

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONNIE D. MARCUM and TENNESSEE VALLEY AUTHORITY,
Chattanooga, Tenn.

*Docket No. 97-1526; Submitted on the Record;
Issued February 17, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained a recurrence of disability on or after September 17, 1993 causally related to his accepted May 23, 1986 employment injury.

In the present case, the Office of Workers' Compensation Programs has accepted that appellant, a laborer, sustained a lumbosacral strain on May 23, 1986 while shoveling sand at work. At the time of the 1986 employment injury appellant was noted to have back pain radiating to the buttocks and both lower extremities. Appellant had experienced low back pain in 1985 following a fall from a porch, but had no radiating back pain until his 1986 employment injury. Appellant was disabled from work due to his May 23, 1986 injury until August 7, 1986. The record contains significant bridging evidence of continued low back symptoms with medical treatment from 1986 until 1993.

On October 4, 1993 appellant filed a notice of recurrence of disability alleging that on September 17, 1993 he had sustained a recurrence of his May 23, 1986 employment injury. Appellant underwent a left L5 discectomy on October 8, 1993 and decompression of recurrent ruptured disc at L5 on August 5, 1994. The Office denied appellant's recurrence claim by merit decisions dated July 8, 1994, September 20, 1995, May 21, 1996 and February 28, 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.¹

In an initial report dated November 23, 1993, appellant's treating physician, Dr. Bert L. Meric, a Board-certified orthopedic surgeon, stated that appellant had a history of considerable back and leg pain on an intermittent basis since his acute event in 1986, after which appellant's continuing back-related problems began. Dr. Meric noted that appellant currently worked on conveyor belt at the same employing establishment wherein he had sustained his 1986 injury. He explained that appellant's current diagnosis was severe exacerbation of left-sided sciatica secondary to rupture of the L5 disc. Dr. Meric opined that appellant's disc rupture was most likely associated with continued stress to the lumbar spine in the presence of degenerative disc disease and may very well also be related to the initial problems appellant had experienced in 1986.

In subsequent reports, Dr. Meric clarified that appellant's back pain and conditions for which he treated appellant were all related to the May 1986 incident. He explained that in his opinion, the intermittent pain appellant was continuing to experience each year following the 1986 injury was related to the same condition, however, appellant was lucky enough each time to have at least some relief with conservative treatment. In a May 26, 1995 report responding to the Office's request for further medical rationale, Dr. Meric added that medically it was very clear cut that a patient could have recurrent mild back pain and evidence of a lumbosacral strain for a significant period of time before frank evidence of a ruptured disc. He added that in many cases, this would be from the effects of a bulging disc or progression of tears in the fibers of the annulus fibrosis, ultimately leading to a disc herniation.

While the claimant has the burden to establish entitlement to compensation benefits, proceedings under the Federal Employees' Compensation Act are not adversarial in nature nor is the Office a disinterested arbiter. The Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.²

In the present case, the medical evidence of record is generally supportive of appellant's claim. Dr. Meric has attempted to causally relate appellant's ruptured disc condition to his 1986 employment injury. While the medical evidence of record is not sufficiently well rationalized to meet appellant's burden of proof, in light of the documented bridging symptoms and treatment between the original injury and the claimed recurrence, Dr. Meric's reports are sufficient to require that the Office further develop the case.³ The Board also notes that there is no medical evidence of record negating causal relationship. On remand the Office shall prepare a statement

¹ *Lourdes Davila*, 45 ECAB 139 (1993).

² *Isidore J. Gennino*, 35 ECAB 442 (1983). The Board also notes that after receipt of Dr. Meric's initial reports the claims examiner advised appellant that he would be referred for an independent medical evaluation, however, the record does not reflect that appellant was referred by the Office for either a second opinion or impartial medical evaluation.

³ See *Lourdes Davila*, *supra* note 1.

of accepted facts and shall refer appellant to a second opinion physician. After such further development of the evidence as necessary, the Office shall issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated February 28, 1997 is set aside and this case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, D.C.
February 17, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member