

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES JOHNSON and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Augusta, GA

*Docket No. 98-926; Submitted on the Record;
Issued November 5, 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 his recurrence of disability was causally related to his May 12, 1995 employment injury.

On May 12, 1995 appellant, then a 61-year-old housekeeping aide, was running a scrubbing machine when a light switch sparked, burning appellant on the left hand. The Office of Workers' Compensation Programs accepted appellant's claim for a burn of the left index finger. Appellant stopped working on May 13, 1995 and returned to work, four hours a day on June 5, 1995. He received continuation of pay for the period May 13 through June 26, 1995 and used sick leave, two hours a day, from June 27 through July 7, 1995. He then returned to work eight hours a day. He retired effective September 30, 1995.

On June 28, 1996 appellant filed a claim for recurrence of disability, beginning February 18, 1996. In an April 15, 1997 decision, the Office denied appellant's claim for recurrence of disability on the grounds that the evidence of record failed to establish that the claimed recurrence was causally related to the May 12, 1995 employment injury. In a June 30, 1997 letter, appellant requested reconsideration. In an August 13, 1997 merit decision, the Office denied appellant's request for modification of the prior decision. In a November 3, 1997 letter, appellant again requested reconsideration. In a November 19, 1997 merit decision, the Office again denied appellant's request for modification of the prior decision.

The Board finds that appellant has not established that his recurrence of disability was causally related to his May 12, 1995 employment injury.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition, for which he seeks compensation was causally

related to his employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.¹

In a May 23, 1995 report, Dr. Christopher G. Kelley indicated that appellant had sustained an electrical shock to the left hand with burns on three fingers. He noted appellant had no exit wound, no loss of consciousness and no fall during the incident. Dr. Kelly indicated appellant had mild, transient pain in the left rib cage. He reported appellant had a past medical history of degenerative joint disease and prostatic hypertrophy. Dr. Kelly stated that appellant was hospitalized for one night after the employment injury.

In a July 19, 1995 report Dr. Joseph Korwin, an internist, gave a history of the May 12, 1995 employment injury and noted that on examination appellant had some posterior left-sided cervical spasm as well as mild spasm and tenderness in the upper trapezius area bilaterally. A July 20, 1995 x-ray showed mild degenerative changes at C6-7.

In a February 27, 1996 medical note, Dr. James G. Jackson, a Board-certified orthopedic surgeon, indicated that appellant was complaining of back pain and neck pain. He related that x-rays showed degenerative arthritis of the cervical spine and degenerative spondylolisthesis, L5 on S1, as well as degenerative disc disease at L5. In an April 19, 1996 report, Dr. Jackson stated that appellant sustained an injury to his back at the employing establishment. He related that appellant reported no symptoms until the injury which consisted of an electrical shock. Dr. Jackson indicated that a lumbar myelogram with a computerized axial tomography scan showed severe spinal stenosis in the lower lumbar region with spondylolisthesis. He noted, however, that appellant became relatively pain-free during the work-up period, but remained fixated mentally on the association of his back pain with the electrical shock. Dr. Jackson commented that since appellant had become remarkably improved, further treatment had been abandoned. He stated that appellant had been advised on many occasions that his current back condition of spondylolisthesis, spinal stenosis and multilevel degenerative joint disease had not been caused by the electrical shock but the shock could have produced muscle spasm that made his pain intermittently and temporarily more severe. In an August 20, 1996 report, Dr. Jackson indicated that appellant had preexisting spinal stenosis and degenerative arthritis. He stated, however, that it was obvious from appellant's history that appellant had an aggravation of his symptoms and preexisting condition for which the Office should be responsible. Dr. Jackson noted that appellant had progressed satisfactorily with treatment but was beginning to display anxiety symptoms from concern about his medical bills. He commented that mental aggravation might require further psychological evaluation and treatment, thereby increasing the medical costs.

In a September 10, 1996 report, Dr. Charlton J. Pickett, a Board-certified family practitioner, stated that he had not seen appellant since February 16, 1994 and that he had referred appellant to Dr. Jackson on February 20, 1996 when he complained of severe back pain. He commented that it appeared appellant suffered from severe spinal stenosis and degenerative arthritis and was in need of surgical treatment. He noted appellant's May 12, 1995 employment

¹ *Dominic M. DeScala*, 37 ECAB 369 (1986).

injury and stated that the injury apparently worsened his back pain which continued until the time of the report.

