

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CALVIN N. BOYER, JR. and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Fort Myers, FL

*Docket No. 99-2473; Submitted on the Record;
Issued October 24, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant established that he sustained a recurrence of disability based on his July 28, 1994 work-related injury.¹

On February 24, 1995 appellant, then a 46-year-old special agent, filed a claim for traumatic injury (Form CA-1) alleging that on July 28, 1994 he sustained an injury to his left eye while in the performance of duty. He stated that he had volunteered in a training session concerning the use and effects of pepper spray. Some spray was sprayed directly into both his eyes, resulting in floating particles in his left eye.

In a medical report dated April 7, 1995, Dr. Jay Crump, appellant's treating optometrist, stated that he had examined appellant on October 7, 1994 "with a complaint of a gray line in the left eye that was moving around." Dr. Crump added:

"[Appellant] first noticed this line a few days after he had pepper spray put in his eyes for a demonstration at work.

"Upon examination his visual acuity was normal and the pigment dusting that remained unchanged from the previous exam[ination] was noted.² Dilated fundus exam[ination] revealed an anterior vitreal separation left eye that was not present on previous exam[ination]s.

"My impression is that the anterior vitreal separation is the cause of the line in [appellant's] vision. This condition is fairly common and has no real treatment....

¹ The Board notes that the case file contains records not associated with this claim.

² The case file did not contain a prior examination.

If the disturbance has not resolved within a reasonable amount of time, surgery may be an option. It is possible this trauma was caused by the pepper spray.”

By letter dated May 19, 1995, the Office of Workers’ Compensation Programs advised appellant that he needed to submit additional information regarding his claim for compensation, including a statement from Dr. Crump regarding what “other possible way this type of condition could be induced.”

In a follow-up medical report dated July 21, 1995, Dr. Crump stated that he examined appellant on June 15, 1995 regarding his anterior vitreous detachment. He noted appellant’s continuing symptoms over the past nine months and discussed treatment options including surgery. Appellant elected to forego surgical intervention at that time.

On August 16, 1995 the Office accepted appellant’s claim for anterior vitreous detachment, left eye.

On September 14, 1998 appellant filed a claim for a recurrence of disability (Form CA-2a) alleging that his accepted injury of July 28, 1994 had not improved, has bothered him over the past several years and “is getting worse.”

By letter dated October 14, 1998, the Office advised appellant that he needed to submit additional information regarding his claim including dates of examination and treatment, a detailed description of findings, test results and all his treatment records for the accepted injury since onset. The Office also required that appellant’s doctor “submit a narrative which includes: [his] opinion, with supporting documentation, as to the causal relationship between [appellant’s] current disability/condition and the original injury.”

In a medical report dated June 7, 1995 and received by the Office on November 6, 1998, Dr. Crump stated:

“[Appellant’s] condition [of anterior vitreous detachment] can occur in specific syndromes: or rarely in advanced age vitreal related degeneration in the sixth or seventh decade of life; or most commonly due to trauma. Since [appellant] has no predisposing factors other than trauma, I would therefore rationally deduce [that] his condition is a direct result of his experience with the pepper spray.”

In a medical report dated April 21, 1998 and received by the Office on November 6, 1998, Dr. Crump stated:

“Since [appellant’s] injury from the pepper spray back in 1994 has left him with floaters that continue to bother him. His visual acuity is normal in each eye but the floaters fall into his vision at times. Currently there is no indication for surgery to remove the floaters but there is a laser surgery that is not FDA approved that could possibly be done or he could have a vitrectomy that would remove the floaters.... [T]he floaters will probably never go away on their own....”

By decision dated March 22, 1999, the Office denied appellant's claim for recurrence of disability on the grounds that appellant "failed to submit your physician's opinion, with supporting explanation, as to the causal relationship between your current condition and the original injury," and that he "failed to provide additional medical evidence to establish how your claim for recurrence of disability is related to the initial injury of July 28, 1994."

A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant 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 the employment injury and supports that conclusion with sound medical reasoning.³

In support of his claim, appellant submitted a June 7, 1995 report from Dr. Crump who stated that he could rationally deduce that appellant's eye condition was a direct result of his experience with the pepper spray. However, this opinion relates to the Office's initial acceptance of appellant's claim and is not relevant to his claim for a recurrence of disability.⁴

On April 21, 1998 Dr. Crump stated that appellant's initial injury in 1994 caused him to have floaters in his left eye that would continue to bother him. However, he added that appellant's visual acuity was normal in each eye. Dr. Crump did not find appellant disabled because of the floaters in his left eye. While appellant may consider the floaters a "distraction," there is no medical evidence that appellant sustained any disability for work because of them.⁵ Nor did Dr. Crump describe how the diagnosed anterior vitreous detachment, accepted as a work-related injury in 1995, continued to cause any intermittent problems such as appellant's floaters over the next three years. In fact, in his 1998 report, Dr. Crump does not mention the vitreous detachment. There is no rationalized medical opinion linking the current floaters in appellant's left eye to the accepted work-related injury.⁶

The Office advised appellant that additional medical evidence must be submitted to support his claim, but the medical evidence he submitted is insufficient to establish a causal relationship between his work-related injury and his current condition. Therefore, the Board finds that appellant has not met his burden of proof.

³ *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

⁴ The Board notes that appellant's original case was destroyed "after a long period of inactivity." The June 8, 1995 report was resubmitted in accordance with the direction of the Office to appellant on October 14, 1998 that he submit "copies of all documents from the original case file so it can be recreated."

⁵ A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. 20 C.F.R. § 10.5(x).

⁶ See *Barbara J. Williams*, 40 ECAB 549, 657 (1989) (finding that medical reports that failed to address the issue of recurrence of disability causally related to the initial work injury are irrelevant).

The decision of the Office of Workers' Compensation Programs dated March 22, 1999 is affirmed.

Dated, Washington, DC
October 24, 2000

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member