

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GILBERTO L. PORTILLA and DEPARTMENT OF JUSTICE,
IMMIGRATION & NATURALIZATION SERVICE, Los Angeles, CA

*Docket No. 97-2717; Submitted on the Record;
Issued September 27, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant sustained a recurrence of disability on or about October 18, 1995 as a result of the employment injury he sustained on January 3, 1995.

On January 3, 1995 appellant, an information officer assigned to the ticket counter, sustained an injury while in the performance of his duties when the plastic crate on which he was standing to make an announcement slid out from under him, causing him to fall.¹ In the description attached to his claim form, he stated that the fall carried his lower torso under the counter, that his upper legs hit the edge of the counter and that he fell backward onto the tile floor. On the way down, he stated, the back of his neck and his shoulders hit the seat of a wheeled chair. Although he used his hands and arms to cushion the blow, he landed on his posterior with what he described as the total weight of his whole body. Appellant stated that he was so dazed that it took a few minutes before he was able to stand up and sit in a chair.

Appellant stopped work on January 10, 1995. Dr. Tiburcio P. Alberto, a general surgeon, saw appellant on January 5, 9 and 17, 1995. Appellant had subjective complaints of pain in the back of the neck, lower back and in the elbows and hands. X-rays showed severe degenerative osteoarthritis in the cervical and lumbosacral spine and osteoarthritis in the elbows and hands. Dr. Alberto diagnosed multiple contusions and kept appellant off work through January 24, 1995. He advised appellant that the presence of severe arthritis would give him pain now and then. On January 19, 1995 Dr. Alberto discharged appellant from his care. Appellant returned to work on January 25, 1995.

The Office of Workers' Compensation Programs accepted appellant's claim for multiple contusions to the lower back, the back of the neck, the elbows and the hands. The Office indicated that concurrent conditions not due to the injury included knee surgery in 1992, degenerative disc disease and gout.

¹ Appellant stated that the crate was 18 inches high.

On March 16, 1995 appellant saw Dr. Cranford L. Scott, a specialist in internal medicine. Dr. Scott reported that he saw appellant for the following diagnoses as a result of his injury on January 3, 1995: osteoarthritis/degenerative joint disease; degenerative disc disease; and muscle sprain/spasms. On June 29, 1995 appellant indicated that he had been having a lot of lower back pain, that he had difficulty walking, standing and even sitting for a long time. On October 18, 1995 he filed a claim asserting that he sustained a recurrence of disability as a result of his January 3, 1995 employment injury.

In a report dated October 17, 1995, Dr. Amos N. Woodard, an orthopedist and an associate of Dr. Scott, described a history of injury that varied in some details from the history appellant provided with his claim form.² He noted that appellant's subjective complaints were of continued neck and back pain. Dr. Woodard stated that appellant could not bend or flex without severe pain, which was constant and unrelenting. He diagnosed status post slip and fall accident of January 3, 1995; cervical myoligamentous strain; dorsal myoligamentous strain; lumbosacral myoligamentous strain; osteoarthrosis of the cervical and lumbar strain; multiple disc bulges of the lumbar spine; and spondylolisthesis of the lumbar spine. Dr. Woodard reported that appellant was temporarily totally disabled from any lifting, bending, stooping, pushing or pulling. He also reported that appellant's prognosis was guarded due to the musculoligamentous injuries combined with severe arthritis and a history of gout.

On May 23, 1996 the Office requested that appellant submit additional information to support his claim of recurrence, including a medical report, containing sound medical rationale, discussing the relationship between appellant's back problems beginning in May 1995 and the contusions sustained on January 3, 1995.

Dr. Woodard replied with a report dated June 6, 1996. He stated that appellant never recovered from the original disability, that he never returned to full employment and that he continued to have lingering symptoms, including neck and back pain, with pain radiating into his leg and around the front of his abdomen; pain in both legs with weakness of both knees; frequent pain in the back of his head and neck; moderate to severe headaches with weakness and lack of dexterity of both hands; weakness and lack of coordination of both arms; and difficulty lying on his back and sides. Dr. Woodard reported that the recurring condition was the same as the original diagnosis. He stated that the initial condition was prone to recurrence "because these are one of the factors of musculoligamentous injury with strain and sprain syndromes." Dr. Woodard stated that appellant's injuries were the result of the slip and fall. Although appellant had evidence of osteoarthritis, Dr. Woodard stated, he was asymptomatic prior to the slip and fall.

