

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEPHEN A. TRESLONI, JR. and DEPARTMENT OF THE NAVY,
MARINE CORPS AIR STATION, Cherry Point, N.C.

*Docket No. 97-982; Submitted on the Record;
Issued June 2, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained a recurrence of disability on or about April 21, 1988 causally related to his March 16, 1984 employment injury.

On March 16, 1984 appellant, then a 45-year-old laborer, sustained a lumbosacral strain in the performance of duty while pushing a wheelbarrow of sand up a slope.¹ He returned to work on March 27, 1984 but was off work again on April 3 and 24, 1984.

In notes dated April 21, 1988, Dr. John J. Bennett, a general practitioner and an employing establishment physician, related that appellant had been operating a ditch digger the previous day but had to move the digger to keep it in line. He related that appellant felt a pull in his back, during the night his condition became worse and the next day he worked half a day but the pain became excruciating.

In a report dated April 27, 1988, Dr. Vandersea diagnosed degenerative disc disease of the lumbar spine and indicated that appellant was totally disabled from April 27 to May 4, 1988. He did not indicate the cause of the condition.

In notes dated April 27, 1988, Dr. Vandersea related that appellant was complaining of low back pain and numbness in his right thigh which began on April 20, 1988 but that appellant did not recall any recent injury. He diagnosed degenerative disc disease with mild radiculitis of the right leg.

In an undated employing establishment form, Dr. Bennett provided the history that appellant related, that he experienced pain in his lower back and numbness in his right upper leg from "pushing/pulling on ditch-witch (weight approximately 800 [pounds])." On the reverse of the form, Dr. Vandersea diagnosed degenerative disc disease and checked the block marked

¹ In a form report dated March 20, 1984, Dr. Harold M. Vandersea, appellant's attending Board-certified orthopedic surgeon, diagnosed an acute lumbar strain superimposed on degenerative disc disease.

“yes” indicating that the condition was caused or aggravated by appellant’s employment and he related the history given him by appellant of “cont[inuuous] pulling pushing on ditch.”

In a letter to the Office dated January 13, 1989, Dr. Vandersea stated that it had been brought to his attention that, while his notes dated April 27, 1988 did not reflect a recent injury to appellant, an injury was documented by Dr. Bennett. He stated, “the description of injury documented by Dr. Bennett would be consistent with my findings of [April 27, 1988]. Apparently there was a history of injury which I did not recall upon examining [appellant] on that date.”

In a claim form dated June 27, 1995, appellant claimed a recurrence of disability on April 21, 1988 which he attributed to his 1984 employment injury.

In a report dated May 17, 1995, Dr. Vandersea diagnosed degenerative disc disease and arthritis. He did not indicate the cause of the condition nor did he provide a date of injury.

By decision dated July 10, 1996, the Office denied appellant’s claim for a recurrence of disability causally related to his 1984 employment-related back strain.

By letter dated October 9, 1996, appellant requested reconsideration of the denial of his claim and submitted additional evidence.

In notes dated August 21, 1996, Dr. Vandersea related that appellant had requested a medical narrative dating back to 1988. He stated that he told appellant that he had degenerative disc disease “and this is aggravated by his present working conditions, that is working as a janitor...” Dr. Vandersea stated that the medical records clearly documented an ongoing problem since 1984 or before.

In a report dated September 12, 1996, Dr. Vandersea related that appellant had been under his care for several years because of chronic degenerative disc disease in his spine and that because of this chronic problem he was unable to perform his regular job.

By decision dated December 19, 1996, the Office denied modification of its July 10, 1996 decision.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability on or about April 21, 1988 causally related to his March 16, 1984 employment-related lumbosacral strain.

An individual 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 compensation is claimed is causally related to the accepted injury.² 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 the employment injury and supports that

² *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

conclusion with sound medical rationale.³ Where no such rationale is present, medical evidence is of diminished probative value.⁴

In this case, appellant sustained a lumbosacral strain in the performance of duty on March 16, 1984 and subsequently returned to duty. On June 27, 1995 he filed a claim for compensation benefits alleging that he sustained a recurrence of disability on April 21, 1988 and he submitted medical evidence in support of his claim.

