

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE E. KUHN and DEPARTMENT OF THE AIR FORCE,
ROBINS AIR FORCE BASE, GA

*Docket No. 99-1046; Submitted on the Record;
Issued July 7, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained a recurrence of disability on or about October 16, 1995 that was causally related to his accepted employment injuries.

From 1986 to 1991 appellant, an aircraft worker, sustained a series of traumatic rib fractures while in the performance of his duties. The rib fractures involved the first through the fifth ribs on the left and occurred while he was performing aircraft maintenance, pulling on hardware and working in tight spaces, such as in fuel tanks. Appellant was placed in a limited-duty status in October 1991. As a result of his limited-duty requirements he was disqualified from his job as an aircraft worker on February 6, 1992 and placed in a permanent light-duty status. Effective October 16, 1995 appellant was separated from his employment on the grounds that he was medically disqualified from performing the duties of an aircraft worker and that efforts to place him in another position commensurate with his physical abilities had been unsuccessful.

On October 3, 1995 appellant filed a claim asserting that he sustained a recurrence of disability as a result of his several employment injuries.¹ He explained: "Due to the numerous times (three) I sustained rib fractures on the job, the agency's medical staff and three other doctors determined I will have some restrictions (limitations) while working on the airplanes. The restrictions keep me from performing the full range of my assigned duties as an aircraft worker, WG-8852. Management in the (C-141 System Program Office) determined they can only use employees with no restrictions or limitations." Appellant stated his belief that his present condition was related to his employment injuries.

¹ Appellant identified the date of recurrence as August 3, 1995, the date of the notice of proposed separation. Under the terms of the October 2, 1995 notice of decision to separate, he was to take sick leave beginning October 4, 1995 until the effective date of separation on October 16, 1995. Appellant filed his claim of recurrence on October 3, 1995, his last day at work.

On November 27, 1995 the Office of Workers' Compensation Programs requested clarification from Dr. J.R. Arnall, the employing establishment medical officer, on whether appellant's restrictions were imposed for preventive reasons or because of the injuries themselves. He replied as follows:

"The issue of work restrictions in this particular case is time oriented. At the time of the injury the restrictions were placed to keep [appellant] from aggravating a painful injury and to promote healing. After the bones healed, he was placed on restrictions as a preventative reason to keep him from fracturing other ribs."

In a decision dated January 12, 1996, the Office denied appellant's claim of recurrence on the grounds that the evidence failed to demonstrate a causal relationship between appellant's employment injury and the claimed disability.

Appellant requested reconsideration and submitted an August 15, 1996 report from Dr. Rafael J. Aguila, who concluded that appellant's injuries were the direct result of his employment. In a decision dated September 23, 1996, the Office denied modification of its prior decision.

Appellant again requested reconsideration. He submitted a January 13, 1997 report from Dr. Aguila, who stated as follows:

"I have examined [appellant] and reviewed his history concerning his separation from [the employing establishment] for physical disability and the relation of his job[-]related injuries. [He] was placed on limited duty after sustaining these injuries in order for them to heal. [Appellant] was still on limited duty at the time the [e]mploying [establishment] separated him from his employment on October 16, 1995. The [employing establishment] placed permanent physical restriction[s] upon him and disqualified him from his job as [an] [a]ircraft [w]orker. The [o]ccupational [p]hysician stated these restrictions were to promote healing and prevent other injuries.

"[Appellant] currently has tenderness in the rib location of 2, 3, 4 and 5 of the left posterior back, which are residuals from the injuries which he sustained in the performance of duty at [the employing establishment] when working inside a fuel tank in 1991. If the restriction had been removed, I feel he could have [been] reassigned to an alternate position to prevent other injuries away from the type of exposure that caused his injuries. [Appellant] is still unable to perform the duties of an [a]ircraft [w]orker due to tenderness in the rib cage area and is limited in pushing, pulling and carrying medium to heavy materials.

"After examining [appellant] and his history, it is my [m]edical [o]pinion that the restrictions imposed on him, were a result of his job[-]related injuries. [Appellant] was, in fact, working light duties at the time of separation, which was a result of his traumatic injuries sustained in the performance of duty and he was disabled to perform [the] duties of an [a]ircraft [w]orker at [the employing establishment]."

