

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VERNON M. DIXON and DEPARTMENT OF AGRICULTURE,
LASSEN NATIONAL FOREST, AMBROSE COMPLEX, Susanville, Calif.

*Docket No. 97-1187; Submitted on the Record;
Issued January 7, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a recurrence of disability on or after September 2, 1996 causally related to the accepted August 29, 1996 lumbar strain.

The Office of Workers' Compensation Programs accepted that on August 29, 1996, appellant, then a 49-year-old firefighter, sustained a lumbar strain, with no time lost from work, when a fire fighter crew member dropped a wooden pallet on appellant while unloading a truck.

In a September 1, 1996 report, Dr. Marchesseault March, an attending internist, provided a history of injury, found tenderness to palpation of the left lumbar area and the sacroiliac joint, and diagnosed low back pain and lumbosacral strain. He prescribed medication and a back support. Dr. March released appellant to modified duty with no lifting over 25 pounds for 2 days and to full duty as of September 2, 1996.

Appellant then claimed a recurrence of disability from September 2, 1996 through an unspecified date. In support of his claim, appellant submitted an October 28, 1996 report from Dr. S. Steven Wong, an attending osteopath. He provided a history of injury and treatment. Dr. Wong indicated that appellant was partially disabled for work from September 1 to 30, 1996, and noted that a lumbar magnetic resonance imaging (MRI) scan would be required before returning appellant to full duty. He stated that:

“Appellant was not seen over one month after his injury ... for his back pain. From his history given to us he has been fighting fire on and off this last summer and he started to work for HUD [the Department of Housing and Urban Development] on October 1, 1996 - scraping off paint on ladder from old building[s]. I do [not] feel that I can verify any total disability for that period. Partial disability may be more reasonable since he was still somewhat symptomatic when he was seen October 7, 1996.”

In a November 6, 1996 letter, the Office advised appellant of the type of medical and factual evidence needed to establish his claim for recurrence of disability.¹ The record indicates that appellant did not submit additional evidence prior to the issuance of the Office's December 6, 1996 decision.

By decision dated December 6, 1996, the Office denied appellant's claim for recurrence of disability as he submitted insufficient medical evidence to establish causal relationship between the August 29, 1996 lumbar strain and his condition on and after September 2, 1996. The Office noted advising appellant by November 6, 1996 letter of the additional evidence required to establish his claim, but that he failed to submit such evidence.²

The Board finds that appellant has not established that he sustained a recurrence of disability on or after September 2, 1996 causally related to the accepted August 29, 1996 lumbar strain.

When an employee claims a recurrence of disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed recurrence of disability is causally related to the accepted injury. This burden includes the necessity of 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 employment factors and supports that conclusion with sound medical reasoning.³ An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's unsupported belief of causal relation.⁴

In support of his claim for recurrence of disability, appellant submitted an October 28, 1996 report from Dr. Wong. He indicated that appellant was partially disabled for work from September 1 to 30, 1996, was still symptomatic as of October 7, 1996 examination, and did not release appellant to full duty pending further testing. Dr. Wong stated that appellant was "not seen [for] over one month after his injury," and had been working as a fire fighter and painter since the injury. He did not explain how and why the August 29, 1996 lumbar strain would cause continuing disability for work or any medical condition on and after September 2, 1996, the date Dr. March, an attending internist, released appellant to full duty. Without a rationalized explanation of the pathophysiologic causal relationship between the accepted lumbar strain and

¹ On November 16, 1996 the Office contacted the employing establishment regarding appellant's work status. The employing establishment responded on November 19, 1996 that appellant was an "administratively determined" employee, and therefore eligible for compensation under the Federal Employees' Compensation Act.

² Following issuance of the Office's December 6, 1996 decision, the final decision in the case, appellant submitted additional medical and factual evidence. This evidence does not appear to have been considered by the Office. Therefore, the Board may not consider this evidence for the first time on appeal because it was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.(2)(c).

³ See *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁴ *Ausberto Guzman*, 25 ECAB 362 (1974).

appellant's claimed continuing condition, Dr. Wong's report is of diminished probative value, and is insufficient to establish appellant's claim for recurrence of disability.⁵

Consequently, appellant has not established that he sustained a recurrence of disability on and after September 2, 1996 causally related to an accepted August 29, 1996 lumbar strain or other factors of his federal employment, as he submitted insufficient rationalized medical evidence establishing causal relationship.

The decision of the Office of Workers' Compensation Programs dated December 6, 1996 is hereby affirmed.

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

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).