

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM A. ANTHONY and U.S. POSTAL SERVICE,
POST OFFICE, Springfield, Mass.

*Docket No. 97-1836; Submitted on the Record;
Issued May 12, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
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 November 12, 1989 causally related to his March 5, 1986 employment injury.

The Board has duly reviewed the case record and finds that this case is not in posture for decision.

This case has previously been on appeal before the Board. In its August 6, 1992 decision,¹ the Board found that the Office of Workers' Compensation Programs in its October 23, 1990 decision properly denied modification of its prior decision² rejecting appellant's recurrence claim as none of the medical evidence appellant submitted addressed the causal relationship of appellant's claimed 1989 recurrence to his accepted 1986 employment injury. The facts and circumstances of the case as set out in the Board's August 6, 1992 decision are incorporated herein by reference.

Following the Board's decision, appellant requested reconsideration on several occasions and the Office denied modification of its prior decision on November 5, 1993, January 31, 1995, February 14 and May 2, 1996.

Under the Federal Employees' Compensation Act,³ 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 recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment

¹ Docket No. 92-248.

² By decision dated April 4, 1990, the Office rejected appellant's recurrence claim.

³ 5 U.S.C. §§ 8101-8193.

injury.⁴ As part of this burden the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition,⁵ and supports that conclusion with sound medical reasoning.⁶

In this case, the Office accepted the condition of a herniated disc at L3-4, which was subsequently operated on. Appellant has since had disc herniation at the same level to a lesser degree and degenerative disc disease at several levels. Appellant has also had a spinal fusion. Appellant claimed a recurrence of disability on or after November 12, 1989 causally related to his March 5, 1986 employment injury. In support of his recurrence claim, appellant has submitted several reports from physicians which, while supportive of his claim, are insufficient to establish his claim.

Appellant, through his representative, submitted medical evidence which summarized his treatment from November 21, 1989 until the time of his spinal fusion.⁷ However, none of this medical evidence addressed the causal relationship of appellant's claimed 1989 recurrence to his accepted 1986 injury.

In a July 28, 1993 report, Dr. Laurence D. Cohen, a Board-certified orthopedist, stated that he had examined appellant on many occasions since July 1986 for pains in his back and leg. Dr. Cohen felt that appellant's continued pain was probably due to the disc degeneration and some instability. He noted that he was impressed with the fact that appellant's continued symptoms concerned his back rather than his legs. It was for that reason that he suggested the spinal fusion. He noted that appellant had the pedicle screw fixation with a fusion and that he had not seen or heard from appellant since with regard to his back. Dr. Cohen stated that there was no doubt in his mind that appellant's disc herniation, discectomy and subsequent fusion are all related. The natural progression of such disc herniations is associated with continued pain and impairment, even under the best of circumstances. Dr. Cohen concluded by stating that he had no reluctance to state that this entire spine problem was a continuation of the original spine problem resulting from the lifting incident at work in March 1986. He noted that there is almost a predictable sequela after a discectomy that patients will have continued difficulty, some more than others.

In a January 4, 1994 medical report, Dr. Paul L. Filippini, an orthopedist, noted the history of appellant's work injury of March 5, 1986 and opined that appellant's present condition is "clearly related to the injury of March 5, 1986."

⁴ *Dennis J. Lasanen*, 43 ECAB 549, 550 (1992).

⁵ *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

⁶ *Lourdes Davila*, 45 ECAB 139, 142 (1993).

⁷ In this case, the Office accepted the condition of herniated disc at L3-4 which was eventually operated on. Following his initial surgery and its aftermath, appellant did not seek medical treatment until after the event of November 12, 1989. Afterwards, appellant was treated until he underwent spinal fusion surgery on May 6, 1991. As appellant has never submitted a claim for the spinal fusion surgery, the question of whether appellant's lumbar fusion was ultimately a residual of his 1986 injury has never been addressed.

In a January 5, 1994 report, Dr. Thomas A. McNulty, a Board-certified internist, indicated that appellant suffered a recurrence on “July 28, 1986” and another recurrence on November 12, 1989.

In a December 8, 1994 report and cover letter, Dr. John C. Bouillon, an orthopedist, stated that according to the review of the history, x-rays and medical records obtained, appellant had been injured while working for the employing establishment as a postmaster lifting a heavy cash drawer and bending at the same time in 1986, herniating his lumbar disc, associated with right lumbar radiculopathy for which he was operated on by Dr. Cohen and reoperated in 1991 following the recurrence of his pain in Vermont by Dr. Frymoyer. Dr. Bouillon opined that “there appears to be a direct causal relationship between the two injuries in 1986 and 1989 leading to the present disability.” Dr. Bouillon stated; “Since 1989, appellant has not been able to perform his duties. He was originally injured on March 5, 1996 lifting the cash drawer but after attempting to go back to work on light duty he failed and in 1989, after an exacerbation of his pain, he had to stop working at the [employing establishment].” At the end of his evaluation, in which he advised appellant to limit himself to light activities and not to lift more than 10 pounds, Dr. Bouillon opined that “it appears that the present disability stems from the industrial accident described in 1986 with an exacerbation in 1989 where the patient herniated his lumbar disc and developed progressive facet sclerosis and lumbar myofascial syndrome due to chronic spasm and pain.”

The Board notes that while the reports of Dr. Cohen, Dr. Filippini, Dr. McNulty and Dr. Bouillon are insufficient to establish a causal relationship between appellant’s alleged recurrence of disability on or after November 12, 1989 and his March 5, 1986 employment injury, the reports constitute sufficient probative evidence to require further development of the record by the Office.⁸

⁸ See *John J. Carlone*, 41 ECAB 354 (1989). The Board notes that in this case the record contains no medical opinion contrary to appellant’s claim.

The Office of Workers' Compensation Programs' decisions dated May 2 and February 14, 1996, January 31, 1995 and November 5, 1993 are hereby set aside and the case remanded for further development to be followed by a *de novo* opinion in accordance with this decision of the Board.

Dated, Washington, D.C.
May 12, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member