The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. Joel R. Graziano, a Board-certified orthopedic surgeon, for an examination and second opinion. In a February 10, 1997 report, Dr. Graziano related that appellant gave a history of the May 12, 1995 electrical shock. Appellant stated that he jumped away from the electrical outlet at the time of the shock, causing him to hurt his neck and lower back. He noted that appellant underwent surgery on November 7, 1996 for a laminectomy of the L5-S1 level with a fusion of the area. Dr. Graziano indicated that a magnetic resonance imaging scan showed spinal stenosis and disc bulging at L5-S1 and degenerative disc disease at L4-5 and L5-S1. He reported that in examination, appellant had full range of motion of the back and normal sensory examination. Dr. Graziano related that appellant complained of no back pain but of some soreness. He concluded that appellant's back problem, which led to surgery, was not caused by the May 12, 1995 electrical shock. Dr. Graziano commented that it was possible that appellant may have sustained a wrenching injury to the cervical and lumbar areas but stated that in no way was the spinal stenosis and disc bulging caused by the electrical shock injury. He indicated that if appellant did sustain an aggravation of the preexisting condition, it should have cleared up within three to four weeks. Dr. Graziano stated that the need for surgery was not related to the May 12, 1995 employment injury.

In an April 22, 1997 report, Dr. Pickett commented that when he first saw appellant on February 16, 1994 Dr. Pickett noted that appellant had a history of osteoarthritis involving his knees and lower back but he did not have complaints of back pain at that time. Dr. Pickett stated that it was not until February 20, 1996 that appellant presented him with complaints of back pain. In a September 22, 1997 report, he stated that appellant suffered an injury at work on May 12, 1995 when he received an electrical shock while operating a scrubber machine. Dr. Pickett noted that he did not see appellant for his back pain until February 20, 1996.

The medical records, therefore, show that Drs. Jackson and Pickett made statements supporting appellant's claim for compensation. Dr. Jackson indicated that the electrical shock of May 12, 1995 did not cause appellant's spinal stenosis, degenerative arthritis or spondylolisthesis. He commented that the electrical shock may have caused intermittent and temporary muscle spasms which would have increased appellant's pain. Subsequently, Dr. Jackson stated that the May 12, 1995 employment injury caused an aggravation of appellant's condition. However, he did not describe how the May 12, 1995 employment injury would have aggravated appellant's underlying, preexisting back condition and did not specify how long such an aggravation would have lasted or how it would have caused any disability after February 18, 1996. Appellant, at the time of his injury, did not report any twisting of his back or onset of back pain after the May 12, 1995 incident. Dr. Jackson did not provide any rationale for the absence of any symptoms of a back problem until nine months after the employment injury when appellant claimed a recurrence of disability. He, therefore, did not provide sufficient rationale to show a causal connection between the May 12, 1995 incident and appellant's subsequent back pain. As a result, Dr. Jackson's reports have little probative value and are insufficient to meet appellant's burden of proof in establishing that he had a recurrence of disability causally related to the May 12, 1995 employment injury.

Dr. Pickett indicated that appellant did not have any symptoms of his back condition until after the May 12, 1995 employment injury. However, the mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.² Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.³ He did not give any explanation on how the employment injury would have caused an aggravation of appellant's back condition, which would have resulted in a recurrence of appellant's disability nine months after the employment injury. Dr. Pickett's reports suffer from the same flaws as Dr. Jackson's reports and, therefore, have the same limited probative value. As a result these reports also are insufficient to meet appellant's burden of proof.

Dr. Graziano's report concurred with Dr. Jackson's opinion that the May 12, 1995 employment injury was not the cause of appellant's spinal stenosis, spondylolisthesis or degenerative disc disease. He indicated that the May 12, 1995 employment injury might have caused muscle spasms that would have ceased within three to four weeks of the employment injury. His report shows that appellant's claimed disability after February 18, 1996 was not causally related to the May 12, 1995 employment injury.

² *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

³ *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).

The decisions of the Office of Workers' Compensation Programs, dated November 19, August 13 and April 15, 1997, are hereby affirmed.

Dated, Washington, D.C.
November 5, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member