

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOUGLAS EARL SMITH and DEPARTMENT OF THE ARMY,
KENTUCKY ARMY NATIONAL GUARD, St. Augustine, FL

*Docket No. 98-508; Submitted on the Record;
Issued October 28, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant met his burden of proof to establish that the multiple back conditions, for which he underwent physical therapy and medical treatment resulted from his accepted lumbar strain, which he sustained in the performance of duty on December 13, 1995.

On January 30, 1996 appellant, then a 43-year-old heavy mobile equipment repairer, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he experienced low back pain while untightening a bolt with a ratchet on December 13, 1995. Appellant missed no time from work. Appellant subsequently expanded his claim to include low back pain.

In support of his claim, appellant submitted numerous reports from Dr. Marc N. Dubick, a Board-certified anesthesiologist, and from the Pain Management Center at St. Joseph Hospital. These notes indicate that appellant was suffering from "chronic low back pain with acute exacerbation with probable discogenic component and structural dysfunction with segmental instability L1 through L5." Dr. Dubick also indicated that he gave appellant sacroiliac joint injections, facet joint capsule injections and interspinous ligamentous injections on April 16, 1997 to treat resolving sacroiliac joint dysfunction with segmental instability and lumbar facet syndrome with segmental instability.

On January 3, 1996 the Office of Workers' Compensation Programs wrote to Dr. Bobby Turner, a Board-certified internist, requesting that he provide a well-reasoned report as to whether the pain appellant experienced was causally related to an earlier injury on February 23, 1995 or was a new injury.¹ In a follow-up letter dated January 19, 1996, the Office advised appellant to file a new traumatic injury claim for the December 1995 injury.

¹ The record reveals that the Office accepted appellant's claim for lumbar strain and cervical strain resulting from a February 23, 1995 employment injury.

On January 3, 1996 Dr. William T. Daniel II, a Board-certified radiologist, performed a magnetic resonance imaging (MRI) scan of appellant's lumbar spine. Dr. Daniel stated that the reason he conducted the MRI was that appellant "describes previous falling injury." Dr. Daniel found "[d]isc desiccation with loss of height and L5-S1 consistent with degenerative disc change. No lumbar disc herniations are identified. No findings of spinal stenosis are demonstrated."

Dr. Charles E. Gagnon, an osteopath, reported on March 25, 1996 that appellant "appears to have a mechanical lower lumbar and lower thoracic pain syndrome with probable facet etiology at approximately T10-12 facets and lower lumbar facets bilaterally with a possible diskogenic component at L5-S1." Dr. Gagnon noted that appellant "reinjured himself by pulling on a wrench."

In response to a May 16, 1996 request from the Office for further information, appellant submitted duty status reports (CA-17) by Dr. Turner dated February 1, May 30 and August 12, 1996, in which he described that appellant injured his lower back while turning a wrench on December 13, 1995. Dr. Turner diagnosed musculoligamentous injury and sacroiliac dysfunction on May 30 and August 12 1996 and back pain on February 1, 1996. Also included were more physical therapy notes, records of payments of bills and multiple reports from Dr. Dubick, including reports of numerous injections given to appellant between August 29, 1996 and June 26, 1997. On May 15, 1996 he stated that appellant had been a patient of the St. Joseph Hospital Pain Management Center since March 25, 1996 and that he had significant structural dysfunction particularly involving the sacroiliac joint region. Dr. Dubick agreed with Dr. Turner's decision to place appellant on light duty, although he noted that appellant could do certain aerobic activities at the present time, such as walking short distances or a stationary bicycle, as tolerated.²

The record reveals that the Office accepted appellant's claim for lumbar strain.

On September 10, 1997 the Office sent appellant a letter, which stated that the medical evidence of record failed to establish that, as a result of untightening a bolt with a ratchet on December 13, 1995 he sustained "low back pain, rule out mixed pain component with sacroiliac facet pain with segmental instability and discogenic disease; bilateral sacroiliac, L3-5, L5-S1 parafacet anterior and posterior ligamentous injections; pelvic girdle and lumbar vertebral dysfunction." The Office reminded appellant that the only accepted condition was lumbar strain, "which usually resolves itself within six to eight weeks." After noting that appellant had the burden of proof to establish causal relationship, the Office stated:

"There is no rationalized medical opinion evidence that your underlying/preexisting disease process, as opposed to your symptoms, was adversely affected when [you] untightened that bolt with a ratchet, on December 13, 1995."

² In response to the Office's request for further information about appellant's back pain, Dr. Dubick noted that physical therapy would be administered to treat back pain which was preventing appellant's regular activity.

The Office allotted appellant 30 days within which to submit the requested medical evidence. Appellant submitted several medical reports, including results of various tests, physical therapist notes and several medical reports that had been previously submitted.

By decision dated October 14, 1997, the Office denied appellant's claim on the grounds that the medical evidence currently of record failed to demonstrate that the claimed condition or disability was causally related to the December 13, 1995 employment injury.

The Board finds that the Office properly determined that appellant failed to meet his burden of proof in establishing that the multiple back conditions, for which he underwent physical therapy and other medical treatment were causally related to the December 13, 1995 employment injury, resulting in a lumbar strain.

The Board has held that an award of compensation may not be based on surmise, conjecture or speculation, or appellant's belief of causal relationship. The mere fact that a disease or condition manifests itself or worsens during a period of employment³ or that work activities produce symptoms revelatory of an underlying condition⁴ does not raise an inference of causal relationship between the condition and the employment factors.⁵ Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.⁶

Appellant submitted multiple reports demonstrating that he sustained a lower back injury, which the Office accepted as lumbar strain. However, no medical report links appellant's need for physical therapy and other medical treatment to the injury of December 13, 1995. The notes and reports of Dr. Dubick and the Pain Management Center at St. Joseph Hospital indicate that appellant became their patient on March 25, 1996 that appellant was suffering from "chronic low back pain with acute exacerbation with probable discogenic component and structural dysfunction with segmental instability L1 through L5" and that injections were given. At no point do any of these reports mention the earlier injury of December 13, 1995, or attribute appellant's condition to an aggravation of this earlier injury.

Similarly, Dr. Gagnon reported that appellant appeared to have a mechanical lower lumbar and lower thoracic pain syndrome, but did not provide any medical opinion with rationale relating this condition to the earlier injury. That is, although the doctor reported that appellant "reinjured himself by pulling on a wrench," he did not describe how and why the mechanism of this injury resulted in the current condition. As such, this report is of diminished probative value and is insufficient to establish appellant's claim.

³ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁴ *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

⁵ *Michael E. Smith*, 50 ECAB ____ (Docket No. 97-1562, issued March 26 1999).

⁶ *Id.*; *Victor J. Woodhams*, 41 ECAB 345 (1989).

Dr. Daniel conducted an MRI on January 3, 1996 because appellant described a previous falling injury. However, this history is not consistent with the history of the December 13, 1995 employment injury, which resulted from untightening a bolt with a ratchet. Moreover, causal relationship was not addressed. Accordingly, no rationalized medical opinion links appellant's recent sacroiliac joint dysfunction with segmental instability and lumbar facet syndrome with segmental instability to the employment injury of December 13, 1995.

As appellant has not submitted rationalized medical evidence explaining how and why the December 13, 1995 employment injury, which was accepted for lumbar strain, could have caused, accelerated, precipitated or aggravated appellant's other multiple back conditions, the Office properly denied appellant's claim for compensation.

The decision of the Office of Workers' Compensation Programs dated October 14, 1997 is hereby affirmed.

Dated, Washington, D.C.
October 28, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member