U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSENDO H. GONZALEZ and DEPARTMENT OF THE NAVY, NAVAL AIR STATION, CHASE FIELD, Beeville, Tex.

Docket No. 96-1406; Submitted on the Record;
Issued February 16, 1999

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant sustained a recurrence of disability on June 20, 1991 causally related to his June 26, 1973 employment injury.

On June 26, 1973 appellant, then an air conditioning equipment mechanic, sustained an injury while in the performance of his duties. The Office of Workers' Compensation Programs accepted his claim for sprained neck, concussion, dental injury, multiple contusions and abrasions, and left shoulder and arm pain. He received compensation for periods of temporary total disability through January 1974. On February 15, 1979 appellant sustained a recurrence of disability causally related to his June 26, 1973 employment injury. He received compensation for temporary total disability for periods through November 1979.

On August 6, 1991 appellant filed a claim asserting that he sustained a recurrence of disability on June 20, 1991 causally related to his June 26, 1973 employment injury. He explained that his condition had worsened since the employment injury and that he had never had any problem prior to that injury. He also indicated that he sustained an injury on June 20, 1991. The Office advised appellant that it considered there to be a "recurrence" of disability when, after apparent recovery or partial recovery, an employee again becomes disabled because of the original injury and without an intervening incident. The Office advised that a new claim should be filed if a new employment-related incident caused his disability.

To support his claim, appellant submitted an October 23, 1991 report from Dr. Ronald G. Munson, his attending family practitioner. He related appellant's history of injury and noted that appellant had extreme difficulty over the last ten years raising his left arm or extending it overhead. Dr. Munson then explained that in June 1991 appellant was working on an air conditioning unit, slipped while holding on with his left arm and was jerked violently. An examination on September 20, 1991 showed full range of motion of the left arm, but appellant was experiencing some neck pain and pain with upper motion of the left arm. Dr. Munson

diagnosed chronic pain in the left shoulder "where the exacerbation of the chronic pain with recent acute injury [sic]." He reported:

> "We are trying to help document this patient's continued problem related to his injury long ago in an automobile accident.
>
> "I obtained as many records as we could obtain on this patient, going back years, including [the records of the initial attending physician]. We have reevaluated him with regard to his injury. I am custodian of [the initial attending physician's] records. For years his original records show office visits and care, consistent with the above."

In a decision dated March 3, 1992, the Office rejected appellant's claim of a recurrence of disability on June 20, 1991. The Office explained that the intervening incident described by Dr. Munson meant that the case was not one of recurrence.

Appellant requested an oral hearing before an Office hearing representative. He submitted, among other things, an August 19, 1992 report from Dr. Munson explaining that apparently there was an error in the interpretation of the June 1991 accident constituting a new intervening injury. This was not the case, Dr. Munson reported: "It is not my opinion that a new injury occurred but that the patient may have exacerbated for a period of time the original injury which has continued to give him disability." Dr. Munson stated that appellant continued to be disabled as a result of the employment-related medical condition.

In a decision dated May 3, 1993, the Office affirmed its March 3, 1992 decision rejecting appellant's claim of recurrence. The Office found that Dr. Munson offered no probative medical rationale to support his position that appellant's condition was a result of the original accepted employment injury.

On June 22, 1993 appellant requested reconsideration. In support thereof, appellant asked the Office to consider a report from Dr. Munson dated June 9, 1993, wherein Dr. Munson stated as follows:

> "[Appellant] has had a persistent chronic left shoulder and neck problem since his early accident in the 1970's. He had an orthopedic evaluation as well in terms of documenting the association of his chronic back and shoulder pain with the original accident.
>
> "I do [not] think there [is] any question that it is related. It [is] difficult to follow a tract of medical documentation from that long ago, however, especially in a patient who attempts to be employed and provide for his family despite his pain. He was seen in our office again on June 1, 1993 complaining of severe left shoulder and neck pain that had been bothering him since the previous Friday night. According to [appellant] with some minimal exertion he had caused the onset of the pain."

After relating findings on examination, Dr. Munson continued:

"It is our medical opinion that [appellant] definitely has residual sequelae from his injury years ago as in our original letter. I think that a review of this patient's status in terms of the Beeville NAS at Chasefield would be appropriate.

"Any questions of his original injury refer to his letter of 1979 from his specialist. He will continue to need medi[c]al attention and medication for his neck, back and shoulder pain related to original accident.

