

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARVIN O. CAMPBELL and DEPARTMENT OF DEFENSE,
DEPARTMENT OF THE ARMY, RED RIVER ARMY DEPOT, Hooks, TX

*Docket No. 99-1143; Submitted on the Record;
Issued July 21, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability beginning September 9, 1996 causally related to his August 2, 1996 employment injury.

On August 2, 1996 appellant, then a 45-year-old chief of fire department operations, was involved in a motor vehicle accident which resulted in lacerations to his neck, face and arm, various contusions and a concussion. He was hospitalized at St. Michael's Hospital on the same date, underwent testing and was discharged on August 5, 1996. Appellant's attending physician, Dr. Lowell Vereen, a Board-certified internist, summarized his stay in the hospital, noting, *inter alia*, that appellant was status post motor vehicle accident with subsequent fall and injuries and that he suffered from lower back strain, had lacerations of the right neck as well as several lacerations not requiring surgical suturing on the face, ataxia of unknown cause (resolving) hypertension and diabetes.

On October 30, 1996 the Office of Workers' Compensation Programs accepted appellant's claim for lower back strain and facial lacerations.

On December 16, 1996 appellant submitted a notice of recurrence of disability alleging that he suffered a recurrence of the August 2, 1996 work-related injury beginning September 9, 1996. He previously submitted a note dated October 1, 1996 from Dr. Vereen wherein he indicated that appellant "has been off work since September 9, 1996 and indefinitely because of a work injury" and a medical report from Dr. Vereen dated October 24, 1996, wherein he noted that appellant had been under his care since August 2, 1996 following a motor vehicle accident and that he had a herniated L4-and 5 disc.

In support of his recurrence of disability claim, appellant submitted medical reports from Wadley Regional Medical Center, where he was an inpatient from September 9 to September 13, 1996. In the discharge summary, Dr. Vereen noted that appellant had a magnetic resonance imaging scan which indicated a bulging disc, that he received epidural injections and

was discharged in stable condition by Dr. Freddie L. Contreras, a Board-certified neurologic surgeon.

In response to a December 27, 1996 request from the Office for further information, appellant submitted medical reports from Dr. Vereen, including a report dated January 7, 1997, wherein Dr. Vereen indicated that appellant had been treated by him since August 2, 1996 and that he “is unable to work due to his injury and is undetermined if he will work in the future. He is disabled at present.” Dr. Vereen enclosed his progress notes.

Appellant also submitted progress notes by Dr. Contreras. In the note dated September 24, 1996, he noted that appellant should continue with conservative therapy for his low back discomfort. In an October 29, 1996 note, Dr. Contreras indicated that appellant was doing better and that they were going to start physical therapy.

In a decision dated January 28, 1997, the Office denied appellant’s claim for compensation for the reason that the evidence failed to establish that the claimed recurrence of disability was causally related to the August 2, 1996 employment injury.

By letter dated February 10, 1997, appellant requested an oral hearing.

In a medical report dated February 11, 1997, Dr. William W. Fox, a Board-certified orthopedic surgeon, stated that appellant had sincere physical complaints of the neck and lower back, but that he did not present adequate physical findings to substantiate his prolonged complaints. Dr. Fox suspected that appellant was suffering from depression and that “this may be his largest problem.” In a report dated March 11, 1997, Dr. Fox found:

“On examination [appellant] has no motor, sensory or reflex deficit in either upper or lower extremities, except he has absent ankle reflexes bilaterally. Straight leg raising test in the sitting position causes slight back pain bilaterally. However, if I do these with the pretense of checking sensation in the toes and particularly working them along the sole of the foot, straight leg raising tests are negative to 90 degrees. He has tenderness all along the lumbar spine with no spasm.”

* * *

“Again [appellant] has axial load test and axial rotation test, both slightly positive. He has excessive tenderness in the back and symptoms out of proportion of objective findings giving him at least positive Waddell[’s] signs out of 8.”

In a medical report dated April 8, 1997, Dr. Fox noted that appellant had general tenderness over the entire lumbar spine, most of the gluteal area, slightly worse on the left. He strongly advised a functional capacity evaluation.

Dr. Contreras issued disability certificates from March 27 through July 29, 1997.

