

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIRGIL W. STOKES and DEPARTMENT OF THE ARMY,
RESERVE OFFICER TRAINING CORPS, University, AL

*Docket No. 99-1841; Submitted on the Record;
Issued December 15, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability on July 31, 1997 causally related to his April 1, 1965 employment injury.

The Board has duly reviewed the case record and finds that appellant failed to establish that he sustained a recurrence of disability on July 31, 1997 causally related to his April 1, 1965 employment 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.¹ This burden includes the necessity of 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 supports that conclusion with sound medical rationale.² Where no such rationale is present, medical evidence is of diminished probative value.³

On April 1, 1965 appellant sustained an exacerbation of multiple sclerosis in the performance of duty while enrolled in a Reserve Officers Training Corps (ROTC) program.⁴ He was terminated from the ROTC on April 14, 1965 as medically disqualified.

¹ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

² *Mary S. Brock*, 40 ECAB 461, 471 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

³ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁴ The Office of Workers' Compensation Programs stated in its July 13, 1998 decision that appellant had an accepted claim for exacerbation of multiple sclerosis sustained on April 1, 1965. The Office decision accepting this condition is not of record as the record was apparently lost and had to be reconstructed in 1987.

In a claim form dated April 20, 1998, appellant alleged that he sustained a recurrence of disability on July 31, 1997 which he attributed to his April 1, 1965 employment injury. By decision dated July 13, 1998, the Office denied appellant's claim for a recurrence of disability. By letter dated August 25, 1998, appellant requested reconsideration of the denial of his claim and submitted additional evidence. By decision dated January 13, 1999, the Office denied modification of its July 13, 1998 decision.

In a report dated November 19, 1996, Dr. John R. Goff, a clinical neuropsychologist, evaluated appellant and diagnosed major depression and cognitive loss, probably dementia. He did not mention appellant's federal employment in 1965. Therefore, this report is not sufficient to establish that appellant sustained any medical condition or disability causally related to his 1965 employment injury.

In a report dated August 21, 1998, Dr. Goff related that he first saw appellant on November 18, 1996. He stated that it appeared that appellant was misdiagnosed with multiple sclerosis in 1965 while in the ROTC. Dr. Goff stated that although appellant did not have multiple sclerosis he did have a significant neurological abnormality which was creating the symptoms which were regarded as indicative of multiple sclerosis in 1965. He noted that appellant had some difficulties in 1957 described as some type of encephalitis and that his situation was further complicated by the existence of an arteriovenous malformation (AVM) which apparently had bled on occasion and perhaps in 1965 gave rise to the visual and gait difficulties of which appellant had been complaining since 1965. Dr. Goff concluded:

“In summary, my review of the records back to 1965 would tend to suggest to me that [appellant] did have a demonstrable neurological problem at the time of the examination in 1965. I do think the records would suggest that this was not related to multiple sclerosis but was related to problems with the AV malformation. There may have been a previous episode of encephalitis but that may well also have been related to the existence of the arteriovenous malformation. Of course, since AVM is a congenital condition [appellant] was born with it and he just began having difficulties with it in his teenage years and then an exacerbation of these difficulties in 1965. [Appellant] continues to have similar difficulties at this point.”

* * *

“I think that this is a very confusing situation probably emanating from what was a misdiagnosis in 1965. The fact that [appellant] was misdiagnosed does not mean that he did not have significant problems at that time. The records indicate that he certainly did. Those problems persist to this day.”

Dr. Goff opined that appellant's neurological problem in 1965 was AVM rather than multiple sclerosis, the diagnosis in 1965. He noted that AVM is a congenital condition which began causing difficulties for appellant during his teenage years including an exacerbation in 1965. However, Dr. Goff failed to provide a rationalized medical opinion explaining how appellant's April 1, 1965 employment injury caused or contributed to his disability on

July 31, 1997. Therefore, his report is not sufficient to establish that appellant sustained a recurrence of disability on July 13, 1997 causally related to his April 1, 1965 employment injury.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁵ Appellant failed to submit rationalized medical evidence establishing that his claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied his claim for compensation.

The decisions of the Office of Workers' Compensation Programs dated January 13, 1999 and July 13, 1998 are affirmed.

Dated, Washington, DC
December 15, 2000

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁵ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).