In notes dated April 21, 1988, Dr. Bennett, a general practitioner and an employing establishment physician, related that appellant had been operating a ditch digger the previous day and felt a pull in his back after moving this equipment. Dr. Bennett did not provide his opinion as to the cause of appellant's condition and merely related the history given him by appellant. He also did not mention the 1984 employment injury. Therefore, this report does not establish that appellant sustained a recurrence of disability in April 1988 causally related to his 1984 employment injury.

In a report dated April 27, 1988, Dr. Vandersea, appellant's attending Board-certified orthopedic surgeon, diagnosed degenerative disc disease of the lumbar spine and indicated that appellant was totally disabled from April 27 to May 4, 1988. However, he did not indicate the cause of the condition and therefore this report does not discharge appellant's burden of proof to establish that he sustained a recurrence of disability in 1988 causally related to his 1984 employment injury.

In notes dated April 27, 1988, Dr. Vandersea related that appellant was complaining of low back pain and numbness in his right thigh which began on April 20, 1988 but that appellant did not recall any recent injury. He diagnosed degenerative disc disease with mild radiculitis of the right leg. Dr. Vandersea did not provide an opinion relating appellant's complaints to his 1984 employment injury and therefore this report is not sufficient to discharge appellant's burden of proof.

In an undated form in which Dr. Bennett related that appellant had experienced pain in his back and numbness in his right leg from "pushing/pulling on ditch-witch (weight approximately 800 [pounds])," Dr. Vandersea diagnosed degenerative disc disease and checked the block marked "yes" indicating that the condition was caused or aggravated by appellant's employment. However, as he did not relate this condition to appellant's 1984 employment injury, this report is not sufficient to support appellant's claim of a recurrence of disability. Furthermore, the Board has held that an opinion on causal relationship which consists only of checking "yes" to a form report question on whether the claimant's disability was related to the history given is of little probative value.⁵ Without any explanation or rationale, such a report has little probative value and is insufficient to establish causal relationship.⁶

³ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁴ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁵ *Deborah S. King*, 44 ECAB 203 (1992); *Donald W. Long*, 41 ECAB 142, 146 (1989).

⁶ *Id.*

In a letter dated January 13, 1989, Dr. Vandersea stated that it had been brought to his attention that, while his notes dated April 27, 1988 did not reflect a recent injury to appellant, an injury was documented by Dr. Bennett. He stated, “the description of injury documented by Dr. Bennett would be consistent with my findings of [April 27, 1988]. Apparently there was a history of injury which I did not recall upon examining [appellant] on that date.” However, Dr. Vandersea failed to note that Dr. Bennett did not provide an opinion as to the cause of appellant’s condition and was merely relating the history given to him by appellant. Furthermore, neither physician related appellant’s condition in 1988 to the 1984 employment injury and therefore this report does not support appellant’s recurrence of disability claim.

In a report dated May 17, 1995, Dr. Vandersea diagnosed degenerative disc disease and arthritis. However, he did not indicate the cause of the condition nor did he provide a date of injury and therefore this report does not establish that appellant sustained a recurrence of disability in 1988 causally related to his 1984 employment injury.

In notes dated August 21, 1996, Dr. Vandersea stated that he told appellant that he had degenerative disc disease “and this is aggravated by his present working conditions, that is working as a janitor which involves bending, lifting, sweeping, etc.” Dr. Vandersea stated that the medical records clearly documented an ongoing problem since 1984 or before. However, Dr. Vandersea did not provide an opinion, supported by medical rationale, explaining how appellant’s complaints in 1988 were causally related to his employment injury occurring four years previously. Furthermore, Dr. Vandersea did not explain why he now believed that appellant’s condition was causally related to the 1984 injury but none of his reports contemporaneous to the claimed 1988 recurrence of disability related appellant’s condition to the 1984 employment injury. Due to these deficiencies, this report does not discharge appellant’s burden of proof.

In a report dated September 12, 1996, Dr. Vandersea related that appellant had been under his care for several years because of chronic degenerative disc disease in his spine and that because of this chronic problem he was unable to perform his regular job. This report does not relate appellant’s back condition to the 1984 employment injury and therefore it is insufficient to establish that appellant sustained a recurrence of disability in 1988 causally related to his employment injury in 1984.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant’s claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁷ Appellant failed to submit rationalized medical evidence establishing that his claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied his claim for compensation.

⁷ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

The December 19 and July 10, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
June 2, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member