

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PETER ESPINOSA and DEPARTMENT OF DEFENSE,
DEFENSE COMMISSARY AGENCY, OAKLAND ARMY BASE, CA

*Docket No. 99-684; Submitted on the Record;
Issued June 8, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant established that he sustained a recurrence of disability causally related to his work injury on February 4, 1986.

On February 4, 1986 appellant, then a 36-year-old meat cutter, injured his back in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's compensation claim for a low back strain, spondylolisthesis L5-S1 and aggravation of congenital spondylolisthesis with surgical intervention. Appellant was off work intermittently following his injury but was placed on the periodic rolls beginning July 28, 1991. He returned to light duty for four hours per day on September 25, 1993. Following a formal decision as to his wage-earning capacity, appellant received compensation for four hours of wage loss per day based on his job designation as a full-time store worker. On September 23, 1997 as a result of a reduction-in-force, appellant was changed from permanent full time to permanent part time (60 hours per pay period). Thereafter, he received wage-loss compensation for two hours per day.

Appellant was under the care of Dr. James B. Reynolds, a Board-certified orthopedic surgeon, following his back injury. He was treated with physical therapy, medication and epidural blocks. Appellant underwent a laminectomy with posterolateral fusion and anterior interbody fusion from L3 to the sacrum during 1992. In an August 31, 1993 report, Dr. Reynolds approved appellant for light duty with no lifting for four hours per day.

On May 25, 1994 under the guidance of Dr. Reynolds, a spinal cord stimulator was permanently implanted to relieve appellant's continuing complaints of chronic mid and left lower back pain.

On August 24, 1998 appellant filed a claim alleging a recurrence of disability beginning August 26, 1998. He indicated on his CA-2a claim form that the date of his first medical treatment following recurrence of disability was July 9, 1998. Appellant stopped work on August 26, 1998.

In support of his claim, appellant submitted a July 3, 1996 report from Dr. Jerome A. Schofferman, a Board-certified orthopedist, who noted that he had examined appellant at the request of Dr. Reynolds with regard to long-term opioid therapy. Dr. Schofferman also noted appellant's history of severe back pain and surgery, his part-time work requirements and his medication trials. He diagnosed post-laminectomy syndrome with chronic pain.

In a July 9, 1998 report, Dr. Schofferman noted that appellant was seen for follow up of low back pain and right leg pain. He noted that appellant had a troublesome symptom of pain in the right gluteal region that occurred during "transition from sit to stand and with any forward bending." Dr. Schofferman diagnosed status post-lumbar fusion, L3 to sacrum, probable degeneration at L2-3 proximal to fusion and opioid dependence. He recommended x-rays and a computerized tomography (CT) scan in order to "determine the etiology of [appellant's] symptoms" and concluded that appellant was unable to perform any work.

By letter dated October 15, 1998, the Office advised appellant to submit a narrative medical report explaining how his alleged recurrence of disability was related to his accepted work injury.

In a decision dated November 27, 1998, the Office denied appellant's claim for compensation on the grounds that the medical evidence was insufficient to establish that appellant established a recurrence of disability.

The Board finds that appellant has failed to establish that he sustained a recurrence of disability causally related to his February 4, 1986 work injury.

When an employee, who is disabled from the job he or she had when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability and show that such light duty can not be performed. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.¹ This burden also includes the necessity of furnishing medical evidence from a qualified 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 reasoning.²

In the instant case, appellant submitted a July 9, 1998 medical report from his treating physician, Dr. Schofferman, indicating that he was totally disabled from work. He specifically noted that appellant required objective medical tests to ascertain the etiology of appellant's pain symptoms, including his recent complaint of pain in the right gluteal area. Because Dr. Schofferman did not address whether appellant was disabled from work on account of his February 20, 1986 employment injury, the Board finds that the Office properly denied benefits. It is appellant's burden to present *prima facie* evidence to establish that he sustained a recurrence

¹ Gary L. Whitmore, 43 ECAB 441 (1992); Cloteal Thomas, 43 ECAB 1093 (1992).

² Lourdes Davila, 45 ECAB 139 (1993).

of disability causally related to his accepted work injury. Although appellant submitted evidence indicating that he is unable to work in his light-duty position, that evidence does not address the issue of causal relationship in any manner; therefore, appellant failed to carry his burden of proof.³

The decision of the Office of Workers' Compensation Programs dated November 27, 1998 is hereby affirmed.

Dated, Washington, D.C.
June 8, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

³ The Board's decision does not preclude appellant from submitting additional evidence to the Office along with a request for reconsideration.