

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHARLES BROWN and DEPARTMENT OF THE AIR FORCE,  
FORT CARSON, Colorado Springs, CO

*Docket No. 99-2546; Submitted on the Record;  
Issued November 3, 2000*

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DECISION and ORDER

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

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on September 25, 1997 causally related to his June 10, 1992 employment injury.

On June 10, 1992 appellant, then a 41-year-old forklift operator warehouseman, sustained an employment-related lumbar strain. He stopped work that day and returned to limited duty on June 17, 1992. Appellant also missed intermittent periods of work thereafter and, for a period, worked four hours per day. On December 10, 1992 he began working regular duty eight hours per day. Appellant's job with the employing establishment ended in April 1993 and he began work as a forklift operator with Layton Trucks in November 1993. He was placed on Social Security disability in 1996 commencing April 29, 1993.

On September 25, 1997 appellant filed a recurrence of disability claim (Form CA-2a) alleging that he sustained worsening back pain causally related to his June 10, 1992 employment injury. On the claim form, appellant stated: "The pain that I experience [sic] when I injured my back has never gone away and has continued to get worse and more intense."

To support his recurrence claim, appellant submitted May 30, 1997 reports from Dr. J. Nitzsche, Dr. Robert C. McIntyre, a Board-certified critical care surgeon, and Dr. Ryan T. Gunlickson, a surgeon, regarding excision of a soft-tissue mass on his left chest and buttock. Appellant also submitted a lumbar spine magnetic resonance imaging (MRI) report dated October 23, 1992 in which Dr. Gary L. George, a Board-certified diagnostic radiologist, diagnosed L5-S1 degenerative disc disease with mild diffuse central disc bulging and/or bony ridge and approximately two millimeter retrolisthesis, L4-5 degenerative disc disease with mild central disc bulging and/or bony ridge, L2 vertebral body lipoma, and a transitional-type vertebral body.

By letter dated March 31, 1998, the Office requested additional factual and medical evidence from appellant to support his claim. In response to the Office's request, appellant submitted a June 3, 1998 narrative statement describing his physical condition and employment duties following his June 10, 1992 employment injury. Appellant stated that he returned to work in December 1992 before he was fit for duty and was required to bend, stoop, reach and frequently lift approximately 30-pound loads. He also stated that, since his June 10, 1992 employment injury, he experienced constant back pain radiating to his lower extremities. Appellant alleged that his recurrence of disability related to his June 10, 1992 employment injury because his treating physicians advised him that his employment injury aggravated his preexisting degenerative back disease or, alternatively, that his injury prompted the development of his present condition.

Appellant submitted additional medical evidence including reports from the Veterans Administration Clinic. In her April 13, 1994 report, Dr. Sandra Baker, a Board-certified internist, opined that appellant's degenerative lumbar spine disease was unrelated to his prior left knee injury, there were no asymmetric forces directed at the spine, and there was no temporal relationship to each claim. Dr. Baker diagnosed status post arthroscopic surgery of the left knee with residuals and sequelae of discomfort, mild crepitus to compression of the patella without complaints and radiographic evidence of prior noted surgery. She also diagnosed mild lumbosacral spine discomfort and residuals and sequelae of mild decreased range of motion and radiographic evidence of degenerative changes.<sup>1</sup>

Appellant also submitted an October 10, 1997 report from Dr. Nancy C. Cutter, Board-certified in physical and spinal cord injury medicine, and Michael H. Craine, a Ph.D. psychologist. The report diagnosed bilateral meniscal tears with status post left arthroscopy, chronic mechanical low back pain, sacroiliac joint dysfunction and mild bilateral knee degenerative changes.

In a report dated August 11, 1997, Dr. Mack Clayton, a Board-certified orthopedic surgeon, stated that he could not specifically diagnose appellant's condition other than to identify a chronic pain problem. In her October 9, 1997 report, Dr. Cutter stated that appellant reported that his lower back pain commenced in the mid-1980s due to "heavy labor" and worsened since his July 10, 1992 employment injury. She diagnosed chronic mechanical low back pain with sacroiliac joint dysfunction and possible functional overlay.

Additionally, appellant submitted an April 14, 1998 report from Dr. Edward J. Ausman, a Board-certified family practitioner, stating that appellant had a back injury history related to a 1992 work-related incident. Dr. Ausman noted that he had last examined appellant on September 9, 1997 and that his medical records revealed that he also experienced back pain in

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<sup>1</sup> Appellant also submitted reports from Shirley M. Pfister, a nurse, Sarah J. Billups, a clinical pharmacist, and Charles D. Sintek, a clinical pharmacist. Section 8101(2) of the Act provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope if their practice as defined by the applicable state law. *Peggy Ann Lightfoot*, 48 ECAB 490 (1997). As nurses and pharmacists are not "physicians" under the Act and cannot render medical opinions on the causal relationship between a given physical condition and implicated factors, these reports are of no probative value. *Vicky L. Hannis*, 48 ECAB 538 (1997).

