

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CARL WILLIAM ADAMS, JR. and DEPARTMENT OF VETERANS  
AFFAIRS, VETERANS ADMINISTRATION BECKLEY MEDICAL CENTER,  
Beckley, WV

*Docket No. 98-1318; Submitted on the Record;  
Issued January 31, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant sustained recurrences of disability beginning on November 4, November 25 and December 14, 1996, causally related to his July 25, 1996 employment injury.

On July 25, 1996 appellant, then a 49-year-old supervisor for food service, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that, on July 25, 1996, he was injured when a five-gallon stainless steel water container fell two and one-half feet and hit him in the head and right shoulder. Appellant stopped working that day. The employing establishment filed with the claim a memorandum dated July 29, 1996 in which an employing establishment official noted that appellant suffered a traumatic injury and commenced continuation of pay on July 26, 1996. The employing establishment also filed a July 25, 1996 certification of illness from Appalachian Regional Healthcare indicating that appellant was unable to work from July 25 to August 1, 1996 and that he would not be able to return to work on August 2, 1996.

Appellant submitted notes from Dr. Barry Levin, an orthopedist, dated from August 5 to August 19, 1996. On August 5, 1996 Dr. Levin noted that appellant was suffering from cervical spondylitis and that he specifically had numbness in his left hand down to his thumb and his index finger.

On September 3, 1996 the employing establishment submitted an August 26, 1996 report of termination of disability and/or payment (Form CA-3), wherein it noted that appellant returned to work on August 26, 1996 on a light-duty part-time schedule, where he was to work four hours per day with no lifting, bending, squatting or climbing. It further noted that appellant

“was paid continuation of pay from July 26, 1996 to the present time. He is working 4 hours a day and 4 hours a day will be charged to [continuation of pay] until his 45 days have expired.”<sup>1</sup>

Appellant submitted an attending physician’s report (Form CA-20) from Dr. Levin dated September 24, 1996, wherein Dr. Levin noted that appellant suffered a cervical strain and would have cervical pain with certain activities. He rated appellant with two percent total body impairment.

By letter dated October 25, 1996, the Office of Workers’ Compensation Programs accepted appellant’s claim for cervical strain.<sup>2</sup>

On November 14, 1996 appellant submitted a notice of recurrence of disability and claim for continuation pay/compensation, Form CA-2a, wherein he alleged that he suffered a recurrence of back pain commencing November 4, 1996. Appellant stopped working on November 4, 1996 and returned to work in a light-duty capacity on November 13, 1996, working eight hours per day.

Submitted with this claim was a letter from the employing establishment contending that appellant had not described any circumstances of recurrence of disability. Also submitted were two notes from Dr. Levin dated November 12 and 13, 1996 indicating that appellant should be limited to light duty and that he was capable of returning to work on November 13, 1996.

On December 5, 1996 the Office requested further information regarding the alleged recurrence. The Office allotted appellant 30 days within which to submit the requested information.

On December 9, 1996 appellant filed another notice of recurrence of disability and claim for continuation pay/compensation (Form CA-2a), wherein he alleged a recurrence commencing November 25, 1996. Appellant indicated that he stopped working on November 25, 1996. Appellant’s supervisor indicated in his portion of the Form CA-2a that appellant continued in a light-duty capacity when he filed this current claim for an alleged recurrence of disability and that he returned to work on December 9, 1996 with no restrictions.

On December 10, 1996 the employing establishment filed another report of termination of disability and/or payment, Form CA-3, noting that appellant stopped work on November 25, 1996 and returned on December 9, 1996 with no restrictions.

In a letter received by the Office on December 23, 1996, appellant explained that he filed recurrence claims because the pain and numbness in his legs never ceased since the original

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<sup>1</sup> On October 8, 1996 appellant filed a claim for compensation on account of traumatic injury or occupational disease (Form CA-7), claiming a schedule award. Appellant noted that he had returned to light-duty work on August 26, 1996 and regular duty as of September 21, 1996.

<sup>2</sup> However, with regard to the Form CA-7 filed requesting compensation for a schedule award, the Office noted that a schedule award is only paid for permanent impairment, that the medical evidence which was submitted indicated a soft tissue injury and that these injuries did not result in any permanent impairment. Therefore, the Office requested further medical information with regard to this claim.

injury and “I [ha]ve tried to work light duty and regular duty but my back will not let me work at this time.”<sup>3</sup>

On January 2, 1997 appellant filed a notice of recurrence of disability and claim for continuation of pay/compensation dated December 18, 1996, alleging a recurrence on December 14, 1996. Appellant claimed compensation benefits for lost wages for the period December 15, 1996 to January 6, 1997. On the reverse of the claim form, appellant’s supervisor indicated that appellant did not attribute any specific employment factor to his alleged recurrence of disability and that the commencement date of the alleged recurrence of disability, should be December 15, 1996, since appellant worked a full eight-hour day on December 14, 1996.

Appellant resubmitted a note from Dr. Levin indicating that appellant may return to light-duty work on November 13, 1996. Additionally, he submitted a note from Dr. Levin releasing appellant to work as of December 9, 1996.