In a decision dated June 14, 1996, the Office denied appellant's claim of recurrence on the grounds that he failed to submit a detailed, rationalized medical opinion, based on a complete and accurate history, to substantiate a recurrence of the accepted contusions of January 3, 1995.

² Dr. Woodard stated that appellant was standing on a wheeled chair when the chair tipped over, causing him to fall backward. As the chair slid from under him, Dr. Woodard reported, appellant struck the counter with his shins and knees. He struck the floor with his buttocks first and then the back of his head and neck struck a nearby chair.

In a decision dated May 29, 1997, an Office hearing representative affirmed the Office's denial of appellant's claim.

The Board finds that the medical evidence of record is insufficient to establish that appellant sustained a recurrence of disability on or about October 18, 1995 as a result of the employment injury he sustained on January 3, 1995.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires 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 the employment injury and who supports that conclusion with sound medical reasoning.³

To support his claim of recurrence, appellant has submitted medical opinion evidence from his attending orthopedist, Dr. Woodard. In his June 6, 1996 report, Dr. Woodard stated that appellant never recovered from the original disability and continued to have lingering symptoms. He stated that the recurring condition was the same as the original diagnosis, which was prone to recurrence. Dr. Woodard stated that these injuries were the result of the slip and fall and he explained that although appellant had evidence of osteoarthritis, he was asymptomatic prior to the slip and fall. The Board finds that Dr. Woodard's opinion is supportive of appellant's claim of recurrence⁴ but is of diminished probative value. Lacking is any medical explanation of how the slip and fall caused appellant's preexisting osteoarthritis to become symptomatic. This is critical.⁵ The Board has held that when a physician concludes that a condition is causally related to employment because the employee was asymptomatic before the employment injury, the opinion is insufficient, without supporting medical rationale, to establish causal relationship.⁶ Thus, a temporal relationship alone is insufficient to establish a causal relationship between the incident that occurred on January 3, 1995 and appellant's symptoms of osteoarthritis. Dr. Woodard must explain what occurred on January 3, 1995 from a pathophysiological perspective and he must show how appellant's symptoms, findings and general medical course support his conclusion.

Dr. Woodard's opinion also fails to explain how the incident of January 3, 1995 caused or aggravated the other medical condition he diagnosed, including various myoligamentous strains, disc bulges and spondylolisthesis. The Board notes that the history of injury reported by Dr. Woodard is generally accurate with respect to the nature of the incident but varies from the

³ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

⁴ Dr. Woodard does not support that appellant stopped work on or about October 18, 1995 because of the multiple contusions appellant sustained on January 3, 1995. Rather, he attributes appellant's temporary total disability to other medical conditions that he indicates the slip and fall caused or aggravated.

⁵ See *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954) (medical conclusions unsupported by rationale are of little probative value).

⁶ See *Thomas D. Petrylak*, 39 ECAB 276 (1987) (medical conclusions based on inaccurate or incomplete histories are of little probative value).

history appellant originally reported in several details, such as whether appellant struck the counter with his shins and knees. Also, Dr. Woodard first examined appellant more than 10 month after the slip and fall. It is important, therefore, that he consider the medical evidence contemporaneous to the incident and explain how the symptoms and findings reported therein support his view.

It is not necessary that the evidence be so conclusive as to suggest causal connection beyond all possible doubt in the mind of a medical scientist. The evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound and logical.⁷ The medical opinion evidence submitted in this case is supportive of appellant's claim, but it is of diminished probative value and is insufficient to establish that appellant sustained a recurrence of disability on or about October 18, 1995 as a result of the employment injury he sustained on January 3, 1995.

The May 29, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
September 27, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁷ *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein at note 1.