

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EUGENE SZUMSKI and DEPARTMENT OF THE ARMY,
AMSA, Wilkes-Barre, PA

*Docket No. 00-1336; Submitted on the Record;
Issued April 11, 2001*

DECISION and ORDER

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

The issue is whether appellant sustained a recurrence of disability on August 24, 1998 causally related to his January 22, 1997 employment injury.

On January 22, 1997 appellant, then a 37-year-old mobile equipment inspector, sustained a lumbosacral strain when his vehicle was hit from behind by another vehicle at a stop sign. He stopped work on that date and began light-duty work on March 24, 1997. Appellant again stopped work on March 27, 1997 and returned on April 8, 1997.

On December 15, 1998 appellant filed a recurrence of disability claim alleging that on August 24, 1998 he experienced intermittent back pain causally related to his January 22, 1997 employment injury. He indicated that the pain was "in the same place as it has been since January 1997." Appellant stopped work on August 24, 1998 and returned to light duty on August 31, 1998.

By letter dated April 19, 1999, the Office of Workers' Compensation Programs requested that appellant submit factual and medical evidence to support his claim. The Office allowed appellant 30 days within which to respond to its request.

By decision dated May 24, 1999, the Office denied appellant's claim on the grounds that the medical evidence of record failed to establish that his alleged recurrence of disability was causally related to his January 22, 1997 employment injury. The Office noted that appellant did not submit evidence in response to its April 19, 1999 letter.

Subsequently, appellant submitted a report dated November 24, 1998 in which Dr. John H. Presper, a Board-certified neurosurgeon, provided a history of appellant's January 22, 1997 employment injury and his objective examination findings. Dr. Presper diagnosed "low-back pain of obscure etiology of two years' duration related to a motor vehicle accident." He opined that appellant lacked any identifiable lesion and that he did not require neurosurgical treatment. Dr. Presper stated: "It seems to me that [appellant] should have

recovered in a reasonable period of time and I really have no good explanation for why he continues to have the problems that he does.” He further stated that there was “a probability that secondary issues may be related to his continual complaints of pain.”

Appellant also submitted a report dated February 9, 1999 in which Dr. Mitchell J. Gross, a Board-certified neurologist, provided a history of appellant’s January 22, 1997 employment injury, objective findings, subjective complaints and treatment. He noted that appellant sustained a significant back and right leg pain in August 1998 when he bent down. Dr. Gross diagnosed chronic low back pain, status post motor vehicle accident in January 1997. He stated: “This is most likely related to structural disease at the L4-5 level. Whether this is all disc disease or ligamentous in nature is unclear.”

In a report dated March 12, 1998, Dr. Nicholas Cardinale, a Board-certified family practitioner, stated his examination findings and diagnosed lumbago, myalgia and myositis. His November 10, 1998 report stated that appellant complained of worsening low back pain related to a motor vehicle accident with monthly flare-ups. Dr. Cardinale diagnosed backache and lumbar disc displacement. His March 26, 1999 report described appellant’s condition and treatment. Dr. Cardinale recommended that appellant be excused from certain physical fitness test requirements.

Appellant submitted numerous reports and progress notes dated February 9, 1998 to March 26, 1999 noting his complaints and medical treatment. In a progress note dated August 25, 1998, Dr. Anthony D. Aquilina, a Board-certified internist, noted his examination findings and diagnosed lumbar disc displacement, lumbago, myalgia and myositis and possible left-side herniated nucleus pulposus. In a note dated February 10, 1999, Dr. Howard L. Spector, a Board-certified diagnostic radiologist, found mild narrowing of the L5-S1 interspace. In a report dated March 31, 1999, Dr. Nicholas Chiumento, a Board-certified internist, stated that appellant complained of worsening back pain with a history of disc disease and numbness and tingling down both legs. He diagnosed disc disease “nec-nos lumbar.” In a report dated May 3, 1999, Dr. Jeffrey Carter opined that a magnetic resonance imaging (MRI) scan showed disc bulging at L3-4.

By letter dated June 4, 1999, appellant, through his attorney, requested an oral hearing before an Office hearing representative. With his request, appellant submitted reports and progress notes dated February 2 to May 21, 1999. In his report dated May 3, 1999, Dr. Carson J. Thompson, a Board-certified neurosurgeon, provided a history of appellant’s January 22, 1997 employment injury, subjective complaints and objective findings. Dr. Thompson noted appellant’s range of motion and stated that he had some tenderness in the mid to lower lumbar region and diminished sensation in the anterior left thigh. Based on MRI scans performed in 1997 and on May 3, 1997, Dr. Thompson found a central to right-sided herniated disc at L3-4 and central herniation or collapse of the disc at L4-5, which appeared to be progressing. He discussed interdiscal fusion and discectomy procedures.

At the oral hearing, held on November 16, 1999, appellant discussed his January 22, 1997 employment injury and stated that prior to the injury he did not have any back problems. He also discussed his medical treatment and work history. Appellant testified that Dr. Thompson

advised surgery which was performed on October 6, 1999. He stated that he stopped work on July 23, 1999.

