

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD A. KAISER and DEPARTMENT OF HEALTH & HUMAN SERVICES, CENTER FOR DISEASE CONTROL, Boston, MA

*Docket No. 98-1101; Submitted on the Record;
Issued March 21, 2000*

DECISION and ORDER

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

The issue is whether appellant has established that he sustained a recurrence of disability on September 22, 1996 causally related to either his May 29, 1992 or June 18, 1990 employment injury.

On June 21, 1990 appellant, then a 43-year-old regional industrial hygienist, filed a claim for injuries sustained on June 18, 1990 when he "missed [his] footing on a stair, which resulted in a loss of balance and a fall of one step to the landing." The Office of Workers' Compensation Programs accepted appellant's claim for a contusion/sprain of the right wrist and traumatic synovitis of the left knee. The Office again accepted that appellant sustained traumatic synovitis of the left knee due to an injury on May 29, 1992,¹ and authorized arthroscopic surgery in 1993. The Office also accepted that appellant sustained lumbar strain by aggravation. Appellant returned to his regular employment on November 22, 1993.²

On October 10, 1996 appellant filed a notice of recurrence of disability alleging that on September 22, 1996 he sustained a recurrence of disability causally related to a February 12, 1996 employment injury.³ Regarding the circumstances of the recurrence of disability, he related that "extensive driving in [government-owned vehicle] caused back sprain." Appellant indicated that he was working with restrictions at the time of the injury. He stopped work on September 24, 1996.

¹ Appellant filed a claim for a recurrence of disability on May 29, 1992 which he related to his June 18, 1990 employment injury. He stated that the injury occurred when he twisted his knee while he moving a box on that date. The Office accepted appellant's claim for a traumatic injury to his knee.

² By decision dated September 28, 1994, the Office granted appellant a schedule award for a 19 percent permanent impairment of his left leg.

³ The record indicates that on October 7, 1996 appellant filed a claim for a traumatic injury on September 22, 1996. It does not appear that the Office adjudicated the traumatic injury claim.

In a letter dated October 25, 1996, appellant related that following his left knee injury on June 18, 1990 he did not experience any problems with his back. He stated that following his May 22, 1992 left knee injury he changed his gait such that he “exert[ed] unnatural stress on my lower back muscles in order to compensate for my left knee injury and yet still be able to move around.” Appellant related that his abnormal gait and back problems continued over the next several years. He stated that in 1994 he began working for another employing establishment. Appellant described injuries on August 2, 1995 and February 12, 1996 which he alleged occurred at work. He indicated that a 1996 x-ray of his back revealed sacralization at L5-S1 and spondylosis at L4. Appellant attributed his back problems to “ligaments, muscles and tendons in this lower back area experience[ing] unnatural stresses, due to abnormal gait, ambulating protectively, walking with a cane and abnormal posture compensation due to my injured left knee.” Appellant contended that “this additive instability exacerbates, irritates and inflames an already very sensitive area in my lower back region, which cannot take these additional unnatural stresses.”

By decision dated February 26, 1997, the Office denied appellant’s claim on the grounds that the evidence failed to establish that he sustained a recurrence of disability on September 22, 1996 due to his May 29, 1992 employment injury.

By letter dated March 14, 1997, appellant requested a review of the written record by an Office hearing representative. He argued that the Office erroneously considered his claim as a recurrence of disability due to his May 29, 1992 employment injury rather than a recurrence of disability causally related to his June 18, 1990 employment injury.

In a decision dated July 9, 1997, the hearing representative affirmed the Office’s February 26, 1997 decision after finding that appellant had not established that he was disabled after September 22, 1996 due to either his May 29, 1992 or June 18, 1990 employment injury.

By letter dated September 3, 1997, appellant requested reconsideration of his claim. In a decision dated November 20, 1997, the Office denied modification of its prior decision.

The Board finds that appellant has not met his burden of proof to establish that he sustained a recurrence of disability on September 22, 1996 causally related to either his May 29, 1992 or June 18, 1990 employment injury.

The basic rule respecting consequential injuries as expressed by Larson is that “when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributed to claimant’s own intentional conduct.”⁴ With regard to consequential injuries, the Board has stated that where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation, to arise out of and in the course of employment and is compensable.⁵ However, an employee who asserts that a

⁴ Larson, *The Law of Workers’ Compensation* § 13.00 (1997); Robert W. Meeson, 44 ECAB 834 (1993).

⁵ *Id.* at § 13.11(a).

nonemployment-related injury was a consequence of a previous employment-related injury one has the burden of proof to establish that fact.⁶

In the present case, appellant sustained employment-related injuries on June 18, 1990 and May 29, 1992 which the Office accepted for a contusion/sprain of the right wrist, traumatic synovitis of the left knee and lumbar strain by aggravation. He filed a claim for a recurrence of disability on September 22, 1996 alleging that he experienced back problems due to his prior employment-related knee injuries.

In support of his claim, appellant submitted numerous office visit notes and form reports from Dr. Charles A. Mick, a Board-certified orthopedic surgeon. In many of these reports Dr. Mick addressed appellant's ability to perform his employment but did not discuss the cause of his condition and thus these reports are of little probative value.

In an office visit note dated October 30, 1996, Dr. Mick noted that a magnetic resonance imaging (MRI) study of appellant's lumbar spine revealed "a Schmorl's node at the L3-4 level with mild facet disease at the L4-5 level" without evidence of herniation. He stated:

"We discussed the relation of his current symptoms to his job. [Appellant] does remember the onset of pain during several activities at work such as getting out of a truck. He also feels increased stress was placed on his back due to the abnormal gait and limping which resulted from left knee surgery which was for a compensation-related injury. I explained that it is possible that these are related factors but that it is difficult to determine precisely the role that they may have played in his current symptoms."