In a decision dated January 13, 1997, the Office denied the claim for compensation for a recurrence of disability commencing on or after November 4, 1996, finding that the evidence failed to demonstrate that the claimed recurrence of disability on or after November 4, 1996 was causally related to the employment injury of July 25, 1996.

In response to a January 13, 1997 request from the Office for more information regarding his alleged recurrence from November 25 to December 14, 1996, appellant submitted additional information regarding the alleged recurrences. By letter dated December 23, 1996, Dr. Adrian N. Silk, a Board-certified neurosurgeon, requested authorization for a lumbar myelogram to rule out a herniated disc at L4-5. Dr. Silk noted that a recent computerized tomography (CT) scan revealed a bulging disc at L4-5 and L5-S1 and that appellant complained of intermittent numbness in his lower extremities, low back pain and pain in both legs. There is also a note dated January 10, 1997 from Dr. Silk noting that he began treating appellant on December 13, 1996, that appellant underwent a lumbar myelogram and that appellant was unable to return to work at the present time. In a follow-up note dated January 24, 1997, Dr. Silk stated that appellant was unable to return to work until further notice.

On January 24, 1997 the Office denied Dr. Silk’s request for surgery as the Office had only accepted appellant’s claim for cervical sprain.

The record reveals that appellant underwent a lumbar spine examination performed on January 9, 1997 by Dr. R. Thompson, a radiologist, who found mild osteophytic lipping, L1-2 and sacralization of L5. Dr. Thompson interpreted the lumbar myelogram performed by Dr. Silk as showing root compression on the left, L3-4. In a CT lumbar spine postmyelogram performed on January 9, 1997, Dr. Thompson found bulging disc L4-5 and L3-4.

Appellant submitted additional notes from Dr. Levin from November and December 1996 discussing that appellant was disabled for work due to back pain. In a December 1996

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<sup>3</sup> By decision dated December 31, 1996, the Office denied appellant’s claim for a schedule award, as it was determined that the evidence of record failed to demonstrate that there had been any permanent loss of use of either upper extremity due to the residuals of the July 25, 1996 employment injury.

report, Dr. Silk found “low back pain and radicular pain to the lower extremities, rule out herniated disc at L4-L5.” Dr. Silk noted that since appellant was not improving, he will admit him to the hospital for a myelogram. Appellant also submitted a report of a magnetic resonance imaging (MRI) dated December 2, 1996 in which, Dr. David Maki, an osteopath, found somewhat variant lumbar spine with appearance of sacralization of the L5 segment; disc dehydration with desiccation with some mild bulge, question protrusion at the level of L4-5; and some variance in appearance between sagittal and axial images with the 3-4 imaged postinferior position involving the left neural foramina.

By letter of April 15, 1997, appellant requested reconsideration.

By decision dated June 11, 1997, the Office found that as there was no conclusive, rationalized medical opinion sufficient to establish that the alleged recurrences on November 4, November 25 and December 14, 1996 were related to the accepted employment injury of July 25, 1996. Accordingly, the Office denied modification of its prior decision.

Appellant submitted a December 15, 1996 emergency room record from Appalachian Regional Healthcare, noting that appellant was complaining of back pain.

By letter dated July 23, 1997, received by the Office on July 29, 1997, appellant again requested reconsideration.

In a progress note dated January 24, 1997, Dr. Silk indicated that appellant was doing fairly well, but continued to have pain in his back and left leg, that appellant had a myelogram and CT scan, which revealed a bulging disc at L3-4 and L4-5 and that there was “no strong indication for surgery.” In a February 24, 1997 note, Dr. Silk indicated that, although appellant was continuing to do fairly well, he continued to have pain in his back and lower extremities, that his electromyography (EMG) and nerve conduction study (NCV) revealed no evidence of nerve root compression, that there was tenderness in the lumbar area in the mid line and that appellant was “going back to work on light duty.”

In an attending physician’s report dated June 30, 1997, Dr. Levin diagnosed cervical spondylitis and lumbosacral disc disease. In this report, Dr. Levin checked the “yes” box corresponding to the question: “Do you believe the condition found was caused or aggravated by the employment activity described? (Please explain your answer).”

In further support of his reconsideration request, appellant submitted various hospital records, including an attending physician’s report dated July 7, 1997, in which, Dr. Silk opined that the condition of low back pain found for which, appellant was totally disabled from December 23, 1996 through March 3, 1997 was related to his employment.

By decision dated October 21, 1997, the Office denied appellant’s request for modification. The Office found that, although appellant did submit new medical evidence, “the medical report received is speculative and of diminished probative value and does not support causal relationship.”

On November 20, 1997 appellant again requested reconsideration and submitted evidence previously of record in support. In addition, appellant submitted a report dated October 30, 1997, in which, Dr. Levin opined:

“[Appellant] sustained an injury to his cervical spine secondary to an accident which started in a July 1997 [sic]. One could say with medical certainty that the original injury exacerbated problems with his lumbar spine, although they did not originally present themselves. Currently, [appellant] is back to work; however, there will be times that he will have pain that will prevent him from working.

