

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HUBERT KENDRICK and DEPARTMENT OF VETERANS AFFAIRS
Montgomery, AL

*Docket No. 99-287; Submitted on the Record;
Issued November 3, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant met his burden of proof to establish that his claimed conditions commencing June 1994 are causally related to the work-related injury of May 18, 1984.

This is the second appeal in this case. In the first appeal, the Board affirmed a May 9, 1991 decision of the Office of Workers' Compensation Programs, which denied appellant's claim for schizophrenia and/or psychotic disorders commencing February 1991 as being causally related to his accepted employment injuries.¹ The Board found that appellant had not produced sufficient medical evidence to establish that his claimed psychiatric condition was causally related and, therefore, constituted a recurrence of his accepted employment conditions of cervical and lumbar strain, unstable C5-6 fracture, cervical fusion and cervical myelopathy.

The record reflects that appellant returned to limited-duty work as a file clerk in April 1989, was a full-time regular-duty recreation aide in November 1990 and returned to his original position as a nursing assistant in October 1992.

On June 14, 1994 appellant filed another notice of recurrence of disability (Form CA-2a) alleging that he sustained a recurrence of disability causally related to his accepted employment injuries. Appellant stopped work on June 14, 1994. The Office did not develop this claim until late 1996.

On September 14, 1994 appellant was involved in a nonwork-related motor vehicle accident.

¹ Docket No. 91-1833 (issued February 18, 1992).

On October 17, 1994 appellant requested an oral hearing. On October 31, 1994 the Office's Branch of Hearings and Review denied appellant's request for a hearing as it does not have jurisdiction to review the February 18, 1992 decision of the Board.

In a January 27, 1995 letter, appellant's attorney, James M. Sizemore, Jr., requested review of appellant's case. In a January 18, 1995 medical report, Dr. Patrick G. Ryan, a Board-certified neurological surgeon, opined that appellant's cervical radiculitis was the result of an on-the-job injury. He noted appellant's automobile accident of 1994, but stated that appellant was having symptoms prior to the accident.

In a decision dated May 4, 1995, the Office denied appellant's request for reconsideration on the grounds that it was untimely filed and did not present clear evidence of error. The Office noted that the last merit decision in the case was the Board's February 18, 1992 affirmation of denial of a 1991 recurrence.

By letter dated August 1, 1995, appellant's attorney requested a review by the Board. On August 22, 1996 the Board issued an Order Dismissing Appeal on the grounds that appellant's attorney advised that he wished to pursue a reconsideration request with the Office.² In a decision dated November 4, 1996, the Office denied appellant's request for reconsideration on the grounds that it was untimely filed and did not present clear evidence of error. The Office again noted that the last merit decision in the case was the Board's February 18, 1992 affirmation of denial of a 1991 recurrence. The Office further noted that a decision regarding appellant's June 14, 1994 recurrence claim had not been issued.

On November 26, 1996 the Office proceeded to develop appellant's June 14, 1994 recurrence claim by requesting factual and medical evidence. The Office noted that appellant had returned to full duty as a nursing assistant before his work stoppage. Appellant was given 30 days in which to provide clarifying, supportive evidence including a detailed narrative statement and a medical opinion, which discussed the relationship between the original injury and the claimed condition or disability.

In an undated statement, appellant asserted that in June 1994 he was unable to continue working due to pain in his back, which radiated into his arms and legs and was admitted to the hospital. Appellant related that he was involved in an automobile accident in September 1994, which caused additional injury. Appellant asserted his belief that his current condition was related to the original injury because it has continued since the time of the original injury, changing only in degree. He noted that, although the automobile accident in 1994 aggravated his symptoms, he was disabled prior to the time of that injury.

In a January 15, 1997 report, Dr. Ryan noted that appellant underwent an anterior cervical discectomy and fusion on September 7, 1996. He noted that appellant had continued significant problems with pain in his neck and shoulders along with problems related to psychiatric illness. Dr. Ryan opined that appellant's problems were the result of both his 1984 work injury and his 1994 automobile accident. He stated that he could not attribute either the 1984 work injury or

² Docket No. 95-2781 (issued August 22, 1996).

the nonwork-related 1994 injury as completely causing appellant's problems, but he believed the 1994 accident aggravated preexisting problems. Dr. Ryan opined that appellant was totally disabled as a result of both his physical and psychological disorders.

