

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID L. AARON and DEPARTMENT OF JUSTICE,
FEDERAL PRISONS SYSTEM, Fort Worth, Tex.

*Docket No. 97-2246; Submitted on the Record;
Issued April 20, 1999*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a recurrence of disability causally related to his accepted employment injury.

The Board has duly reviewed the case record and finds that this case is not in posture for decision.

In the present case, the Office of Workers' Compensation Programs has accepted that appellant, a painter, sustained a lumbar strain on May 25, 1993 in the performance of his federal employment.¹ The record indicates that appellant returned to his regular work on May 31, 1993. On February 6, 1995 appellant filed a notice of recurrence of disability alleging that he had sustained a recurrence of the May 25, 1993 injury. The Office denied appellant's recurrence claim by decision dated April 27, 1995. The Office denied modification of the prior decision on August 2, December 8, 1995, September 17, 1996 and the Office denied appellant's application for review on April 3, 1997.

An employee 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 he claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

¹ The record indicates that appellant filed a claim on February 28, 1992 alleging that on the prior day he sustained a low back injury while lifting a wheelbarrow over steps. The record does not indicate whether the Office accepted this claim.

² *Carolyn F. Allen*, 47 ECAB 240 (1995).

In support of his notice of recurrence of disability appellant submitted reports from his treating physicians Dr. W. Robert Hudgins, a Board-certified neurosurgeon and Dr. Howard J. Huntzinger, a Board-certified family practitioner.

On January 17, 1995 Dr. Huntzinger noted that appellant had a two-month history of worsening back pain, which was different from the muscle pull pain he had previously experienced. Dr. Huntzinger noted that appellant did have an on-the-job injury one year ago with back pain that was treated conservatively.

On February 13, 1995 Dr. Hudgins noted that appellant had several on-the-job injuries and had been having pain in the back with numbness into the groin and pain into the knee on the left side. Dr. Hudgins stated that with bed rest and conservative treatment his pain had improved, but he noted that if appellant's pain reoccurred with normal activity, appellant might require a microdiscectomy at L5-S1 on the left.

On September 25, 1995 Dr. Hudgins reported that appellant had undergone surgery on July 18, 1995 for herniated disc at L5-S1. Dr. Hudgins noted that appellant had indicated that he had no other injuries or accidents that would cause a back problem and that appellant felt that his current back condition was related to his 1993 employment injury. Dr. Hudgins opined that it was his professional opinion, with reasonable medical probability, that appellant's herniated disc condition was causally related to the 1993 injury. He explained that many patients who had herniated discs started out with milder injuries that gradually worsened until the disc herniated badly enough to hit the nerve and require surgery. He stated that in fact, nearly everyone who ended up having back surgery had experienced back problems for some time. Dr. Hudgins concluded that appellant's herniated disc condition was causally related to his 1993 lumbar strain.

On January 5, 1996 Dr. Huntzinger noted that an magnetic resonance imaging scan had confirmed a moderately severe herniated disc at L5-S1 and appellant had undergone lumbar microdiscectomy at L5-S1 on the left on July 18, 1995. Regarding the cause of the herniated disc condition, Dr. Huntzinger opined:

“As my progress notes document, at that time he had told me he had an on-the-job injury a year prior to January 17, 1995, approximately, that gave him backpain, weakness, and left leg symptoms. He was treated conservatively and seemed to get better. It is medically a well-documented fact that otherwise thin, young, healthy men, have a history of trauma initially rupturing the fibers of the out lumbar disk, with disk elements protruding later causing the more classic radicular symptoms of herniation several months down the line. Medically it is my opinion that this was the case in [appellant] and I would wish appropriate parties to be aware of this fact as his history is very consistent with 1995's diagnosis and surgery all being related to that initial injury which, according to him, occurred on the job.”

While the reports of appellant's attending physicians were not completely rationalized as they did not address lack of bridging evidence between appellant's May 1993 injury and his late 1994 onset of back pain, they were consistent in indicating that appellant's development of

herniated lumbar disc was consistent with his 1993 employment injury. Appellant's treating physicians opinions regarding causal relationship were also not contradicted by any substantial medical or factual evidence of record. Therefore, while the reports were not entirely sufficient to meet appellant's burden of proof to establish the claim, they raised an uncontroverted inference between the claimed injury or disability and the accepted employment injury and were sufficient to require the Office to further develop the evidence.³

It is well established that proceedings under the Act are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁴

On remand, the Office shall refer appellant to a second opinion physician for an evaluation as to whether his herniated disc condition was causally related to his accepted 1993 employment injury. After such further development of the evidence as necessary, the Office shall issue an appropriate decision.

The decisions of the Office of Workers' Compensation Programs dated April 3, 1997 and September 17, 1996 are hereby set aside and this case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, D.C.
April 20, 1999

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

³ *Katherine J. Friday*, 47 ECAB 591 (1996).

⁴ *Richard E. Konnen*, 46 ECAB 388 (1996).