

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HOWARD JOHNSON and DEPARTMENT OF THE AIR FORCE,
McCLELLAN AIR FORCE BASE, Calif.

*Docket No. 97-1072; Submitted on the Record;
Issued February 12, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has establish that his recurrence of disability from March 29 to April 2, 1993 or his condition after March 29, 1993 is causally related to his March 17, 1991 employment injury.

The Office of Workers' Compensation Programs accepted that appellant sustained a low back strain on March 17, 1991 while exiting an aircraft fuel tank. Appellant received continuation of pay from March 18 to 21, 1991, and returned to light duty on March 22, 1991 and to his regular duties two weeks later. Appellant again stopped work from March 29 to April 2, 1993, and filed a claim for compensation for this period, contending that his disability was related to his March 17, 1991 employment injury.

By decision dated June 1, 1994, the Office rejected appellant's claim for compensation for the period from March 29 to April 2, 1993 on the basis that there was no medical evidence showing that his disability during this period was related to his March 17, 1991 injury. Following a hearing held at appellant's request on February 8, 1995, an Office hearing representative, in a decision dated April 19, 1995, found that appellant failed to meet his burden of proof to establish that his recurrence of disability or his continuing low back problems were causally related to his March 17, 1991 employment injury. Appellant requested reconsideration on two occasions, and the Office, by decisions dated February 13 and November 25, 1996, refused to modify its prior decisions.

The Board finds that appellant has not met his burden of proof to establish that his recurrence of disability from March 29 to April 2, 1993 or his condition after March 29, 1993 is causally related to his March 17, 1991 employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability, for which she claims compensation is causally related to

the accepted injury.¹ This burden includes the necessity of furnishing evidence from a qualified 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

In a note dated March 29, 1993, a physician at Kaiser Permanente medical group diagnosed “low back pain, recurrent,” and indicated that appellant had been unable to work from March 29 to April 2, 1993. In a report dated March 29, 1993, this physician set forth a history that appellant twisted and pulled muscles in his back on March 17, 1991 coming out of an aircraft fuel tank and that on March 26, 1993 he experienced severe back pain on awakening. This physician checked “yes” in answer to the question “Are your findings and diagnosis consistent with history of injury or onset of illness.” The Board has held that the checking of a box on a form is insufficient, without any explanation or rationale, to meet an employee’s burden of proof.³

On April 28, 1994 appellant underwent a lumbar magnetic resonance imaging scan which showed bulging disks at L3-4 and L4-5. Appellant, however, has not submitted medical evidence establishing that this condition is related to his March 17, 1991 employment injury. In a report dated April 10, 1995, Dr. John Takakuwa, a Board-certified internist, diagnosed a recurrent lumbosacral strain and indicated appellant was unable to work from April 10 to 12, 1995. Dr. Takakuwa set forth a history of recurrent low back pain since March 1991 when appellant had low back pain at work and checked “yes” in answer to the question, “Are your findings and diagnosis consistent with history of injury or onset of illness.” As noted above, this type of report is not sufficient to meet appellant’s burden of proof. In a report dated April 12, 1995, a physician in the neurosurgery department at Kaiser Permanente stated that he had “no idea or opinion re: causation.” In a report dated November 17, 1995, Dr. Takakuwa, writing to appellant, stated, “During the visits you have had since April 1995 you have never reported a new injury to your back and reported back pain as a recurrence of back pain going back to 1991.” This report does not express the physician’s opinion that appellant’s back condition since April 1995 is related to his March 1991 employment injury, but instead merely relates what appellant told the physician. The medical evidence is not sufficient to establish that appellant’s recurrence of disability from March 29 to April 2, 1993 or his condition after March 29, 1993 is causally related to his March 17, 1991 employment injury.

¹ *John E. Blount*, 30 ECAB 1374 (1974).

² *Frances B. Evans*, 31 ECAB 60 (1980).

³ *Salvatore Dante Roscello*, 31 ECAB 147 (1979).

The decisions of the Office of Workers' Compensation Programs dated November 25 and February 13, 1996 are affirmed.

Dated, Washington, D.C.
February 12, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member