In a decision dated February 25, 1997, the Office denied appellant's 1994 claim on the grounds that the evidence failed to demonstrate that the claimed condition or disability was causally related to the injury.

In a September 12, 1997 decision, an Office hearing representative vacated the decision dated February 25, 1997 and remanded the case for further development. The hearing representative noted that, following the claimed recurrence of June 1994, appellant was hospitalized and received treatment from the Veterans Administration (VA) Medical Center in Montgomery, Alabama. It was also noted that appellant sought medical treatment from a neurologist, Dr. C. Miller. The district Office was directed to obtain (1) the records of medical treatment appellant received following his claimed recurrence of June 1994; (2) the admission and discharge summaries for any hospitalization appellant had; (3) records of any other medical treatment appellant had following his automobile accident in September 1994; and (4) further directed to obtain the admission and discharge summaries for the surgery appellant underwent in September 1996. The Office was also requested to refer appellant to an appropriate medical specialist to resolve the outstanding issues in the case.

By letter dated October 3, 1997, the Office advised appellant of the medical records needed, as outlined in the September 12, 1997 Office hearing representative's decision and afforded him 30 days in which to submit such information. Additional evidence was not received.

By decision dated November 5, 1997, the Office denied appellant's claim on the basis that he had not met his burden of proof in establishing that his claimed condition was causally related to his work injury.

Subsequently the Office received the medical records from the VA Hospital for June and July 1994; medical records from Dr. Miller and other physicians for June 1994 and ongoing; admission and discharge summaries including all studies performed for hospitalization following the September 1994 motor vehicle accident; and the admission and discharge summaries for the September 1996 surgery. On May 11, 1998 appellant's attorney requested reconsideration.

In a report dated July 14, 1998, Dr. Gordon Kirschberg, a Board-certified neurologist and an Office referral physician, noted that there were no definite organic neurological abnormalities at the present time related to the May 18, 1984 work injury. Dr. Kirschberg stated that he believed appellant had chronic pain and found very little to substantiate ongoing continued disability. Aggressive physical reconditioning therapy with no need for further investigation or surgical therapy was recommended. Dr. Kirschberg stated that appellant's emotional condition had a lot to do with appellant's chronic pain and that he thought other secondary gain and psychological factors were at work.

In a July 22, 1998 report, Dr. Kirschberg stated that he had no idea how many of appellant's symptoms were purely real chronic pain with functional overlay and how much was

purely theatrical. Based on purely organic medical findings, Dr. Kirschberg stated that he believed appellant could go back to any duty he wished to immediately. He stated that appellant's disability had ceased probably a long time ago and that whatever disability he had was due to the injury of 1984. A July 22, 1998 work tolerance limitation form contained no limitations based on organic findings.

In a September 1, 1998 report, Dr. William Patterson, a Board-certified psychiatrist and an Office referral physician, noted that appellant has a long history of cervical neck pain and documented disc problems with subsequent surgical interventions. Dr. Patterson stated that, to his knowledge, appellant had essentially no psychiatric history or problems prior to November 1990 when he was released to return to full, unrestricted work duties. His description of psychotic symptoms were as vague and he did not meet the DSM-IV criteria for schizophrenia. Dr. Patterson stated that he did not see any psychotic symptoms, but noted that appellant was taking an anti-psychotic drug, which might control such symptoms. Dr. Patterson stated that it was very unusual to see late onset psychosis, especially schizophrenia, and he did not feel that appellant's psychological complaints were in any way related to his injury in 1984. He reasoned that a cervical injury has no relationship to psychotic symptoms and the temporal relationship between the two events was far removed.

Dr. Patterson noted that appellant developed these complaints after being released to return to work, which suggested malingering. However, he noted that malingering was a very difficult diagnosis to prove unless the individual is placed under surveillance and symptoms or disabilities are documented to be staged. Dr. Patterson noted that appellant worked for several years after the 1984 injury, although he stated that he has had almost constant pain. Dr. Patterson stated that appellant's rating of pain as being moderately severe to severe is not consistent with the absence of pain behavior, his activity level, low pain medication intake, infrequent help-seeking behavior, etc. Dr. Patterson opined that appellant's pain intensity was in the mild to moderate range at most. He did not show any overt psychotic symptoms, but simply talked about them. Dr. Patterson stated that a trial of medication would be helpful in determining if appellant truly had a psychotic disorder.