Dr. Mick's opinion that it is "possible" that appellant's back condition is due to his abnormal gait and other factors of his employment is speculative and equivocal in nature and therefore of little probative value.⁷ Further, Dr. Mick noted that appellant attributed his back condition due to employment factors other than his prior accepted employment injuries. In a recurrence of disability situation, generally no event other than the previous injury accounts for the disability.⁸

In a form report dated January 10, 1997, Dr. Mick diagnosed back pain and stiffness and indicated that "[w]ork activities may have aggravated back but cause is unknown." As Dr. Mick's causation finding is equivocal it is of little probative value.⁹ Further, Dr. Mick did not specifically relate any diagnosed condition to appellant's prior employment injuries. Thus, his opinion is insufficient to meet appellant's burden of proof.

⁶ *Margarette B. Rogler*, 43 ECAB 1034 (1992).

⁷ *William S. Wright*, 45 ECAB 498 (1994).

⁸ *See William R. Lance*, 18 ECAB 422, (1967).

⁹ *Id.*

In an initial evaluation dated December 16, 1996, Dr. Robert S. Waskowitz, who specializes in sports medicine, discussed appellant's history of employment injuries to his knee and noted that appellant related back pain due to "compensation for his left knee." He diagnosed probable degenerative changes of the left knee. Dr. Waskowitz did not relate the diagnosed condition to appellant's prior employment injuries or find him unable to perform his employment; therefore, his opinion is of little probative value.

In a form report dated December 19, 1996, Dr. Waskowitz diagnosed degenerative disease of the left knee and checked "yes" that the condition was related to employment because "[appellant] stated it was related to an accident at work in 1990." He indicated that it was "unknown" whether appellant had any disability from employment. Dr. Waskowitz did not find appellant disabled from employment and thus his opinion is insufficient to establish that he sustained a recurrence of disability on September 22, 1996. Further, he did not make a finding regarding the cause of the diagnosed condition other than to note appellant's own belief that his problem was work related.¹⁰ A physician's opinion on causal relationship which consists only of checking "yes" in response to a form question without any attendant rationale has little probative value and is insufficient to establish causal relationship.¹¹

In a letter dated February 12, 1997, Dr. Alvaro J. Ocampo, who specializes in occupational medicine, related that he treated appellant at the time of his June 19, 1990 employment injury. He further discussed appellant's May 1992 employment injury and 1993 arthroscopic surgery. Dr. Ocampo stated:

"The symptoms of pain, tenderness, atrophy and weakness in his left lower extremity were associated with antalgic abnormal gait, favoring the right lower extremity."

"All the above abnormal conditions reported on the left lower extremity and a lumbosacral defect reported as Schmorl's node with intense physical activity required by his work duties, may have a direct causal relationship between his initial injury and his present complaints of back pain."

"Although, his initial injury did not include[] complaints or deficits in the cervical, thoracic and lumbosacral spine. The symptoms of back pain and spasms are described in the medical records several times, including a slip and fall with a low back sprain. Thus, it is possible to associate the medical history of low back symptoms reported after several months with the first left knee injury on June 1990."

Dr. Ocampo's finding that appellant's lumbosacral pain "may have" a relationship with his initial employment injury is speculative in nature and thus of diminished probative value.

¹⁰ In a form report dated April 9, 1997, Dr. Waskowitz diagnosed deconditioning and status post-arthroscopy. He did not address the cause of appellant's condition. In an accompanying office visit note, Dr. Waskowitz recommended physical therapy.

¹¹ *Ruth S. Johnson*, 46 ECAB 237 (1994).

Further, he attributed appellant's back condition in part to an intervening injury, a "slip and fall" of an unknown date, without explaining the impact of this injury on appellant's back condition. As Dr. Ocampo did not explain how, with reference to the specific facts of this case, either the May 29, 1992 or June 18, 1990 employment injury caused appellant's disability from employment beginning September 22, 1996, his opinion is insufficient to meet appellant's burden of proof.

In a report dated July 18, 1997, Dr. David G. Quigley, a Board-certified orthopedic surgeon, related:

"[Appellant] had a significant injury while working for the [employing establishment] on June 18, 1990, when he fell down a flight of stairs injuring his right wrist and left knee. At that time he most likely injured his low back as well. He again injured his left knee in May 1992 while at work. On February 12, 1996 while at work getting out of his truck, his left leg slipped on some ice and he had pain in his knee and aggravated his back. He again noticed back pain getting out of his truck in April 1996. These facts are all contained in my office reports and Dr. Bertini's notes."

Dr. Quigley concluded that "[f]rom a reasonable degree of medical certainty, [appellant's] back and knee injuries are related." However, his opinion is of diminished probative value as his finding that appellant "most likely" injured his back on June 18, 1990 is speculative in nature and based on an inaccurate history of injury, that of appellant falling down a flight of stairs, when in fact appellant related that he fell "one step to the landing."¹² Further, in an October 25, 1996 statement submitted to the Office, appellant indicated that he had experienced no problems with his back following the June 1990 employment injury. Additionally, Dr. Quigley noted other injuries which may have accounted for appellant's back condition. Thus, his opinion is insufficient to meet appellant's burden of proof.

Appellant, consequently, has not submitted sufficient evidence to establish that his back condition for which he claimed a recurrence of disability on September 22, 1996 was the "direct and natural result" of his accepted May 29, 1992 and June 18, 1990 employment injuries.

¹² *Geraldine H. Johnson*, 44 ECAB 745 (1993).

The decisions of the Office of Workers' Compensation Programs dated November 20, July 9 and February 26, 1997 are hereby affirmed.

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

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member