

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THURMOND REED and DEPARTMENT OF THE NAVY,
Parris Island, SC

*Docket No. 98-1712; Submitted on the Record;
Issued March 23, 2000*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a recurrence of disability causally related to his March 6, 1990 employment injury.

On March 6, 1990 appellant, then a 42-year-old fire inspector, filed a claim for a traumatic injury occurring on that date when a "window frame fell on [the] lower part of back." The Office of Workers' Compensation Programs accepted appellant's claim for a contusion of the lower back. He stopped work on March 6, 1990.

On March 16, 1992 appellant returned to work as a billeting clerk. By decision dated December 14, 1992, the Office reduced appellant's compensation benefits effective March 16, 1992 based on its finding that the position of billeting clerk fairly and reasonably represented his wage-earning capacity.¹

On December 1, 1996 appellant filed a notice of recurrence of disability alleging that in January 1996 he sustained a recurrence of disability causally related to his March 6, 1990 employment injury. He indicated that he stopped work in January 1996 and did not return.

On January 13, 1997 the Office of Personnel Management (OPM) approved appellant's application for disability retirement. OPM noted that appellant had "not been separated from government service."

By letter dated August 5, 1997, appellant requested compensation from the Office for total disability. In a letter dated February 19, 1998, the Office informed appellant of the definition of a recurrence of disability and requested additional factual and medical information.

¹ By decision dated March 19, 1993, the Office determined that an overpayment existed in the amount of \$10,161.15 and that appellant was at fault in the creation of the overpayment.

On March 9, 1998 appellant submitted a claim for compensation on account of disability, (Form CA-7) requesting compensation from January 24, 1997 through March 3, 1998. In an accompanying statement dated March 10, 1998, he related that upon his return to work following his employment injury he stood, walked and climbed stairs. Appellant stated, "I believe that the repetitive and continuous walking and climbing to the 2nd and 3rd deck and enforce[d] sitting along with other duties within an eight-hour day contributed severely to my original injury."

By decision dated May 4, 1998, the Office denied appellant's claim on the grounds that the evidence failed to establish that he sustained a recurrence of disability causally related to his accepted employment injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant has not met his burden of proof to establish that he had a recurrence of disability.

Where an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 to show that he or 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.² There is no evidence in the record establishing any change in the nature and extent of appellant's position as a cause of his claimed disability beginning January 1996.

Appellant submitted office visit notes dated 1995 and 1996 which indicate that he received treatment for back pain. These reports are not sufficient to meet appellant's burden of proof as they are devoid of a rationalized opinion regarding the cause of his complaints.

In a report dated March 28, 1996, Dr. Donald R. Johnson, II, a Board-certified orthopedic surgeon, indicated that appellant had "a severely degenerative [L]4-5 segment" and recommended a possible fusion. He did not address the cause of the diagnosed condition and thus his report is of little probative value.

In a report dated September 30, 1996, Dr. Johnson noted that a magnetic resonance imaging (MRI) scan obtained on February 6, 1995 showed "severe degenerative changes at the L4-5 disc with disc narrowing and bulging." He opined that appellant could not perform work as a fire fighter. Dr. Johnson further noted that appellant had been referred to him by another physician and indicated, "The history given to me by [appellant] was that his pain began on March 6, 1990 after a wall casing fell on top of him." However, he did not attribute the degenerative changes in appellant's back to his March 6, 1990 employment injury or find that he was unable to perform his work as a billeting clerk. Thus, his opinion is insufficient to meet appellant's burden of proof.

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

In an office visit note dated October 2, 1996, Dr. Leland C. Stoddard, a Board-certified orthopedic surgeon and appellant's attending physician, indicated that he had treated appellant since his March 20, 1990 low back injury³ and stated that he had a "disc herniation of L4-5 which has left him with [a] chronic condition of low back pain and intermittent radiculitis." He found that appellant was "disabled at this time from any occupation other than sedentary work...." However, the Office accepted appellant's claim for a low back contusion. It is therefore appellant's burden to establish through the submission of rationalized medical opinion evidence that his herniated disc is causally related to his accepted employment injury.⁴ Dr. Stoddard did not explain how, with reference to the specific facts of this case, the March 6, 1990 employment injury resulted in the diagnosed condition of a herniated disc and thus his opinion is of diminished probative value.⁵

In a report dated December 26, 1996, Dr. Stoddard related that he had treated appellant for a low back injury and stated:

"[Appellant] has been markedly disabled by his injury. He has [a] herniated disc with marked low back pain and intermittent sciatica. This has left [appellant] with minimal mobility in the lower back with frequent pain and muscle spasm. He has been unable to function normally and is currently unable to work as a billeting clerk."

Dr. Stoddard did not explain how and why appellant's condition worsened such that he was unable to perform his work at the employing establishment or specifically relate the diagnosed condition of a herniated disc to the March 6, 1990 employment injury and thus his opinion is insufficient to meet appellant's burden of proof.

Moreover, the remaining report from Dr. Stoddard does not support a finding that appellant's current back condition is the result of his employment injury. In a letter to the Office dated March 10, 1998, he stated, "[Appellant] brought by your letter concerning his back injury. [He] has not had a recurrence of his back problem, nor has he had any new injuries."

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.⁶ To establish causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors 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, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion.

³ While Dr. Stoddard referred to the date of injury as March 20, 1990, appellant is alleging a recurrence of his March 6, 1990 injury.

⁴ *Charlene R. Herrera*, 44 ECAB 361 (1993).

⁵ *Connie Johns*, 44 ECAB 560 (1993).

⁶ *Donald W. Long*, 41 ECAB 142 (1989).

Appellant failed to submit such evidence in this case and, therefore, has failed to discharge his burden of proof.

The decision of the Office of Workers' Compensation Programs dated May 4, 1998 is hereby affirmed.

Dated, Washington, D.C.
March 23, 2000

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member