

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES R. FUNBURG and DEPARTMENT OF THE ARMY,
ARMY AMMUNITION PLANT, McAlester, OK

*Docket No. 99-17; Submitted on the Record;
Issued March 20, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability as of April 10, 1998 causally related to his accepted July 29, 1996 lower back injury.

On July 29, 1996 appellant, a 46-year-old material handler and forklift operator, injured his lower back while being jostled inside the forklift he was driving. Appellant filed a claim for benefits on July 30, 1996, which the Office of Workers' Compensation Programs accepted for lumbosacral strain by letter dated September 12, 1996. The Office paid him temporary total disability compensation for appropriate periods and placed him on the periodic rolls.

On April 6, 1998 Dr. Stewart C. Smith, a Board-certified neurosurgeon and appellant's treating physician, submitted a report indicating that appellant had consulted him on the date of the report with complaints of increasing shakiness and burning in his right leg. Dr. Smith noted that appellant had returned to work as a dispatcher and stated:

“On examination today, I still think his current tremor is nonphysiological in nature. I can[no]t explain what kind of tremor it is. He just has a motion that encompasses his head, trunk, right arm and right leg and seems to somewhat spare the left side and it also seems to be pretty much gone when he is walking down the hall. He has no upper motor neuron signs and no cerebellar signs. He does not have any complaints of headache or vertiginous type symptoms.

“Impression: this is a nonphysiological tremor and I think [it] is related to [appellant] having some psychological overlay which is causing him some significant stress about his work environment and personally I do n[o]t have anything to add for him.”

Dr. Smith subsequently submitted additional reports dated April 6 and 7, June 2 and 4 and July 7, 1998, in which he diagnosed a conversion disorder and generally reiterated the findings contained in his initial April 6, 1998 report.

On May 27, 1998 appellant filed a Form CA-2 claim for benefits, alleging that he sustained a recurrence of disability on April 10, 1998 which was caused or aggravated by his July 29, 1996 employment injury.

By letter dated June 11, 1997, the Office advised appellant that it required additional factual and medical evidence, including a medical report, to support his claim that his current condition/or disability as of April 10, 1998 was caused or aggravated by his accepted July 29, 1996 employment injury.

By decision dated August 26, 1998, the Office denied appellant compensation for a recurrence of his accepted lower back condition. The Office found that appellant failed to submit medical evidence sufficient to establish that the claimed condition or disability as of April 10, 1998 was caused or aggravated by the July 29, 1996 employment injury.

The Board finds that appellant has not sustained a recurrence of disability as of April 10, 1998 causally related to the July 29, 1996 employment injury.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a 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 who supports that conclusion with sound medical reasoning.¹

The record contains no such medical opinion. Indeed, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates his disability for work as of April 10, 1998 to his July 29, 1996 employment injury. For this reason, he has not discharged his burden of proof to establish his claim that he sustained a recurrence of disability as a result of his accepted employment injury.

The only new and relevant medical evidence appellant submitted was Dr. Smith's medical reports from April, June and July 1998, in which he related appellant's complaints of shakiness and burning in his right leg and diagnosed a conversion disorder, but found that these symptoms were nonphysiological in nature and did not express an opinion as to whether they were causally related to appellant's July 29, 1996 employment injury. As Dr. Smith's reports were the only evidence appellant submitted in support of his claim for a recurrence of disability, appellant failed to provide a rationalized, probative medical opinion indicating that his current condition was caused or aggravated by the accepted July 29, 1996 employment injury.²

¹ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

² *William C. Thomas*, 45 ECAB 591 (1994).

As there is no medical evidence addressing and explaining why the claimed condition and disability as of April 10, 1998 was caused or aggravated by his July 29, 1996 employment injury, appellant has not met his burden of proof in establishing that he sustained a recurrence of disability.

The August 26, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
March 20, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member