

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHAWN L. SORRELL and DEPARTMENT OF LABOR,  
TURNER JOB CORPS CENTER, Albany, Ga.

*Docket No. 97-2472; Submitted on the Record;  
Issued June 21, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he had a recurrence of disability causally related to his employment injury.

On May 5, 1997 the Office of Workers' Compensation Programs, in a decision, denied appellant's claim on the grounds that the medical evidence of record failed to establish that his recurrence of disability was caused by the accepted injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability causally related to his accepted injury.

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 disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>1</sup>

Appellant submitted the employing establishment health records covering the period April 20 through December 1990 when appellant was terminated by means of a resignation. An April 20, 1990 entry reveals appellant was treated for a head injury after being attacked at a nightclub by several persons. Appellant reported that he was beat up around the face and hurt his left side. A strong smell of alcohol was noted on appellant's breath. The medical assessment was contusion of the right eye and face. Left lower lateral flank abrasion and alcohol use and abuse.

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<sup>1</sup> *Lourdes Davila*, 45 ECAB 139 (1993).

The May 22, 1990 entry revealed, appellant was brought to the dispensary after being jumped by several guys. A strong smell of alcohol was reported. Several small abrasions was reported on the forehead, left arm and shoulder and a small amount of bleeding was noted. Appellant's wounds were cleaned with Hydrogen Peroxide, Bacitracin ointment applied and appellant was advised to return on an as needed basis.

A May 23, 1990 entry revealed, appellant went home on leave and was involved in a fight. Appellant's nose was reported to be fractured. A ½ inch abrasion was noted on the midforehead and a ½ inch contusion was reported on the tip of the nose with diffuse swelling and right convex curve of the bridge. Multiple abrasions and contusions were reported to the nasal area and appellant was observed to be in respiratory distress. X-rays were ordered of the facial and nasal bones, chest, ribs and left scapular area. X-rays were negative to ribs fracture, but revealed a fracture of the nasal spine and negative scapular fracture. On May 24, 1990 appellant was terminated from the employing establishment.

In this case, the Office accepted that appellant sustained a nose fracture and contusion of the left shoulder on May 22, 1990.

On November 30, 1996 appellant filed a claim for a recurrence of disability alleging that on January 12, 1991 he sustained a recurrence of disability causally related to his May 1990 accepted injury. Appellant stated that since his initial injury he continued to have seizures and depressive episodes, had chronic headaches, felt fatigue, sustained nerve damage, had vision loss, nose bleeds, facial disfiguration, fractured nose and scapular, sleep disturbance, left side weakness and suicidal thoughts.<sup>2</sup>

In a December 10, 1994 medical report, Dr. James J. Haney, III, Board-certified in anesthesiology, read a computerized axial tomography (CAT) scan of appellant's brain as normal. In a May 30, 1995 medical report, Dr. Haney read a second CAT scan of appellant's brain as normal. However, neither of these reports supports that appellant had any residuals based on his May 22, 1990 work-related injury and thus are of no probative value to appellant's claim.<sup>3</sup>

In an August 30, 1995 medical report, Dr. Allen Auerbach, appellant's treating osteopath, stated that he initially evaluated appellant on April 10, 1995 and that based on a review of medical records, appellant "suffered a blow to the head with a baseball bat four years prior and indicates an increase in seizure activity since that time." In a medical report dated December 18, 1995, Dr. Auerbach stated that appellant was under his care for a seizure disorder which resulted from a head blow sustained over four years ago. In a February 21, 1996 medical report, Dr. Auerbach stated that appellant had been under his care since April 10, 1995 and that he "has a complete diagnosis of [g]rand [m]al [s]eizures as well as severe anxiety and depression."

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<sup>2</sup> On December 30, 1996 the Office notified appellant that it had received his claim for a recurrence of disability, but since the records of his prior claim were no longer available, he would need to contact all the doctors who treated him and arrange for them to submit all their medical and treatment records and office notes relative to his injury in order for the Office to properly consider his claim.

<sup>3</sup> *Arlonia B. Taylor*, 44 ECAB 591(1993).

However, none of these reports contain a rationalized medical opinion establishing a causal relationship between appellant's condition and his work-related injury and thus are of limited probative value.<sup>4</sup>

In a medical report dated January 24, 1995, Dr. Maximo A. Icasiano, who specializes in family medicine, stated that appellant had been admitted to an emergency room on January 22, 1995 with headaches post grand mal-type seizure and that appellant had related his seizure history as having begun in 1990. He noted that appellant's CAT brain scan was negative. In a medical report dated August 23, 1996, Dr. Thomas S. Vates, Board-certified in psychiatry and neurology, related appellant's history of seizure disorder since 1990, noted also that appellant had been seen in an emergency room in February 1996 and that, upon examination, appellant had a seizure disorder, "probably secondary to trauma." These reports are likewise of limited probative value because they fail to establish a causal relationship between appellant's claim of seizures relating to his May 22, 1990 work-related injury and his current condition.<sup>5</sup> Indeed, Dr. Icasiano offered no opinion regarding the causal relationship of appellant's seizure history with his accepted injury and noted that a CAT scan was normal. Further, Dr. Vates' opinion was speculative and not supported by a factual history of appellant's medical condition.<sup>6</sup>

As noted above, part of appellant's burden of proof includes the submission of reasoned medical evidence, which address whether the claimed disability is causally related to the accepted employment injury. Although the Office advised appellant of the need to submit medical and treatment records and office notes from the doctors who had treated him relative to his injury, appellant failed to submit medical evidence addressing the dispositive issue of causal relationship.

Appellant has not submitted a medical report which explains how the grand mal seizures and other medical problems he is currently experiencing is linked to the May 22, 1990 injury of nose fracture and contusion of the left shoulder accepted by the Office. Moreover, Dr. Auerbach reported that appellant "suffered a blow to the head with a baseball bat four years prior." However, appellant's dispensary records do not support trauma by a baseball bat. Only trauma to the scapular area was noted in a fight on May 23, 1990 while on leave and the x-ray report was negative for pathology. In any event, none of appellant's current medical problems have been linked to the injury accepted by the Office. Accordingly, the Board finds that appellant has not established that he sustained a recurrence of disability based on his accepted May 22, 1990 injury.

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *William S. Wright*, 45 ECAB 498 (1994).

The decision of the Office of Workers' Compensation Programs dated May 5, 1997 is hereby affirmed.<sup>7</sup>

Dated, Washington, D.C.  
June 21, 1999

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>7</sup> The Board notes that subsequent to the Office's May 7, 1997 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C Campbell*, 5 ECAB 35 (1952).