By decision dated September 17, 1998, the Office denied modification of the November 5, 1997 decisions finding that appellant's physical and emotional conditions were not causally related to the May 18, 1984 work injury.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability on and after June 1994 causally related to his work injury of May 18, 1984.

In this case, the Office accepted that appellant sustained employment-related conditions of cervical and lumbar strain, unstable C5-6 fracture, cervical fusion and cervical myelopathy on May 18, 1984. After receiving compensation benefits, appellant returned to work on a light-duty basis until October 1992 when he returned to his original full-time position as a nursing assistant. Appellant stopped work on June 14, 1994 and filed a notice of recurrence of disability beginning June 1994 and attributable to his May 18, 1984 employment injury.

When an employee claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the reliable and probative evidence that the recurrence of the disabling condition for which he seeks compensation was causally related to the accepted employment injury.³ As part of this burden, the employee must submit rationalized medical opinion evidence based on a complete and accurate factual and medical background showing a causal relationship between the current disabling condition and the accepted employment-related injury.⁴ Causal relationship is medical in nature and, generally, can be established only by medical evidence.⁵ Where no such rationale is present, medical evidence is of diminished probative value.⁶

In a recurrence of disability situation, generally no event other than the previous injury accounts for the disability.⁷ A recurrence of disability is a spontaneous return to disability due to the original employment injury with no intervening causes involved.⁸

In this case, appellant has not submitted rationalized medical opinion evidence establishing that his alleged physical and emotional disability on and after June 1994 was causally related to his May 18, 1984 accepted employment-related conditions.

Although appellant stated that he has had continuing problems since the original injury and the automobile accident aggravated his symptoms, the medical evidence submitted by appellant fails to establish definite bridging symptoms between the May 18, 1984 employment injury and his claimed recurrence of disability beginning in June 1994.⁹ Dr. Ryan's January 18, 1995 report, in which he noted that appellant was having symptoms prior to the accident, failed to provide any medical rationale for his opinion that appellant's cervical radiculitis was the result of the on-the-job injury. Likewise, in his January 15, 1997 report, Dr. Ryan failed to provide any medical rationale or explanation for his opinion that appellant's physical and psychological disorders (which he did not specify) were attributed to both his 1984, work injury and his 1994 automobile accident.

As noted above, medical evidence is of diminished probative value where medical rationale is lacking.¹⁰ Dr. Ryan provides no basis for his opinion, which was rendered almost

³ *Jessie Johnson, Jr.*, 39 ECAB 945 (1988).

⁴ *Id.*

⁵ *Armando Colon*, 41 ECAB 563, 565 (1990).

⁶ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁷ *See William R. Lance*, 18 ECAB 422, 428 (1967).

⁸ *Stephen J. Perkins*, 40 ECAB 1193 (1989).

⁹ For the importance of bridging information in establishing a claim for a recurrence of disability, *see Robert H. St. Onge*, 44 ECAB 1169 (1992); *Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Richard McBride*, 37 ECAB 748 (1986).

¹⁰ *See Michael Stockert*, *supra* note 6.

eleven years after appellant sustained his original injury and approximately six months after he stopped working. Inasmuch as appellant's claimed psychological disorder(s) constitutes a new condition, it is appellant's burden to establish causal relationship for conditions not accepted by the Office.¹¹ Therefore, Dr. Ryan's reports are of little probative value in establishing a causal relationship to support appellant's claim of a recurrence of disability causally related to his 1984, employment injury.

Alternatively, the second opinion reports of Drs. Kirschberg and Patterson are well rationalized and are based upon a complete, accurate and consistent history of injury as well as a comprehensive examination. These reports establish that appellant does not have a residual impairment traceable to factors of employment and that any work limitations are not due to the accepted conditions of the May 14, 1984 work accident.

The Board has held that the weight of the medical evidence is not determined by the number of doctors supporting a particular position but by the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.¹² There is no rationalized medical evidence of record, which established appellant's recurrence of disability is causally related to his accepted May 14, 1984 condition. Therefore, the Board finds that appellant has failed to meet his burden of proof in this case.

The decisions of the Office of Workers' Compensation Programs dated September 17, 1998 and November 5, 1997 are hereby affirmed.

Dated, Washington, DC
November 3, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

¹¹ *Charlene R. Herrera*, 44 ECAB 361, 370 (1993).

¹² *James Mack*, 43 ECAB 321 (1991); *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).