's history of back injury in 1983 and again in 1995, noted that a 1990 computerized tomography (CT) scan demonstrated a bulging disc at L5 and noted that appellant claimed a reoccurrence of back spasms with burning type back pain radiating to the right hip on July 15, 1996. Dr. Antin did not discuss the events and circumstances of July 15, 1996 and did not provide any opinion as to the causation of appellant's July 15, 1996 complaints.

Appellant submitted an August 1, 1996 report from Dr. Jae-C. Kim, Board-certified in rehabilitation medicine, which noted that appellant complained of recurrent low back pain and recent onset of right shoulder pain since July 15, 1996 and stated that it was similar to his 1995 incident. He noted significant right paravertebral muscle spasm, explained to appellant that he had chronic myofascial pain syndrome and recommended a home exercise program. Dr. Kim did not discuss causation of the July 15, 1996 complaints.

By letter dated August 28, 1996, the Office requested further information on the claimed recurrence including a detailed medical narrative containing a rationalized opinion regarding causal relation of the diagnosed condition. It also requested appellant's statement describing events on July 15, 1996 and explaining why he believed his present condition was related to the original injury.

Appellant submitted an August 19, 1996 x-ray report demonstrating mild arthritic changes of his cervical, thoracic and lumbosacral spines. He also provided a September 6, 1996 statement claiming that his "accident" on July 15, 1996 was a reoccurrence from the January 18, 1995 injury. Appellant claimed that this was documented by Dr. Antin and claimed that it was the same injury repeating itself because the severity of pain and spasms in his hip, back and shoulder were the same. Appellant indicated that he was a disabled veteran with shrapnel wounds and a herniated disc at L5-S1. He also noted that in recent months his job as a letter carrier included more deliveries in the same amount of time with forced overtime and that he did a lot of walking, lifting, twisting and carrying.

A September 12, 1996 report was submitted by Dr. Kim which referred to his prior report, noted that he had injected appellant's right shoulder trigger point and indicated that appellant still complained of low back pain. He diagnosed myofascial pain syndrome, mostly affecting the lower lumbar spine and emphasized that appellant needed stretching and strengthening exercises. Dr. Kim did not discuss causation of the July 15, 1996 complaints.

Also submitted was an October 8, 1996 fitness-for-duty examination report from Dr. Victoria M. Langa, a Board-certified orthopedic surgeon. She noted that appellant had occasional radicular and low back discomfort since 1983, that he received Veterans Administration (VA) disability due to his low back complaints and that the 1990 CT scan showed a minimal bulging disc at L2-3 and a bulging disc with associated central disc herniation at L5-S1. Dr. Langa noted that on January 18, 1995 appellant's complaints began spontaneously and then progressed, that he was subsequently diagnosed as having lumbar strain and that he was released to full duties without restrictions on March 9, 1995. She noted that appellant claimed that in late June early July 1996 he began being assigned mandatory overtime, that he sought an excuse from this overtime from the VA, but that he was still assigned overtime hours. Dr. Langa noted that on July 15, 1996 appellant claimed that, during the performance of his regular duties, he noted the onset of recurrent back spasms without any specific incident of trauma. She noted that on July 15, 1996 appellant was diagnosed with lumbar strain, chronic spasm and herniated disc and that on July 16, 1996 Dr. Antin diagnosed lumbar strain and recommended rest, but that appellant was put on light duty and lost no time from work following this incident. Dr. Langa reviewed Drs. Antin's and Kim's reports, reported appellant's current symptoms and diagnosed intermittent, essentially nonradicular low back pain by history and history of central disc herniation at L5-S1. She noted that "established disc herniations typically can result in intermittent and fluctuating symptoms of low back discomfort which would be consistent with

[appellant's] overall history of low back symptomatology since 1983.” Dr. Langa opined that the “work injury” of January 18, 1995 most likely represented a recurrence of the preexisting condition since there was no history of any specific injury having occurred on that date. She indicated that appellant had returned to baseline when he resumed full work activities in March 1995 and noted that she would consider him to have been fully recovered from any work incident on January 18, 1995 by that time. Dr. Langa opined that, without any specific history of trauma, appellant’s spasms developed on July 15, 1996 “basically represented a flareup or recurrence of the underlying condition (disc herniation).” She opined that these spasms which developed on July 15, 1996 were not a “recurrence” of the previous spasms on January 18, 1995 but instead, she restated, “represented a separate flareup or recurrence of the preexisting condition (disc herniation).” Dr. Langa opined that at that time appellant had fully recovered from the January 18 and July 15, 1996 flare ups and was back to baseline with respect to his established disc herniation.

By decision dated January 22, 1997, the Office rejected appellant’s recurrence claim finding that the evidence of record failed to establish that appellant’s condition on or after July 15, 1996 was causally related to the accepted employment injury. The Office found that appellant had not met his burden of proof to establish his claim as the medical evidence of record did not support that the claimed recurrence was causally related to the January 18, 1995 lumbar strain injury.

The Board finds that appellant has failed to establish that he sustained a recurrence of disability commencing July 15, 1996, causally related to his January 18, 1995 accepted lumbosacral soft tissue muscular strain injury.

An individual who claims a recurrence of disability due to an accepted employment injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of 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 supports that conclusion with sound medical reasoning.¹ The statement of a lay person such as appellant, however, is not competent evidence on the issue of causal relationship.² Causal relationship is a medical issue and can be established only by medical evidence.³ Such medical evidence is not present in this case.

In this case, none of the medical evidence even addresses appellant’s condition on and after July 15, 1996 as being a recurrence of his January 18, 1995 injury. The emergency medical report from July 15, 1996 merely assessed appellant’s condition at that time and did not discuss causation nor mention the January 18, 1995 lumbar spine strain. Dr. Antin’s report gave appellant’s history generally, only briefly mentioning a January 18, 1995 incident and reiterated appellant’s contentions of recurrence, but did not include or discuss the events of July 15, 1996

¹ *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

² *See James A. Long*, 40 ECAB 538 (1989).

³ *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

or provide any medical opinion as to the causation of appellant's July 15, 1996 symptoms, let alone implicate the January 18, 1995 lumbar strain as a cause. Dr. Kim noted appellant's onset of pain complaints on July 15, 1996, noted that these included right shoulder pain and indicated that appellant claimed that the complaints were the same as his 1995 problems. He offered no discussion of or opinion regarding the causation of appellant's July 15, 1996 pain symptoms and did not implicate the 1995 incident as a cause of his current myofascial pain syndrome in either of his two reports. Consequently, none of these reports support appellant's recurrence claim.

Dr. Langa reviewed appellant's history, examined appellant and opined that his "work injury" of January 18, 1995 was a recurrence of his preexisting herniated disc condition. She further noted that appellant's July 15, 1996 symptoms represented another recurrence of the same underlying preexisting herniated disc condition and specifically explained that the muscle spasms on July 15, 1996 were not a recurrence of previous muscle spasms on January 18, 1995, nor was the July 15, 1996 incident causally related to the January 18, 1995 flareup, but that the July 15, 1996 symptoms were a separate flareup of appellant's preexisting herniated disc condition. The Board notes that this opinion not only does not support appellant's claim, but offers strong evidence contrary to appellant's claim.

As no further probative, rationalized medical evidence was submitted which provided an opinion causally relating appellant's July 15, 1996 symptoms to his January 18, 1995 lumbar strain injury, he has failed to meet his burden of proof to establish his recurrence claim and the Office's denial of the claim was proper.

Accordingly, the decision of the Office of Workers' Compensation Programs dated January 22, 1997 is hereby affirmed.

Dated, Washington, D.C.
April 9, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member