1985 and 1990. He diagnosed recurrent lumbosacral pain, possible L5-S1 discopathy, and/or possible spinal stenosis on September 9, 1997. Dr. Ausman noted that appellant was somewhat improved when he returned for his December 1997 examination. He stated:

“Being that I did not previously see [appellant] until September 1997, I was unable to compare my exam[ination] with his previous exam[ination]s. Patient history, however, suggested that what seems to be a previous lumbar condition worsened after the incident described above in 1992. This would lead me to believe that at least partly would be work related. Certainly the mechanism of injury the patient describes could have aggravated a previous condition or even prompted the development of a new condition.”

Appellant also submitted a report from Dr. Sandra Baker, a Board-certified internist, dated April 12, 1994 and a Social Security Administration (SSA) decision dated June 28, 1996 regarding appellant’s entitlement to disability benefits.

By letter dated August 18, 1998, the Office referred appellant, together with a statement of accepted facts and list of questions, to Dr. Robert Schutt, a Board-certified orthopedic surgeon, for a second opinion evaluation. Dr. Schutt’s September 16, 1998 report stated that, on June 10, 1992, appellant sustained a lumbar strain at work when he was using a forklift and lost his balance. He noted appellant’s symptoms and range of motion. Dr. Schutt also noted that his evaluation of appellant’s May 22, 1998 lumbar spinal MRI films and x-rays showed significant degenerative disc disease, primarily at the L5-S1 level. He opined that, based on his review of appellant’s medical records, his June 10, 1992 lumbar strain, which aggravated his underlying, preexisting degenerative lower-back disc disease, was resolved by conservative therapy. Dr. Schutt stated:

“I am not aware of any severe or any residual alteration of the underlying medical condition. [Appellant’s] MRI was essentially unchanged from that of 1992. I would not have expected any continued impairment past [December 1992] when he was returned to work. I am not aware of any situation that caused irreversible changes in his underlying medical condition that altered the disease process which has left him with lower back pain.”

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“I do believe [appellant] has work restrictions.... It is my opinion [appellant] is unable to return to heavy manual labor due to the degenerative condition in his lumbar spine. I have restricted him so that he could only return to medium work. I do believe that the reason these work restrictions are on him is due to the degenerative disc disease and are not related to the lumbar strain of 1992.”

Dr. Schutt also submitted a September 8, 1998 work capacity evaluation (Form 5c) restricting appellant to an 8-hour day and occasional bending, squatting, kneeling and crawling. He also restricted appellant from lifting over 25 pounds. Dr. Schutt stated: “These [restrictions] are due to the degenerative disc disease in [appellant’s] lumbar spine and if [appellant] were to

abuse or overuse his lower back, he would end up developing problems with a superimposed strain.”

By decision dated September 22, 1998, the Office denied appellant’s claim on the grounds that the evidence of record failed to show that his alleged recurrence of disability was causally related to his June 10, 1992 employment injury. The Office found that Dr. Schutt’s report constituted the weight of the medical evidence because it was well rationalized and unequivocally stated that appellant’s back condition resulted from his preexisting degenerative disc disease rather than his June 10, 1992 employment injury.

By letter dated September 25, 1998, appellant, through his attorney, requested a hearing before an Office hearing representative, which took place on March 23, 1999. At the hearing, his attorney argued that appellant’s worsening back condition substantiated his recurrence of disability claim. Appellant’s attorney also argued that appellant’s preexisting degenerative disc disease worsened because of his June 10, 1992 employment injury. He recounted his June 10, 1992 employment injury and testified that he sustained a recurrence of disability on September 25, 1997 when he felt pain while walking. Appellant further testified that his alleged recurrence was unrelated to his degenerative disc disease.

Appellant submitted an April 22, 1999 report from Dr. Arnold L. Ahnfeldt, a Board-certified orthopedic surgeon, which noted the history of appellant’s June 10, 1992 employment injury and his findings on physical examination. Dr. Ahnfeldt stated that a July 14, 1992 x-ray revealed L5-S1 anterior osteophytes with disc space narrowing, L5-S1 spondylosis, and acute exacerbation of chronic low back pain. He also stated that an October 23, 1992 MRI showed L5-S1 degenerative disc disease with mild diffused central disc bulging, L5-S1 retrolistheses, mild central L4-5 disc bulging with degenerative disc disease and L2 vertebral body lipoma. Dr. Ahnfeldt noted that a May 22, 1998 MRI demonstrated L3-4, L4-5 and L5-1 intervertebral dessication with mild annulus fibrosis bulging without focal disc bulging, herniation or spinal stenosis. He further noted that appellant’s May 22, 1998 lumbar spine x-ray showed moderate L5-S1 interspace narrowing with a prominent ventral spur formation. Dr. Ahnfeldt stated: “Based on the material presented to me, it does appear that [appellant] did have exacerbation of a chronic condition while active as a forklift operator at the [employing establishment] and certainly one would postulate that the job performance did exacerbate his symptomology.”

