

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of AISA FALATEA, JR. and DEPARTMENT OF VETERANS AFFAIRS,
FRESNO MEDICAL CENTER, Fresno, Calif.

*Docket No. 97-1852; Submitted on the Record;
Issued March 17, 1999*

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 in establishing that he sustained a recurrence of disability on or after December 5, 1996 causally related to his May 8, 1990 employment injury.

The Board has duly reviewed the case on appeal and finds that appellant has failed to meet his burden of proof in establishing that he sustained a recurrence of disability on or after December 5, 1996 causally related to his May 8, 1990 employment injury.

Appellant filed a claim alleging on May 8, 1990 he injured his back in the performance of duty. The employing establishment terminated appellant's compensation effective May 19, 1990. The Office of Workers' Compensation Programs accepted appellant's claim for low back strain on June 4, 1990. On March 2, 1993 the Office terminated appellant's compensation benefits finding that he was no longer disabled due to his employment injury. Appellant filed a notice of recurrence of disability on February 15, 1995. The Office denied this claim by decision dated May 15, 1995. Appellant filed a notice of recurrence of disability on January 28, 1997 alleging that on December 5, 1996 he sustained a recurrence of disability while working for a private employer. By decision dated March 5, 1997, the Office denied appellant's claim finding that he had not established that his current condition or disability was causally related to his accepted employment injury.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his recurrence of disability commencing December 5, 1996 and his May 8, 1990 employment injury.¹ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate

¹ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.²

In support of his claim for recurrence of disability, appellant submitted a report from Dr. Terry C. Sawchuk, a physician Board-certified in physical medicine and rehabilitation, dated December 19, 1996. Dr. Sawchuk noted that appellant asserted that he had reinjured his back in a work-related incident on December 5, 1996. He stated that record indicated that appellant injured himself bending over for a prolonged period.

A recurrence of disability is defined as a spontaneous material change in the employment-related condition without an intervening injury.³ In this case, the only medical evidence of record indicates that appellant's current condition is due to an intervening injury of bending for a prolonged period of time in the performance of his private sector position. As there is no medical evidence supporting that appellant's current condition is due to a spontaneous material change in his accepted May 1990 employment-related condition, appellant has failed to meet his burden of proof and the Office properly denied his claim.

The March 5, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
March 17, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

² See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(1) (January 1995).