"This should resolve any conflict from our original letter which was not meant to imply that there was a new acute injury to which all his pain was associated. That was never the intent. Our medical records document that he had an acute injury which exacerbated his chronic problem as he had again in June of this year."[1]

In a decision dated September 6, 1995, the Office reviewed the merits of appellant's claim and denied modification of its May 3, 1993 decision. The Office found that Dr. Munson once again offered no probative medical rationale in support of his position that appellant's current condition was related to the original accepted work injury. The Office noted that none of the other reports submitted by appellant contained such rationale and that the factual evidence submitted by appellant was of no probative value on the medical issue raised by appellant's claim.

The Board finds that the evidence of record is insufficient to establish that appellant sustained a recurrence of disability on June 20, 1991 causally related to his June 26, 1973 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.[2]

The October 23, 1991 and June 9, 1993 reports of Dr. Munson, appellant's attending family practitioner, indicated that appellant sustained a traumatic injury occurring on June 20, 1991 when he worked on an air conditioning unit, slipped while holding on with his left arm and was jerked violently. These facts do not support appellant's claim that he sustained a recurrence of disability on June 20, 1991 causally related to his June 26, 1973 employment injury.

[1] On June 25, 1993 appellant filed an appeal with the Board. The Board issued an order granting the Office's motion to dismiss the appeal so that it could reconsider the merits of appellant's claim. Docket No. 94-2472 (issued December 16, 1994). On February 14, 1995 the Office issued a nonmerit decision denying appellant's request for reconsideration. On appeal, the Board issued an order granting the Office's motion to remand the case on the grounds that the Office failed to comply with the Board's prior order. Docket No. 95-1513 (issued July 19, 1995).

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

The Office's procedure manual states that a recurrence of disability includes certain kinds of work stoppages that occur after an employee has returned to work after a period of disability. A recurrence of disability includes a work stoppage caused by the one of the following: (1) a spontaneous material change, demonstrated by objective findings, in the medical condition that resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness; (2) a return or increase of disability due to an accepted consequential injury; or (3) withdrawal of a light-duty assignment made specifically to accommodate the claimant's condition due to the work-related injury, with the withdrawal having occurred for reasons other than misconduct or nonperformance of job duties. A recurrence does not include a work stoppage caused by a condition that results from a new injury, even if it involves the same part of the body previously injured, or by renewed exposure to the causative agent of a previously suffered occupational disease. If a new work-related injury or exposure occurs, Form CA-1 or CA-2 should be completed accordingly.[3]

Dr. Munson's reports indicate that appellant's disability beginning June 20, 1991 did not result from a spontaneous material change in the medical conditions accepted as having resulted from the employment injury of June 26, 1973. Instead, these reports support that appellant's disability for work arose from an incident that occurred while he worked on an air conditioning unit on June 20, 1991.[4] Although the Office explained the nature of a recurrence claim and advised appellant that a new claim should be filed if a new incident caused his disabling condition to recur, it does not appear from the record that appellant filed a new claim. The issue on appeal, therefore, is strictly one of recurrence. As there is no accepted consequential injury in this case and no withdrawal of a light-duty assignment, the record on appeal fails to establish appellant's claim.

Dr. Munson explained that the incident of June 20, 1991 exacerbated the chronic pain that was residual to the original injury of June 26, 1973. He provided an accurate history of the accepted employment injury of 1973 and reported that he had obtained medical records on appellant going back years. It is therefore apparent that he based his opinion on a complete and accurate factual and medical history, although he admitted that it is difficult to follow a tract of medical documentation from that long ago. What Dr. Munson failed to explain was the specific nature of the residuals left by the 1973 employment injury and how, physiologically speaking, these residuals caused or contributed to the disability for work that resulted from the incident of

[3] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b (January 1998).

[4] Dr. Munson did not make clear whether the later incident arose in the course of appellant's federal employment.

June 20, 1991. Without a well-reasoned medical discussion showing such a causal relationship, the record does not establish a recurrence of disability.[5]

The September 6, 1995 decision of the Office of Workers' Compensation Programs is affirmed.[6]

Dated, Washington, D.C.
February 16, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[5] It is not necessary that the evidence be so conclusive as to suggest causal connection beyond all possible doubt in the mind of a medical scientist. The evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound and logical. *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein at note 1.

[6] The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). The Board therefore has no jurisdiction to review Dr. Munson's May 30, 1996 report, which was submitted for the first time on appeal.