

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS A. FEKETE and DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, Pa.

*Docket No. 97-1279; Submitted on the Record;
Issued March 24, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has established a recurrence of disability causally related to his accepted employment injuries; and (2) whether the Office of Workers' Compensation Programs properly terminated medical benefits for the accepted injuries.

In the present case, appellant filed a claim alleging that he sustained an injury in the performance of duty on June 15, 1993 when he was bending over cleaning a coffee pot. The Office accepted the claim for a cervical and shoulder strain. Appellant returned to work on June 28, 1993.

On March 22, 1996 appellant filed a notice of recurrence of disability, Form CA-2a. He did not indicate a specific date of recurrence, stating on the claim form that his condition had not changed and that he still experienced symptoms.

By decision dated September 5, 1996, the Office determined that appellant had not established a recurrence of disability and that appellant did not have continuing residuals of his employment injury. By decision dated November 18, 1996, the Office indicated that it would modify the prior decision to reflect entitlement to medical benefits through September 5, 1996;¹ modification of the remainder of the prior decision was denied.

The Board finds that appellant has not established a recurrence of disability causally related to his employment injury.

A person 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

¹ The Office noted that, after appellant advised the Office of his move to South Carolina, appellant had received a letter from the Philadelphia regional office advising him that his case was still open for medical treatment.

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.²

In this case, it is not clear whether appellant, in filing a CA-2a, was claiming a specific period of disability. The claim form did not provide a date of recurrence of disability, and appellant indicated “not applicable” as to the date he stopped work following the recurrence. Appellant did indicate on the CA-2a that he had missed work on February 22 and 23, 1996 due to a myelogram, but the Office indicated in its November 18, 1996 decision that it would pay for relevant medical treatment concerning the cervical spine prior to September 5, 1996. Since appellant would be entitled to compensation for loss of wages due to employment-related medical treatment, there does not appear to be an adverse decision as to February 22 and 23, 1996. No other dates of disability have been identified and no relevant medical evidence on this issue has been submitted. Accordingly, the Board finds that the Office properly denied a recurrence of disability in this case.

The Board further finds that the Office properly terminated medical benefits.

With respect to continuing medical benefits for the accepted employment injuries, the Office accepted the burden of proof with regard to terminating residuals.³ The Board notes that there is no probative medical evidence indicating a continuing cervical or shoulder strain. A treatment note dated September 7, 1994 from Dr. David A. Bundens, an orthopedic surgeon, indicates that a magnetic resonance imaging scan revealed a minimal disc bulge at C6-7; no reference is made to a cervical or shoulder strain. Moreover, none of the medical evidence submitted after that date contains a diagnosis of cervical or shoulder strain or attributed appellant’s ongoing symptoms to the accepted soft tissue conditions.⁴ In a report dated May 9, 1996, Dr. Dennis E. McConnell, a neurosurgeon, noted a cervical spondylotic spur with a small herniated disc at C6-7. The Board notes that the Office has not accepted a spondylotic spur or herniated disc as employment related.⁵ Dr. McConnell noted that appellant had a lifting incident at work and stated that apparently symptoms had persisted, without providing a complete medical background. He further stated that the objective findings “explain [appellant’s] symptoms of neck and shoulder pain. It could have been aggravated by an incident that he describes having sustained on June 15, 1993.” Dr. McConnell does not explain the nature and extent of any aggravation, or otherwise provide a reasoned medical opinion that establishes causal relationship between a spondylotic spur or herniated disc and the accepted employment

² *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

³ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment. *Furman G. Peake*, 41 ECAB 361 (1990).

⁴ There is no medical evidence of record regarding treatment from September 1994 until early 1996.

⁵ It is appellant’s burden to establish a specific condition, not previously accepted, as causally related to the employment injury; see *Elaine Pendleton*, 40 ECAB 1143 (1989).

injury. In the absence of a reasoned opinion, based on a complete background, the Board finds that appellant has not established a herniated disc or spondylotic spur as causally related to his employment injury.

The Board accordingly finds that the Office properly determined that appellant was not entitled to medical benefits after September 5, 1996.

The decisions of the Office of Workers' Compensation Programs dated November 18 and September 5, 1996 are affirmed.

Dated, Washington, D.C.
March 24, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member