U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARTURO C. RAMIREZ and DEPARTMENT OF THE ARMY, CORPUS CHRISTI ARMY DEPOT, Corpus Christi, Tex.

Docket No. 97-322; Submitted on the Record;
Issued January 7, 1999

DECISION and ORDER

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

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability due to his March 1, 1994 employment injury beginning January 12, 1996.

On March 1, 1994 appellant, then a 46-year-old materials expediter, sustained multiple injuries when he tripped and fell during the course of his federal employment duties. He stopped work on that day and the Office of Workers' Compensation Programs subsequently accepted the claim for a cervical sprain, lumbar sprain, and left elbow and wrist sprains. Appellant returned to work on November 29, 1995 in a light-duty capacity.

On March 21, 1996 appellant filed a notice of recurrence of disability alleging that on January 12, 1996 he sustained a recurrence of disability attributable to his March 1, 1994 employment injury. Appellant stopped work on January 12, 1996 and did not return.

In an April 24, 1996 decision, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that the recurrence of disability beginning on January 12, 1996 was causally related to the March 1, 1994 employment injury.

The Board has duly reviewed the case record in the present appeal and finds that the Office properly determined that appellant did not meet his burden of proof in establishing that he sustained a recurrence of disability due to his March 1, 1994 employment injury beginning January 12, 1996.

When an employee, who is disabled from the job he or she held when injured on account of employment related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the

employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[1]

Appellant has not shown a change in the nature and extent of his injury-related condition nor has he shown a change in the nature and extent of the light-duty job requirements. Appellant has submitted medical reports from his treating physician Dr. Philip J.A. Willman, a Board-certified neurological surgeon, however, these reports are insufficient to establish that appellant sustained a recurrence of disability beginning January 12, 1996 causally related to his March 1, 1994 employment injury. In a letter dated January 12, 1996, Dr. Willman, who had performed a C7 discectomy on appellant in 1988 in connection with a prior injury in 1986,[2] stated:

> "This is to certify that the above mentioned patient has been under my medical care. I have seen [appellant] since June 1995 for his low back injury, not for the previous neck injury he sustained. The release to light duty in November 1995 was just for the back injury.
>
> I feel he needs an independent disability evaluation and he should remain off work until that has been completed…."

In a more detailed report dated January 12, 1996, in which he also recommended that appellant stop work, Dr. Willman, noted that appellant reported that he was unable to work the light duty that was prescribed for him as it made his neck feel worse. Dr. Willman, stated:

> "After going over everything with [appellant], I am not really sure where to go from here from my standpoint as he has had a negative lumbar myelogram and post myelogram CT (computerized tomography), but it now appears that the repetitive motions that he is having to perform is exacerbating the previous cervical problem but in that regard, he had actually been back at work for some time. Therefore, in my opinion, [appellant] needs to have an independent disability evaluation for the whole body. I will go along with whatever decision is made in this regard. I firmly believe that until this disability evaluation has been performed, that from my standpoint, I do not want to be put in the position of making [appellant] get worse. Therefore, I would highly recommend that he be allowed to stay off work until he has had the disability evaluation. If the [Office of Workers' Compensation Programs] has any questions regarding my decision, then I would recommend that they either get hold of me or find [appellant] another treating doctor as again, I refuse to be put in a compromising position regarding this case."

Dr. Willman's January 12, 1994 letter and report are insufficient to establish appellant's claim because while he notes appellant's complaint that his light duty work is causing him neck

[1] *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[2] In an earlier report dated June 26, 1996, Dr. Willman stated, in part: "[Appellant] was seen in the office this afternoon June 26, 1995 and according to my office records, this is the first time I have seen him since I saw him on December 16 1992. On questioning, [appellant] mentions that he has again injured himself and this time it is the low back. This injury occurred on March 1, 1994."

pain, the physician does not provide any objective findings to establish that appellant's condition has worsened since his release to light duty.[3] In fact, with respect to appellant's back condition, for which Dr. Willman was most recently treating appellant, the physician specifically states that appellant's lumbar myelogram and post myelogram CT scan were negative. In addition, in stating that the repetitive motions of appellant's light duty are exacerbating his prior cervical condition, Dr. Willman appears to be relating appellant's current complaints to appellant's 1986 cervical injury, and not to the March 1, 1994 injury relevant to appellant's current claim.[4] On March 22, 1996 the Office advised appellant of the type of medical evidence needed to establish his claim for a recurrence of disability. However, appellant has not submitted sufficient medical evidence to establish a change in the nature and extent of his injury-related condition. Furthermore, appellant has not alleged, and the evidence does not show, that there has been a change in the nature and extent of his light-duty job requirements.

For these reasons, appellant has not met his burden of proof to establish that he sustained a recurrence of disability beginning on January 12, 1996.

The April 24, 1996 decision of the Office of Workers' Compensation Programs is affirmed.[5]

Dated, Washington, D.C.
January 7, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[3] *Cf. Robert H. St. Onge*, 43 ECAB 1169, 1175 (1992) (finding that documented evidence of bridging symptoms supports a causal relationship of recurrence to original injury).

[4] *See Jose Hernandez*, 47 ECAB ___ (Docket No. 94-1089, issued January 23, 1996) (finding that the medical opinions submitted by appellant failed to address directly whether the claimed recurrence was causally related to the accepted injury).

[5] The Board notes that subsequent to the Office's April 24, 1996 decision, appellant submitted additional medical and documentary evidence. The Board is precluded from reviewing this evidence, as it was not before the Office at the time of the final decision on appeal; *see* 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence together with a request for reconsideration to the Office.