

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAWRENCE E. PAULE and DEPARTMENT OF THE AIR FORCE,
STRATEGIC AIR COMMAND, ELLSWORTH AIR FORCE BASE, SD

*Docket No. 98-752; Submitted on the Record;
Issued January 28, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof to establish that he sustained a recurrence of disability on or after May 16, 1996 causally related to his July 1, 1992 work-related injury.

The Board has reviewed the case record in the present appeal and finds that the case is not in posture for decision.

Proceedings under the Federal Employees' Compensation Act are not adversary in nature, nor is the Office of Workers' Compensation Programs a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.¹

In this case, the Office, on November 25, 1992, accepted appellant's² claim for a July 1, 1992 lumbosacral strain and disc protrusion and, on March 23, 1995, appellant's November 30, 1994 claim for recurrence of disability.³

On May 23, 1996 appellant filed a claim for recurrence of disability, alleging that the recurrence occurred on May 1, 1996 and that he had stopped work on May 14, 1996. He also filed a claim for wage loss from May 14 to June 17, 1996.

¹ *William J. Cantrell*, 34 ECAB 1223 (1983).

² At the time of his initial claim for compensation, appellant was a 49-year-old heating repair technician.

³ In support of his claim, appellant submitted a May 23, 1994 medical report from Dr. Michael E. Schurrer, appellant's treating physician and Board-certified in internal medicine, who stated that appellant had chronic low back pain, and a January 30, 1995 report from Dr. Daniel A. Rey, appellant's treating physician and Board-certified in internal medicine, who noted appellant's history of low back pain.

In a decision dated September 11, 1996, the Office denied appellant's claim for recurrence of disability. On October 9, 1996 appellant requested a hearing. A hearing was held on July 24, 1997, and the hearing representative issued a decision on October 8, finalized on October 15, 1997, affirming the Office's September 11, 1996 decision.

In support of his May 23, 1996 claim for recurrence of disability, appellant submitted medical reports from Dr. John David Sabow, Board-certified in psychiatry and neurology. In a May 14, 1996 medical report, Dr. Sabow stated that that "three to four weeks ago [appellant] had a real flare up with his back with pain radiating through the left buttock down the posterolateral aspect of the left lower extremity all the way to the foot." He related appellant's "crampy, achy sensation below the knee in the lateral aspect of the left calf and some persistent hyperesthesias in the foot." Upon examination Dr. Sabow stated that appellant had no "particular tenderness ... in the low back or over the left greater sciatic notch." He further stated that the flare up seemed to be waning.

In an attending physician's report dated May 22, 1996, Dr. Sabow stated that appellant was partially disabled from May 14 to June 17, 1996 based on lumbar radiculopathy. He noted the date of injury as July 1, 1992. However, he noted in a box on the medical form that appellant could return to light duty on June 17, 1996. In a medical report dated September 25, 1996, Dr. Sabow stated that appellant had a flare up of his original March 1993 injury in May 1996, and that he "had to conclude that that flare up was still directly related to the injury for which I initially evaluated him."

In the instant case, although none of appellant's treating physician's reports contain rationale sufficient to completely discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that he sustained a compensable back injury on May 14, 1996, they constitute substantial, uncontradicted evidence in support of appellant's claim and raise an uncontroverted inference of causal relationship that is sufficient to require further development of the case record by the Office.⁴ The Board notes that Dr. Sabow's reports are essentially similar to the reports submitted by Drs. Schurrer and Rey in support of appellant's May 23, 1996 recurrence of disability claim in that the reports relate appellant's chronic low back pain to his work-related injury. Additionally, there is no opposing medical evidence in the record.

⁴ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

Accordingly, the decision of the Office of Workers' Compensation Programs dated October 15, 1997 is hereby set aside and the case is remanded for further development in accordance with this decision of the Board.⁵

Dated, Washington, D.C.
January 28, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

⁵ The Board notes that subsequent to the Office's October 15, 1997 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).