

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL L. WRIGHT and U.S. POSTAL SERVICE,
WEST TOLEDO STATION, Toledo, OH

*Docket No. 99-2227; Submitted on the Record;
Issued November 22, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained a recurrence of disability on January 13, 1998 causally related to his April 11, 1989 employment injury.

On April 11, 1989 appellant, then a 38-year-old letter carrier, hurt his back while in the performance of duty. The Office of Workers' Compensation Programs accepted the claim for a lumbar sprain and an aggravation of lumbosacral spondylosis and began paying appropriate benefits. He returned to limited, light-duty work.

On January 30, 1998 appellant filed a notice of recurrence of disability (Form CA-2a), alleging that on January 13, 1998 he slipped and fell on ice, landing directly on the spot of the original injury, thereby causing a recurrence of his accepted injury. In support of his claim, he submitted a January 26, 1998 request for physical therapy from Northwest Ohio Orthopedics. Appellant also submitted unsigned medical notes dated January 19, 1998 which indicated that appellant sustained a new injury on January 13, 1998 when he fell in a parking lot of a church, that the impressions were of L5-S1 spondylosis, history of bilateral posterolateral fusion, probable pseudoarthrosis and right sciatica, acute. This report noted that this injury was probably an aggravation of his preexisting pathology and that conservative care would be commenced.

By letter dated February 12, 1998, the Office requested that appellant submit additional information.

In response, appellant submitted a March 9, 1998 medical report by Dr. Van B. Boggus, a Board-certified orthopedic surgeon, who noted that appellant had been under his care since approximately August 17, 1989, that he underwent a reconstructive lumbar procedure on December 7, 1998, and that postoperatively he has had persistent radiculopathy. Dr. Boggus stated that appellant had only a fair result with continued lumbar and radicular pain, and that this has been aggravated most recently on January 13, 1998 when he fell sustaining some indirect

trauma. He further stated that appellant's "L5-S1 spondylosis and lumbar radiculopathy represents a chronic condition yet aggravated by a January 13, 1998 injury."

In a letter dated April 27, 1998, the employing establishment noted that it was controverting this claim due to an intervening traumatic event.

In a decision dated May 12, 1998, the Office denied appellant's claimed recurrence, finding that the evidence was insufficient to support that the claimed recurrence is causally related to the approved injury.

By letter dated May 20, 1998, appellant requested a hearing.

At the hearing held on January 26, 1999, appellant testified that he had a spinal fusion and that this fusion was starting to disintegrate, that in 1994 he returned to work in a limited-duty position and that he was capable of doing this work most of the time, that on January 13, 1998 he slipped and fell on ice in the church parking lot and was taken to the hospital, and that the doctor at the hospital indicated that the fall broke the fusion.

In a decision dated April 16, 1999, and finalized April 20, 1999, the Office determined that claimant had not established that his recurrence of disability occurring on January 13, 1998 was causally related to his accepted work-related injury of April 11, 1989. Accordingly, appellant's claim for recurrence was denied.

The Board finds that appellant has not established that he sustained a recurrence of disability on January 13, 1998 causally related to his accepted injury of April 11, 1989.

Where a claimant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.¹ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

It is an accepted principle of workers' compensation law, and the Board has so recognized, 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 is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct. Thus, it is accepted that once the work-connected character of any condition is established, "the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause."³ If a member weakened by an employment injury contributes to a later fall

¹ *Carolyn F. Allen*, 47 ECAB 240, 244-45 (1995).

² *Id.*

³ *Robert W. Meeson*, 44 ECAB 834, 838-39 (1993).

or other injury, the subsequent injury will be compensable as a consequential injury. If further complication flows from the compensable injury, *i.e.*, so long as it is clear that the real operative factor is the progression of the compensable injury, with an exertion that in itself would not be unreasonable under the circumstances, the condition is compensable.⁴

In this case, appellant sustained an employment-related injury on April 11, 1989 that was accepted for lumbar sprain and an aggravation of lumbosacral spondylosis. Applying the principles noted above, the Board finds that the triggering episode of appellant's claimed recurrence of disability on January 13, 1998 was the slip and fall in the church parking lot. Appellant has failed to submit any rationalized medical evidence proving that the injury sustained in the slip and fall was causally related to his accepted employment injury. Although Dr. Boggus opines that appellant's work-related condition was aggravated by the January 13, 1998 fall, he does not provide an adequate explanation that would meet appellant's burden of proof that the January 13, 1998 slip and fall did not constitute an intervening injury. Accordingly, appellant's injury on January 13, 1998 constitutes an independent intervening nonindustrial cause of his back disability. Therefore, appellant has failed to establish a recurrence of his work-related injury.

The decision of the Office of Workers' Compensation Programs dated April 16, 1999 and finalized April 20, 1999 is affirmed.

Dated, Washington, DC
November 22, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

⁴ *Sandra Dixon-Mills*, 44 ECAB 882, 885 (1993).