

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BRUCE W. EPPERLEY and DEPARTMENT OF THE ARMY,  
McALESTER ARMY AMMUNITION PLANT, McAlester, OK

*Docket No. 98-515; Submitted on the Record;  
Issued September 10, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
BRADLEY T. KNOTT

The issue is whether appellant has established a recurrence of disability based on his August 11, 1995 employment injury

On May 2, 1996 appellant, then a 46-year-old electrician, filed a claim for compensation alleging that on August 11, 1995 he injured his back while in the performance of duty.

The record contains an August 14, 1995 medical report from Dr. H.T. Osborn, an osteopath, in which appellant is determined to have had a lumbar sacral strain. In an August 21, 1995 medical report, Dr. Walter G. Reed noted that appellant injured his back while on duty but that he was released to duty effective that date. In a medical report dated April 29 and May 1, 1996, Dr. Osborn stated that appellant injured his back on August 11, 1995 and that a magnetic resonance imaging (MRI) scan revealed possible ruptured lumbar disc.

On May 14, 1996 the Office of Workers' Compensation Programs advised appellant that he needed to submit additional information regarding his claim including a detailed narrative medical report containing a well-rationalized medical opinion as to the relationship between his work-related injury and his current claim. The Office noted that appellant had 20 days from the date of the letter to respond.

On May 15, 1996 the Office notified appellant in a letter decision that he was not entitled to continuation of pay from August 12 to September 24, 1995. On the same day the Office accepted that appellant, on August 11, 1995 had sustained a lumbar strain resolved.

On May 16, 1996 appellant filed a claim for wage loss from May 20 to June 2, 1996.

On May 31, 1996 the Office denied appellant's claim on the grounds that the medical evidence of record failed to establish that his condition was causally related to his accepted injury.

In a medical report dated May 23, 1996 and received by the Office on June 6, 1996, Dr. J. Michael Alvis, appellant's treating physician and a surgeon, stated that appellant injured his back on August 11, 1995; that he had lumbar disc syndrome, and that he was totally disabled from May 8 to June 19, 1996.

On June 27, 1996 appellant requested an oral hearing.

In a decision dated August 13, 1996 and finalized on August 15, 1996 a hearing representative vacated the Office's May 31, 1996 decision on the grounds that the Office provided only 20 days in its notice to appellant to submit evidence in support of his claim,<sup>1</sup> but in fact decided the claim after only 14 days had passed since its May 14, 1996 letter. Further, the hearing representative noted that the Office confused the issue by issuing appellant a partial acceptance letter after it denied his claim. Since appellant's doctor submitted a medical report sufficient to warrant additional development, the Office was required to further develop the case on the issue of causal relationship.

In a medical report dated May 8, 1996, Dr. Alvis stated that appellant injured his back at work about 10 months previously, and that he has had severe intermittent pain since that time. He reviewed appellant's MRI scan and noted a minimal central disc rupture at L5-S1 which did not appear to impinge on his nerve root. Dr. Alvis noted that appellant had severe "modic-type changes at the L5-S1 interspace" and ordered appellant to four to six weeks of physical therapy and ordered him off work. In multiple disability slips, Dr. Alvis placed appellant on temporary total disability from May 8 to November 26, 1996. In medical reports dated June 19 and July 31, 1996, Dr. Alvis stated that appellant had severe left leg pain caused by his work-related injury. In a medical report dated October 25, 1996, Dr. Mike A. Houghton, Board-certified in family medicine, stated that he had examined appellant on October 15, 1996, and determined that he had a lumbosacral dysfunction, probable spondylitis; moderate degenerative disc disease, hips and back; severe coronary artery disease; and hypertension. In a medical report dated January 28, 1997, Dr. Osborn noted appellant's employment and injury history, and stated that appellant remained symptomatic with pain down the left leg and coccyx area. He noted that appellant had had coronary bypass surgery and was unable to perform "any gainful work of any type."

On February 27, 1997 the Office advised appellant that the evidence in his claim indicated the possibility of a recurrence of disability. However, it also noted that the record was "devoid of any medical evidence from August 21, 1995 to April 26, 1996," and thus he would need to submit medical reports from August 21, 1995 through April 26, 1996 to support his claim. The Office also advised appellant that to support disability commencing May 20, 1996, the beginning date in appellant's claim for wage loss, he would need to include a rationalized medical opinion explaining the relationship between the disabling condition and the August 11, 1995 work-related injury.

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<sup>1</sup> The hearing representative noted that the Office should have provided 30 days to appellant from the date of the notice to submit evidence in support of his claim.

On March 12, 1997 appellant's counsel advised the Office that appellant had no new injury; that his medical condition was a continuation of his original injury; that appellant had not sought medical care from August 1995 through May 1996; and that the pain from the original injury was so severe that appellant left work on or about April 26, 1996. Appellant also submitted medical reports dated June 14, 1995 and May 7, 1996, and received by the Office on March 14, 1997, from Dr. Dwayne A. Schmidt, Board-certified in internal medicine, who noted appellant's post-coronary status after one and two years, respectively. In treatment notes dated September 25 and November 26, 1996, and January 8 and April 8, 1997, received by the Office on April 16, 1997, Dr. Alvis stated that appellant continued to have severe back pain but little left leg pain, and that a September 25, 1996 MRI revealed no real nerve impingement.

In a decision dated August 19, 1997, the Office denied appellant's claim for recurrence of disability on the grounds that the medical evidence of record failed to establish that his condition was causally related to the work-related injury.

The Board finds that appellant failed to establish that his medical condition on or after May 20, 1996 was causally related to his August 11, 1995 accepted injury.

An employee 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 he claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish 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 supports that conclusion with sound medical reasoning.<sup>2</sup>

In this case, appellant submitted multiple medical reports from Dr. Alvis, his treating physician. However, none of these reports contained a rationalized medical opinion establishing a causal relationship between appellant's condition and his work-related injury. For example, Dr. Alvis' medical reports dated May 6 and 23, 1996, note that appellant had sustained a work-related injury in August 1995; that he had lumbar disc syndrome; and that he was totally disabled from work in May 1996. These reports do not include a rationalized medical opinion establishing a well-reasoned opinion based on objective clinical findings that appellant's August 1995 injury was causally related to his May 1996 condition, and thus these reports are of limited probative value. Similarly, Dr. Alvis' June 19 and July 31, 1996 medical reports merely note back pain and opine that it was caused by the August 1995 work-related injury. These reports are likewise devoid of any rationalized medical opinion establishing a causal relationship between the condition and the work-related injury.<sup>3</sup> Dr. Houghton's October 25, 1996 opinion recounted appellant's injury history but failed to provide a rationalized opinion establishing a relationship between the condition and the work-related injury. Dr. Osborn's January 28, 1997 medical report noted that appellant remained symptomatic with pain down the left leg and

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<sup>2</sup> *Lourdes Davila*, 45 ECAB 139 (1993).

<sup>3</sup> Dr. Alvis' treatment notes from September 1995 through April 1997 are likewise of no probative value as they are unrationalized opinions and fail to establish appellant's burden of proof.

coccyx area; that he had had coronary bypass surgery, and was unable to work. This report established no causal relationship between appellant's condition and his work-related injury and is likewise of little probative value. The remaining medical opinions address appellant's coronary bypass operation and are of no relevance to appellant's claim.

Appellant has not submitted the necessary rationalized medical evidence to support his claim of recurrence of disability. None of the medical reports of record established that appellant's medical condition on or about May 20, 1996 was causally related to his August 11, 1995 employment injury.

The August 19, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.  
September 10, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Bradley T. Knott  
Alternate Member