

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DUSTIN T. SMITH and DEPARTMENT OF ENERGY,
BONNEVILLE POWER ADMINISTRATION, Portland, Oreg.

*Docket No. 97-1150; Submitted on the Record;
Issued January 26, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant established that his recurrence of disability was causally related to the accepted work injury.

Appellant's notice of traumatic injury, filed on July 12, 1995, was accepted by the Office of Workers' Compensation Programs for an acute thoracic strain after appellant, a 25-year-old land surveyor, hurt his back while carrying water to mix with concrete. On July 22, 1996 appellant filed a notice of recurrence of disability, claiming that his back started acting up again while driving to and from work sites in the field.

The Office requested that appellant provide a narrative report from his physician explaining the causal relationship between his 1995 injury and his current back condition. On September 4, 1996 the Office denied the claim on the grounds that appellant had failed to establish that his cervical strain was causally related to the initial work injury. The Office noted that appellant had not provided the requested medical evidence.

The Board finds that appellant has failed to meet his burden of proof in establishing that his recurrence of disability was causally related to the 1995 work injury.

Under the Federal Employees' Compensation Act,¹ 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 recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.² As part of this burden the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes

¹ 5 U.S.C. §§ 8101-8193.

² *Dennis J. Lasanen*, 43 ECAB 549, 550 (1992).

that the current disabling condition is causally related to the accepted employment-related condition³ and supports that conclusion with sound medical reasoning.⁴

Section 10.121(b) provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a medical report covering the dates of examination and treatment, the history given by the employee, the findings, the results of x-ray and laboratory tests, the diagnosis, the course of treatment, the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions, and the prognosis.⁵ Thus, the medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated, or aggravated by the accepted injury.⁶

In this case, the medical evidence, consisting of a treatment note dated March 30, 1996, the normal results of x-rays taken on the same day and progress notes from a physical therapist, is insufficient to establish any causal relationship between appellant's diagnosed cervical strain and the 1995 work injury. While Dr. Dennis D. Asby, Board-certified in internal medicine, mentioned that appellant injured his back about eight months ago, and had a return of "discomfort in the cervical and thoracic spine," he failed to provide a rationalized medical opinion connecting appellant's current cervical strain with the accepted thoracic strain. Therefore, the Board finds the medical evidence insufficient to meet appellant's burden of proof.⁷

³ *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

⁴ *Lourdes Davila*, 45 ECAB 139, 142 (1993).

⁵ 20 C.F.R. § 10.121(b).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁷ See *Jose Hernandez*, 47 ECAB 288 (1996) (finding that medical reports that failed to address directly the causal relationship between appellant's recurrence of disability and his employment injuries were insufficient to meet appellant's burden of proof).

The September 4, 1996 decision of the Office of Workers' Compensation Programs is affirmed.⁸

Dated, Washington, D.C.
January 26, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁸ The record contains a medical report dated November 4, 1996 from Dr. Asby, who stated that appellant had "reaggravated" his prior injury involving both the thoracic and cervical spine. The Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c); *William A. Couch*, 41 ECAB 548, 553 (1990). Thus, the new evidence cannot be considered by the Board because it post-dates the Office's final decision dated September 4, 1996. Appellant may wish to request reconsideration before the Office within one year of the date of the Board's decision in this case.