“I hope you understand the relationship of the injury in that it has affected his whole spine and therefore has caused him to lose work because of pain in his lumbar spine, as well as his cervical spine and will allow [appellant] the compensation due him.”

By decision dated February 5, 1998, the Office again denied modification of the prior decision. The Office found that the report of Dr. Levin contained insufficient medical reasoning to support a causal relationship between the claimed recurrence of disability and the employment injury of July 25, 1996.

The Board finds that the Office properly determined that appellant failed to meet his burden of proof to establish that the alleged recurrences of disability on November 4, November 25 and December 14, 1996 were causally related to his July 25, 1996 employment injury.

With regard to appellant’s recurrences of disability on November 4 and November 25, 1996, the Board has held that, when an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.<sup>4</sup> With regard to the alleged recurrence of December 14, 1996, the Board has held that, where appellant had a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence, that the subsequent disability for which he claims compensation is causally related to the accepted injury.<sup>5</sup> As part of this burden in all instances, appellant must 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 employment factors and supports that conclusion with sound medical reasoning.<sup>6</sup>

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<sup>4</sup> *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>5</sup> *Jose Hernandez*, 47 ECAB 288, 293-94, (1996).

<sup>6</sup> *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996)

Despite the Office's instructions on the evidence necessary to support his claim, appellant did not submit rationalized medical opinion evidence showing that the claimed recurrences of disability were related to his accepted employment injury, *i.e.*, the cervical strain. The return to work notes by Dr. Levin dated November 12 and November 13, 1996 indicate that appellant had been under his care since November 4, 1996 and could return to work in a light-duty capacity. Dr. Levin did not explain how the cervical sprain developed into the current back problems and why these problems are so debilitating as to prevent appellant from working. Furthermore, these notes set forth no explanation as to the reason for appellant's absence from work. Dr. Levin's progress notes are similarly unhelpful to appellant's case, as no progress note contains a comprehensive explanation of appellant's work history and how appellant's back injury is work related. One of the reports in which, Dr. Levin expressed his opinion on causal relationship was his June 30, 1997 attending physician's report (Form CA-20). In this report, Dr. Levin checked the "yes" box corresponding to the question: "Do you believe the condition found was caused or aggravated by the employment activity described? (Please explain answer)." Dr. Levin, however, did not provide any explanation for why he responded yes to the question on causal relationship. The Board has held that an opinion on causal relationship, which consists only of checking "yes" to a form's report question on whether the appellant's disability was related to the history given is of little probative value and is insufficient to establish causal relationship.<sup>7</sup> Finally, the Board finds that Dr. Levin's October 30, 1997 report is insufficient to establish a causal relationship. Dr. Levin opined that appellant sustained an injury to his cervical spine and lumbar spine secondary to the July 25, 1996 employment injury and that "one could say with medical certainty that the original injury exacerbated problems with his lumbar spine, although they did not originally present themselves." However, Dr. Levin did not provide an adequate medical explanation as to how this occurred. The Board has long held that medical opinions not containing rationale on causal relation are entitled to little probative value.<sup>8</sup> Accordingly, as Dr. Levin did not provide a rationalized explanation regarding the nature of the relationship between the diagnosed condition and the July 25, 1996 accepted injury, Dr. Levin's opinion is insufficient to meet appellant's burden of proof.<sup>9</sup>

Similarly, Dr. Silk's medical reports are insufficient to establish a causal relationship. Dr. Silk's return to work slips, progress notes and medical reports fail to constitute complete rationalized medical opinions as they fail to address causation. Although Dr. Silk, in his attending physician's report (Form CA-20) also checked "yes" when asked if he believed the condition of low back pain was caused or aggravated by the employment activity described, he also failed to provide any rationale for this conclusion.<sup>10</sup>

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<sup>7</sup> *Donald W. Long*, 41 ECAB 142, 146 (1989).

<sup>8</sup> *Carmen Gould*, 50 ECAB \_\_\_\_ (Docket No. 97-2225, August 3, 1999), *slip op.* at 4; *Carolyn F. Allen*, 47 ECAB 240, 246.

<sup>9</sup> *Carmen Gould*, 50 ECAB \_\_\_\_ (Docket No. 97-2225, issued August 3, 1999); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

<sup>10</sup> *Donald E. Long*, *supra* note 7 at 142.

Dr. Thompson's x-rays provided no opinion as to causal relationship; these reports only gave a reading as to appellant's back condition.

Therefore, as none of the medical evidence gives a conclusive, rationalized opinion as to the cause of appellant's disability beginning November 4, November 25 and December 14, 1996 and its relationship to the July 25, 1996 employment injury, the Board finds that appellant has failed to meet his burden of proof in establishing that he sustained recurrences of disability on November 4, November 25 and December 14, 1996 causally related to his July 25, 1996 employment injury.

The February 5, 1998, October 21 and June 11, 1997 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.  
January 31, 2000

George E. Rivers  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member