In an April 16, 1998 report, Dr. Cardinale provided a history of appellant's January 22, 1997 employment injury and subsequent treatment. He opined "due to the severity of the initial injury [appellant] is prone to back injuries more easily than the average person." In his May 27, 1999 report, Dr. Cardinale stated that appellant had back pain since January 22, 1997 and later attained some relief, however, he experienced frequent flare-ups. He concluded:

"It is to my knowledge and a review of [appellant's] medical record that he has had no subsequent or previous back injuries dating back before January 22, 1997, and since that point he has not had any new injuries. It appears that [appellant's] condition is chronic, stemming from his initial motor vehicle accident for which he was seen on January 22, 1997. Upon further review of this case with my supervising physician, Dr. Aquilina, and review of the chart, he feels also that [appellant's] condition is stemming from his initial accident which occurred in January 1997. Also, at this point, [appellant] should not be doing any work. He should be off until he has surgery."

In his May 21, 1999 surgery request form, Dr. Thompson diagnosed central to right-sided herniated disc at L3-4 with central herniation or collapse of the disc at L4-5 and low back pain with bilateral leg pain. He recommended that appellant undergo lumbar laminectomy and discectomy procedures with interdiscal fusion at L3-4 and a postoperative myelogram.

In response to the question "how is the condition related to the employee's work injury," Dr. Thompson stated: "work injury [on] January 22, 1997 with motor vehicle accident -- struck from behind while stopped with development of low back pain and bilateral leg pain. In a report dated August 17, 1999, Dr. Thompson noted appellant's subjective complaints and stated that a July discogram was positive and revealed disc herniation at L3-4. He discussed further treatment including surgical intervention. Dr. Thompson's October 6, 1999 postoperative report described the surgical procedure performed on that date.

In a July 8, 1999 report, Dr. David O. Cartaya indicated that a neurological lumbar discogram was performed. He diagnosed an acute annular tear at L3-4 with severe pain and degenerative changes at L4-5 and L5-S1 with less pain than at L3-4.

In a report dated October 5, 1999, Dr. Paul M. Leiman, a Board-certified diagnostic radiologist, stated that a lumbar myelogram revealed anterior disc herniation at L3-4 with spinal stenosis, L4-5 and L5-S1 disc bulging and bilateral spondylolysis.

By decision dated December 21, 1999, the Office hearing representative affirmed the Office's May 24, 1999 decision on the grounds that the medical evidence was insufficient to establish that appellant sustained a recurrence of disability beginning August 24, 1998 causally related to his January 22, 1997 employment injury.

The Board finds that appellant has failed to establish that he sustained a recurrence of disability on August 24, 1998 causally related to his January 22, 1997 employment injury.

An employee who claims benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim.² When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.³ The claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.⁴

In this case, the medical evidence of record fails to explain how and why appellant's current back condition is causally related to his January 22, 1997 employment injury or show a change in the nature and extent of his light-duty job requirements. Although Dr. Cardinale concluded that appellant's alleged recurrence was causally related to his January 22, 1997 employment injury, he did not support his conclusion with a well-rationalized opinion. Furthermore, his report, dated April 16, 1998, was not contemporaneous with appellant's alleged August 24, 1998 recurrence of disability.

Dr. Presper's November 24, 1998 report concluded that appellant had "low back pain of obscure etiology" and that he had "no good explanation for why [appellant] continues to have the problems that he does." Dr. Presper further stated that there was a "probability that secondary issues may be related to [appellant's] continual complaints of pain." Thus, Dr. Presper clearly expressed that the cause of appellant's continuing back pain was unknown.

Dr. Thompson's May 21, 1999 surgery request form indicated that appellant's condition was caused by "work injury [on] January 22, 1997 with motor vehicle accident -- struck from behind while stopped with development of low back pain and bilateral leg pain." However, Dr. Thompson did not support his conclusion with a rationalized medical opinion.

Dr. Gross, in his February 9, 1999 report, noted his objective findings and appellant's complaints but did not provide a rationalized medical opinion explaining how his chronic back pain was causally related to his January 22, 1997 employment injury. He stated: "This is most likely related to structural disease at the L4-5 level. Whether this is all disc disease or ligamentous in nature is unclear." Thus, Dr. Thompson did not address the issue of whether appellant's structural disease at L4-5 was causally related to his accepted employment injury.

Reports and notes from Drs. Cardinale, Aquilina, Spector, Chiumento, Carter, Thompson, Cartaya and Leiman contained objective findings, related appellant's complaints and diagnosed lumbago, myalgia, myositis and lumbar disc displacement, possible left-side herniated nucleus

¹ 5 U.S.C. §§ 8101-8193.

² *Ruthie Evans*, 41 ECAB 416, 423-24 (1990); *Donald R. Vanlehn*, 40 ECAB 1237, 1238 (1989).

³ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁴ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

pulposus, disc narrowing and disc bulging, but did not include a rationalized medical opinion on the causal relationship issue. Therefore, the Board finds that appellant has failed to meet his burden of proof.

The decisions of the Office of Workers' Compensation Programs, dated December 21 and May 24, 1999, are hereby affirmed.

Dated, Washington, DC
April 11, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member