In a decision dated March 18, 1997, the Office denied modification of its prior decision.

Appellant again requested reconsideration. He submitted, among other things, a supplemental report from Dr. Aguila, who opined that appellant continued to experience residuals from the injury to his ribs in 1991. Dr. Aguila noted that a current functional capacity evaluation showed that appellant was limited to 55 pounds for occasional lifting, carrying, pushing and pulling. Appellant was able to lift 25 pounds on a frequent basis and 10 pounds on a constant basis. The position of aircraft worker required heavy lifting up to 75 pounds, heavy carrying of 45 pounds and more, moderate lifting and carrying up to 45 pounds, pulling hand over hand and pushing in the moderate to heavy range. Dr. Aguila reported:

“It is my opinion that [appellant] was not physically able to perform the essential duties of his position as an [a]ircraft [m]echanic upon separation from employment due [to] the injury to his ribs. [He] still exhibits tenderness and complains of pain upon active engagement of physical activities. The above limitations are consistent with the injury and he is still limited to performing in the [m]edium [m]ork capacity range as stated. [Appellant’s] limitations are a direct result of the injury sustained in 1991 and was working on limited duty at the time of his separation from employment.”

In a decision dated January 8, 1998, the Office denied modification of its prior decision.

The Board finds that the medical evidence is insufficient to establish that appellant sustained a recurrence of disability on or about October 16, 1995 that was causally related to his accepted employment injuries.

When an employee who is disabled from the job he held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he can perform the limited-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 to show that he cannot perform such limited-duty work. 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 limited-duty job requirements.²

The prerequisite in this statement of the law is that the employee be disabled from the job he held when injured “on account of employment-related residuals.” The physician who treated and followed appellant for his employment-related rib fractures, Dr. Arnall, has clarified that appellant’s restrictions were initially placed to keep him from aggravating a painful injury and to promote healing, but after the bones had healed, appellant was placed on restrictions as a preventive reason to keep him from fracturing other ribs. This appears consistent with the medical evidence prior to appellant’s separation. In an April 8, 1994 treatment note, Dr. Arnall stated: “I told [appellant] I felt he was disqualified because of soft bones and not because of rib fractures -- he had a preexisting condition.” A consultant’s evaluation on February 15, 1995 showed essentially normal findings on physical examination, including “no pain on palpation to

² See *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

any of the rib fields.” Radiological reports on February 27, 1995 showed old or healed fractures. On April 3, 1995 Dr. Arnall reported that appellant was “doing well now -- no problems.” He added that apparently appellant had soft bones “and he fractures [his] ribs when he works in tanks.”

This evidence tends to establish that appellant was susceptible to fracturing his ribs while performing the duties of an aircraft worker and that he was disqualified and ultimately separated from his federal employment not because pain or tenderness or some other residual of his employment-related fractures prevented him from performing those duties but because of his susceptibility to fracturing other ribs in the future. Where the employee’s disqualification for continued employment is due to an underlying condition, without any contribution from injury-related residuals, compensation is not payable.³

Dr. Aguila has reported that, in his opinion, appellant was not physically able to perform the essential duties of his position as an aircraft worker upon separation from employment due to the injury to his ribs. This opinion is of diminished probative value because he did not ground his opinion on positive clinical findings or other relevant medical evidence obtained prior to appellant’s separation. As the Board has noted, the medical evidence prior to appellant’s separation tends to support that his fractures had healed and that he was doing well with no problems. Dr. Aguila did not attempt to reconcile this evidence with his own opinion.⁴ Nor did he explain how appellant’s tenderness and pain in 1997 was consistent with the lack of such findings prior to his separation in 1995.⁵

As Dr. Aguila’s opinion is of diminished probative value and as the treating physician has clearly supported that appellant was separated for prophylactic or preventative reasons and not because of injury-related residuals, the Board finds that appellant has not met his burden of proof to establish that he sustained a recurrence of disability on or about October 16, 1995 that was causally related to his accepted employment injuries.

³ See *James L. Hearn*, 29 ECAB 278 (1978).

⁴ Medical conclusions based on inaccurate or incomplete histories are of little probative value; see *James A. Wyrick*, 31 ECAB 1805 (1980) (physician’s report was entitled to little probative value because the history was both inaccurate and incomplete); see generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

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

The January 8, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
July 7, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member