Appellant also submitted a form report from Dr. Gwendolyn C. Henke, a Board-certified orthopedic surgeon, dated October 28, 1994 and a September 16, 1994 county disability claim form.

By decision dated June 4, 1999, the hearing representative affirmed the Office’s September 22, 1998 decision on the grounds that the medical evidence of record did not show that appellant’s alleged recurrence of disability was causally related to his June 10, 1992 employment injury. The hearing representative found that the weight of the medical evidence rested with Dr. Schutt’s September 16, 1998 report. He noted that Dr. Ahnfeldt’s report was of “seriously diminished probative value” because he did not provide a medical rationale to support his conclusion that appellant continued to experience residuals from his June 10, 1992 employment injury.

The Board finds that appellant has not met his burden of proof to establish that he sustained a recurrence of disability on September 25, 1997 causally related to his June 10, 1992 employment injury.

The employee has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed recurrence of disability is causally related to the original injury.<sup>2</sup> Such proof must include medical evidence that the claimed recurrence of disability is causally related to the accepted employment injury.<sup>3</sup> As part of this burden, appellant must furnish 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 employment factors and supports that conclusion with sound medical reasoning.<sup>4</sup> Whether a particular employment incident causes disability is a medical issue which must be resolved by competent rationalized medical opinion evidence.<sup>5</sup> An award of compensation may not be made on the basis of surmise, conjecture or speculation, or on appellant's unsupported belief of causal relation.<sup>6</sup> Thus, the medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>7</sup> In this regard, medical evidence of bridging symptoms between the alleged recurrence and the accepted injury must support the physician's conclusion of a causal relationship.<sup>8</sup>

In this case, the medical evidence of record does not show that appellant's alleged recurrence of disability was causally related to his June 10, 1992 employment injury. Dr. Schutt's September 16, 1998 report carries the weight of the medical evidence as it is both well rationalized and based on a complete factual and medical history of appellant's condition. He opined that appellant's disabling back condition was not causally related to his June 10, 1992 employment injury but rather to his preexisting degenerative disc disease. Furthermore, while appellant submitted an April 12, 1994 report in which Dr. Baker diagnosed mild decreased range of motion of the lumbosacral spine with radiographic evidence of mild degenerative changes, she did not provide an opinion regarding the cause of that condition. The record contains no other medical evidence that would bridge the period from the June 10, 1992 employment injury to 1997, the year of the alleged recurrence of disability.

Dr. Cutter's June 10 and Dr. Clayton's October 9, 1997 progress notes merely state that appellant's back condition worsened since his June 10, 1997 employment injury and did not address the causal relation issue. Dr. Ausman's April 14, 1998 report also failed to relate

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<sup>2</sup> *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996).

<sup>3</sup> *See id.*

<sup>4</sup> *Id.*

<sup>5</sup> *See Buddy L. Spaulding*, 40 ECAB 1002, 1007 (1989).

<sup>6</sup> *See Alfredo Rodriguez*, *supra* note 2.

<sup>7</sup> *Lourdes Davila*, 45 ECAB 139, 142 (1993).

<sup>8</sup> *Leslie S. Pope*, 37 ECAB 798, 802 (1986).

appellant's alleged recurrence to his June 10, 1992 employment injury as the doctor only noted that appellant's preexisting lumbar condition was worsened by his June 10, 1992 employment injury. Dr. Ahnfeldt's April 22, 1999 report was based on a complete and factual medical history but has little probative value because the doctor did not relate appellant's condition to his June 10, 1992 employment injury. Dr. Ahnfeldt only discussed appellant's June 10, 1992 employment injury.

The June 28, 1996 SSA decision is not determinative of a claimant's entitlement to compensation under the Federal Employees' Compensation Act.<sup>9</sup> Moreover, the SSA decision is not contemporaneous with appellant's alleged recurrence of disability.

Accordingly, as appellant has not submitted rationalized medical evidence explaining how and why his condition was related to his June 10, 1992 employment injury, appellant has not met his burden of proof in establishing his recurrence claim.

The decision of the Office of Workers' Compensation Programs dated June 4, 1999 is affirmed.

Dated, Washington, DC  
November 3, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>9</sup> See *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994); *Kenneth W. Yasnick*, 31 ECAB 1132, 1138 (1980).