

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD A. TAYLOR, JR. and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION, Chicago, Ill.

*Docket No. 97-2618; Submitted on the Record;
Issued May 19, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability causally related to his December 27, 1976 work-related injury.

On December 28, 1976 appellant, then a 28-year-old special agent, filed a claim for compensation alleging that on December 27, 1976 he injured his back while in the performance of duty.

The Office of Workers' Compensation Programs accepted appellant's claim for acute low back strain and approved continuation of pay from December 28, 1976 to January 2, 1977.¹

In a letter dated March 28, 1989, the Office stated that it received appellant's undated and unsigned claim for recurrence of disability on March 6, 1989, in which he alleged that he has had intermittent pain since his original injury. The Office advised appellant regarding what evidence he needed to submit in order to establish his claim for recurrence of disability.

The Office received appellant's November 11, 1991 narrative on August 11, 1992 in support of his claim for recurrence of disability. Appellant noted that on July 15, 1985 he injured his back while "lifting only a bag of accounting files," resulting in surgical removal of the L4-5 disc, left side and L5-S1, right side.

On January 22, 1993 the Office denied appellant's claim on the grounds that the evidence failed to establish a causal relationship between appellant's condition and his accepted injury.

On February 16, 1993 appellant requested an oral hearing on the Office's January 22, 1993 decision denying benefits. On March 17, 1994 a hearing was held and, on

¹ Appellant resigned from the Federal Bureau of Investigation in November 1979.

July 5, 1994, the hearing representative issued a decision remanding the case to the Office for a second opinion consultation to determine whether appellant's condition was causally related to his accepted injury.²

On December 14, 1994 the Office referred appellant, a statement of accepted facts, a copy of his medical record and specific questions to Dr. Archer W. Bishop, Board-certified in orthopedic surgery, for a second opinion.

In a January 26, 1995 medical report, Dr. Bishop stated that appellant's disability was caused by his 1985 injury. In response to the Office's question, he stated that appellant's degenerative disc disease was not related to the accepted injury.

On February 8, 1995 the Office, in a decision, denied appellant's claim.

On February 6, 1996 appellant requested reconsideration. In an April 10, 1996 merit decision, the Office denied modification of its February 8, 1995 decision. In a letter received by the Office on April 15, 1997, appellant requested reconsideration. In a May 16, 1997 merit decision, the Office denied modification of its February 8, 1995 decision.

The Board has duly reviewed the case record on appeal and finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability causally related to his December 27, 1976 work-related injury.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.³ As appellant filed his appeal with the Board on August 5, 1997, the only decision before the Board is the May 16, 1997 decision of the Office which denied modification of the of its February 8, 1995 decision.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his alleged recurrence of disability and his December 27, 1976 employment injury.⁴ 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 employment factors and supports that conclusion with sound medical reasoning.⁵

In this case, Dr. Bishop stated in a January 26, 1995 medical report that he was essentially familiar with appellant's history of injury. He reviewed appellant's x-rays and found

² The Office hearing representative found that appellant's treating physician provided a "modicum of rationale in support" of his opinion that appellant's condition was causally related to his accepted injury.

³ See 20 C.F.R. § 501.3(d)(2).

⁴ *Lourdes G. Davila*, 45 ECAB 139 (1993); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

⁵ *Louise G. Malloy*, 45 ECAB 613 (1994).

that they revealed “a partial lumbarization of S1 with a rudimentary disc at this level, narrowing at the next two discs up with some spurring.” Dr. Bishop also stated that the upper lumbar area appeared to be normal. Based on his examination, Dr. Bishop found that appellant’s impairment and disability was a result of his degenerative disc based on appellant’s 1985 injury. He noted that if x-rays taken between 1976 and 1985 would show a degenerative process, “that perhaps it would be possible” to find a causal relationship between appellant’s current medical condition and the 1976 accepted injury. Dr. Bishop stated in an addendum report dated January 27, 1995, that he had reviewed x-rays taken in 1982, 1983 and 1985, stating that “the disc spaces are 4-5, 5-1 are well maintained.” He also noted that there did not appear to be any degenerative process involved.

In support of his claim, appellant submitted a medical report dated February 7, 1996, from Dr. Fred A. Killeffer, Board-certified in neurological surgery. He stated that he had reviewed appellant’s medical records including x-rays and found that appellant’s accepted injury was “not just a soft tissue injury” and that appellant’s subsequent injuries were related to the accepted injury.⁶ This report is of limited probative value because it does not contain a rationalized opinion to support appellant’s claim that his current medical condition was causally related to the accepted injury.⁷ Appellant also submitted an October 10, 1979 medical report from Dr. William M. Hovis, Board-certified in orthopedic surgery. However, he declined to opine that appellant’s current medical condition was causally related to his accepted injury. Indeed, Dr. Hovis stated: “[I]n the absence of documentable objective medical evidence, the impairment rating (of appellant’s back) would be zero.” Further, a January 13, 1997 medical report from Dr. Mary Anne McNamara is of no probative value because it related to appellant’s recent traumatic injury to his right hand and finger. Appellant also submitted an April 7, 1997 medical report from Dr. Burton S. Wollowick, Board-certified in orthopedic surgery. He stated that appellant had returned for examination after a ten-year absence, noted appellant’s 1985 surgery and stated that he had been doing well “until about two weeks ago, when he began having quite a bit of pain in the low back region.” Based on a review of x-rays, Dr. McNamara stated that appellant had lumbosacral strain. This report is of limited probative value because it contains no opinion as to whether appellant’s current condition was causally related to his work-related injury.⁸

As appellant has not submitted any rationalized medical evidence which substantiates that his back condition on or after March 6, 1989 was causally related to the accepted employment injury, appellant has not met his burden of proof.

On the other hand, Dr. Bishop’s second opinion report, where he found that appellant’s disability was causally related to his 1985 injury, was based on a complete physical examination established for the purposes of determining his residuals and other medical issues associated

⁶ Dr. Killeffer did not list a 1985 accident in his list of appellant’s post-December 1976 episodes.

⁷ *Arlonia B. Taylor*, 44 ECAB 591(1993); *see also Gary R. Sieber*, 46 ECAB 215 (1994) (probative value of a medical opinion includes the opportunity for and thoroughness of examination).

⁸ *Id.*

with his work-related injury. His findings are considered well reasoned, based on an accurate historical and medical profile and are therefore afforded probative weight.

The decision of the Office of Workers' Compensation Programs dated May 16, 1997 is affirmed.

Dated, Washington, D.C.
May 19, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member