

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REUBEN ORTIZ, JR. and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, San Francisco, CA

*Docket No. 98-755; Submitted on the Record;
Issued November 1, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained a recurrence of disability commencing June 9, 1996 causally related to his December 7, 1995 employment injury.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to establish that he sustained a recurrence of disability commencing June 9, 1996 causally related to his December 7, 1995 employment injury.

On December 8, 1995 appellant, then a 36-year-old electrician, filed a claim for compensation alleging that on December 7, 1995 he twisted his back while in the performance of duty. Appellant described the nature of his injury as upper back pains.

In support of his claim, appellant submitted a December 11, 1995 duty status report from his treating physician who noted that appellant twisted his upper back at work and had limited lateral movement of his neck and shoulders. The Office of Workers' Compensation Programs, on April 25, 1996, accepted appellant's claim for back strain.¹

In an unsigned treatment note dated June 10, 1996, it was noted that appellant "was petting a dog and bending down and had severe lumbar pain and left thigh numbness, reaggravated."

On July 12, 1996 appellant filed a claim for compensation from December 8 to December 11, 1995 and January 22, 1996, from June 10 to June 14, 1996, and from June 24 to July 12, 1996.

¹ In a September 20, 1996 letter, the Office advised appellant that his original claim had been accepted for upper back strain due to twisting on December 7, 1995.

By letter dated August 9, 1996, the Office advised appellant that he needed to submit additional information regarding his claim for recurrence of disability alleged to have occurred on June 10, 1996, including a rationalized medical opinion from his doctor addressing causal relationship between the current condition and the original injury.²

On August 19, 1996 appellant filed a claim for recurrence of disability stating that “the recurrence occurred at home while I was petting my dog” on June 9, 1995. Appellant also noted that his original injury included problems with the upper and lower back.

In support of his claim, appellant submitted a medical report dated June 21, 1996 from Dr. Samuel S. Jorgenson, appellant’s treating physician and an orthopedic surgeon. He noted familiarity with appellant’s history of injury stating that appellant hurt his lower back on December 7, 1995. Dr. Jorgenson also noted that appellant had “sustained a flare up of pain at work on June 9, 1996.” He noted appellant’s complaints of 80 percent back pain across the lumbosacral junction and 20 percent leg pain. Dr. Jorgenson also noted some extension of leg pain, primarily into left lower extremity, as well as mild tenderness to palpation of the lumbar paraspinous level. He further noted disc space narrowing at the L4-5 and L5-S1 levels, with mild anterior osteophytic spurring. Dr. Jorgenson diagnosed appellant with probable lumbar degenerative disc disease.

In a medical report dated June 27, 1996, Dr. Jorgenson stated that appellant had lumbar degenerative disc disease.

In a treatment note dated August 23, 1996, Dr. Jorgenson stated that appellant was doing extremely well, that he had returned to full duty without limitations and that he had released appellant from further medical care.

In a letter dated September 30, 1996, the Office advised appellant that it had received his claim for recurrence of disability but that he was required to submit a medical report which addresses how the low back disc condition was related to the accepted upper back strain injury.

In a medical report dated December 12, 1995 and received by the Office on October 22, 1996, Dr. Mee-Jin Chong, Board-certified in family practice, related appellant’s history of injury as having injured his back at work in early December. He stated that, upon examination, appellant had pain in the low back and mid thoracic region. In a medical report dated July 12, 1996 and received by the Office on October 28, 1996, Dr. Jorgenson stated that appellant had lumbar degenerative disc disease and disc protrusion.

In a letter decision dated December 6, 1996, the Office denied appellant’s claim for recurrence of disability on the grounds that he failed to submit medical evidence that established a causal relationship between his alleged June 9, 1996 recurrence of disability and his December 7, 1995 work-related injury.

² Appellant had not yet filed a recurrence of disability claim but did include June 10, 1996 as a date which he sought compensation coverage. The date that appellant noted he had sustained the recurrence was June 9, 1995.

On January 1, 1997 appellant requested reconsideration. In support of his request, appellant submitted a December 19, 1996 medical report from Dr. Jorgenson received by the Office on January 6, 1997. In that report, Dr. Jorgenson stated that he last treated appellant in September 1996 for “ongoing back pain” at which time he had released appellant from medical care and returned him to full duty. Dr. Jorgenson related that appellant now related symptoms of increased back pain since he had returned to work. He also noted that when he saw appellant in 1995 his lower back pain was the primary issue. Upon examination Dr. Jorgenson noted tenderness to palpation in the lumbar paraspinous area and lumbar with restricted range of motion. He stated that appellant had lumbar degenerative disc disease. Dr. Jorgenson also added that he “cannot comment on whether or not these symptoms are work related, as I did [not] see [appellant] until approximately seven months after his injury.” However, he noted after review of the medical record that appellant’s low back problems were work related.

In a merit decision dated February 20, 1997, the Office denied appellant’s request for reconsideration on the grounds that the medical evidence of record failed to establish that appellant’s alleged recurrence of disability was causally related to his accepted injury.

On September 5, 1997 appellant requested reconsideration. In support of his request, appellant submitted a July 21, 1997 medical report from Dr. Chong who stated that appellant had been treated initially in December 1995 for thoracic pain, low back pain and spasms throughout the back. Although x-rays at that time were negative, appellant later returned in June 1996 with complaints regarding upper and lower back pain. A magnetic resonance imaging (MRI) scan revealed a bulging disc which he opined was causally related to appellant’s December 1995 injury.

In a merit decision dated October 10, 1997, the Office modified its February 20, 1997 decision to include low back pain as a work-related injury based on Dr. Chong’s July 21, 1997 medical report. However, the Office denied appellant’s request for further compensation on the grounds that the medical evidence of record failed to address the alleged June 9, 1996 recurrence episode referred to by appellant and whether appellant’s condition after that date was related to his December 7, 1995 work-related injury.

An individual 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 compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a qualified 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.³

In this case, appellant has not submitted sufficient rationalized medical evidence establishing that he sustained a recurrence of disability on June 9, 1996 causally related to his work-related injury. Although the Office accepted that appellant had sustained a lower back

³ *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1993); *Robert H. St. Onge*, 43 ECAB 169 (1992).

injury on December 7, 1995, appellant alleged that he sustained a recurrence of disability on June 9, 1996 while at home when he bent down to pet his dog. However, Dr. Jorgenson's June 21, 1996 medical report lacks sufficient rationalization bridging the accepted claim in 1995 to his medical condition in 1996. In addition, Dr. Jorgenson's report is based on an inaccurate medical history. He stated that appellant sustained a flare-up at work on June 9, 1996. Appellant stated in his claim form that he injured his back when he petted his dog at home on June 9, 1996.⁴ For these reasons this report is of diminished probative value. Further, Dr. Chong's July 21, 1997 medical report did not include a rationalized medical opinion establishing a causal relationship between appellant's alleged recurrence of disability on June 9, 1996 and his work-related injury. The Office advised appellant of the specific type of evidence needed to establish his claim, but such evidence was not submitted.

The decisions of the Office of Workers' Compensation Programs dated October 10 and February 20, 1997 is affirmed.

Dated, Washington, D.C.
November 1, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁴ *Marilyn L. Howard*, 33 ECAB 683 (where the Board held that a medical opinion based on an incomplete and inaccurate medical history is of diminished probative value).