At a hearing held on January 20, 1998, appellant described the motor vehicle accident and testified that afterwards he was “sore all over” and his back hurt. He also testified that he lost feeling in his legs. Appellant stated that he was released to return to work on August 19, 1996, but that he was still having “lots of pain” in the center of the lower back, that on September 9, 1996 he was unusually stiff and that when he bent over to pick up a pen, he could not move. His wife took him to the hospital and he has not returned to work since that date.

After the hearing, appellant submitted an attending physician’s report (Form CA-20) from Dr. Vereen dated November 15, 1996, wherein he diagnosed appellant as suffering from a bulging disc at L4-5 and stated that this condition was caused or aggravated by employment activity, but did not provide any further explanation when asked to do so.

In a decision dated March 9, 1998, the hearing representative affirmed the Office’s January 28, 1997 decision, finding that the medical evidence was insufficient to establish a recurrence of disability causally related to the August 2, 1996 work-related injury.

In an undated letter received by the Office on June 15, 1998, appellant requested reconsideration and submitted a letter dated June 7, 1998 from the civilian executive assistant for the employing establishment, who stated:

“Due to [appellant’s] continued inability to work coupled with the absence of a projected date in which you can resume work, it is my decision that your removal is warranted. It is the decision that you will be removed from your employment at this depot effective June 11, 1998.”

By decision dated September 15, 1998, the Office found that the evidence submitted in support of reconsideration was not sufficient to warrant modification of its prior decision.

In an undated letter received by the Office on November 9, 1998, appellant again requested reconsideration. In support, he submitted a medical report by Dr. Mark Wren, a Board-certified physiatrist, dated September 24, 1998, wherein he stated:

“My current diagnosis is chronic low back pain, status post motor vehicle accident, secondary to sacroiliac joint dysfunction and degenerative dis[c] disease. I suspect [appellant’s] condition has become static at about one and a half years post injury and I am not optimistic about full recovery.”

Appellant also submitted a March 11, 1998 report by Dr. Wren which made the same finding.

By decision dated November 19, 1998, the Office denied appellant’s request for reconsideration, finding that the information submitted in support of the request was not sufficient to warrant modification of its prior decision.

The Board finds that appellant has failed to establish that his recurrence of disability on September 9, 1996 was causally related to the accepted August 2, 1996 work injury.

When appellant claims 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.¹ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

In the instant case, the Office accepted appellant's claim for lower back strain and facial lacerations. He then claimed a recurrence of disability beginning September 9, 1996, when he again stopped work due to his August 2, 1996 work-related motor vehicle accident. Despite the Office's instructions on the evidence necessary to support this claim, appellant did not submit rationalized medical opinion evidence showing that the claimed recurrence of disability was related to his employment injury.

In his attending physician's report dated November 15, 1996, Dr. Vereen stated that appellant was suffering from a bulging disc at L4-5 and that this was related to his employment activity, but failed to provide any further explanation when asked to do so. In his January 7, 1997 report, Dr. Vereen stated that appellant was unable to work due to his injury, but failed to explain the causal relationship between his prior injury and his disability at that time. Similarly, Dr. Wren stated that appellant was suffering from "chronic low back pain, status post vehicle accident, secondary to sacroiliac joint dysfunction and degenerative dis[c] disease," but failed to provide any explanation as to why he believed that appellant's back condition was caused by the work-related injury. None of the other medical evidence addresses causal relationship.

An award of compensation may not be based on surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment. To establish causal relationship, appellant must submit a physician's report in which the physician reviews the factors of employment identified by appellant as causing his condition and taking these factors into consideration as well as findings upon examination of appellant and his medical history, states where these employment factors caused or aggravated appellant's diagnosed conditions and present rationale in support of his or her opinion. Appellant failed to submit such evidence and therefore failed to discharge his burden of proof.³

¹ *Jose Hernandez*, 47 ECAB 288, 294 (1996); *John E. Bount*, 30 ECAB 1374 (1979).

² *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996); *Frances B. Evans*, 31 ECAB 60 (1980).

³ *Stephen T. Perkins*, 40 ECAB 1193, 1200 (1989).

The decisions of the Office of Workers' Compensation Programs dated November 19, September 15 and March 9, 1998 are affirmed.

Dated, Washington, D.C.
July 21, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member