

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RICHARD HUTCHINSON and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Beckley, WV

*Docket No. 00-1612; Submitted on the Record;  
Issued April 13, 2001*

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DECISION and ORDER

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

The issue is whether appellant sustained a recurrence of disability causally related to an accepted September 6, 1994 employment injury.

On September 7, 1994 appellant, then a 40-year-old veterans benefits counselor, filed a notice of traumatic injury, alleging that on September 6, 1994 he slipped and fell on a recently waxed floor at the hospital in which he worked. Appellant felt a muscle pull in his right arm, wrist and shoulder and a sharp pain in his neck and back.<sup>1</sup> By decision dated January 29, 1997, the Office of Workers' Compensation Programs accepted appellant's claim for contusions of the elbow and forearm.

On December 23, 1996 appellant stopped work due to back and hip pain. On January 2, 1997 appellant filed a claim for a recurrence of disability, alleging that he had experienced constant back and hip pain since his September 6, 1994 injury, which had gradually hindered his performance. Appellant underwent two surgeries on his lower back, on March 7 and April 29, 1997.

By decision dated December 22, 1997, the Office denied appellant's claim, finding the evidence insufficient to establish that his recurrence of disability was causally related to the September 6, 1994 injury. Appellant requested an oral hearing, which was held on November 4, 1998. By decision dated January 14, 1999, the hearing representative affirmed the Office's December 22, 1997 decision.

By letter dated February 22, 1999, appellant requested reconsideration, but did not submit any new evidence. By decision dated May 26, 1999, the Office denied appellant's request for reconsideration.

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<sup>1</sup> Appellant also filed a notice of occupational disease on April 16, 1997.

By letter dated September 9, 1999, appellant again requested reconsideration and submitted medical reports from Dr. Robert H. Wilkins, a Board-certified neurological surgeon and Dr. Barry Levin. By decision dated September 29, 1999, the Office denied modification of its January 14, 1999 decision, finding that the record contained no rationalized medical opinion that appellant's current condition is related to the employment injury of September 6, 1994.

The Board finds that appellant has not met his burden of proof to establish that his condition is causally related to the accepted employment injury in 1994.

Where appellant 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 disabilities for which he claims compensation are causally related to the accepted injury.<sup>2</sup> 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.<sup>3</sup>

In this case, appellant indicated on his 1994 claim that when he slipped and fell he felt a sharp pain in his neck and back. Appellant's claim, however, was accepted only for elbow/forearm contusions on January 29, 1997, not for any back condition

At the hearing on November 4, 1998 appellant stated that the first date of treatment for his back was less than a year after the 1994 incident and that he saw a chiropractor in August 1995. The record, however, contains no evidence of specific back pain or medical treatment until June 13, 1996, almost two years after the incident. Dr. Maurice Bassali, a Board-certified radiologist, stated on June 13, 1996 that appellant had "degenerative changes at the L4-5 level," yet there was "no evidence of acute trauma, destructive bone process, or any other abnormality." On August 29, 1996 Dr. Sang K. Kim, a Board-certified radiologist, noted:

"There is evidence of diffuse disc bulge at L4-5 centrally, paracentrally on both sides and posterolaterally on both sides. It is extremely difficult to determine whether or not there is an actual extrinsic impression present to the anterior aspect of the thecal sac at this area or any nerve root compression present. MRI [magnetic resonance imaging] would be beneficial to better evaluate the relation between the disc bulge and the thecal sac in this area."

In an MRI report dated December 19, 1996, Dr. Bassali indicated that appellant had posterior disc herniation at L4-5 as well as degenerative changes at the L4-5 level.<sup>4</sup> In a report dated October 22, 1996, appellant was diagnosed with "extensive degenerative joint disease of lumbosacral spine and hips."

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<sup>2</sup> *Jose Hernandez*, 47 ECAB 288 (1996).

<sup>3</sup> *Id.*

<sup>4</sup> A radiologic report dated September 7, 1994, the day after the incident, indicated that at that time appellant had degenerative changes between L4-5.

Subsequently, three physicians diagnosed appellant with herniated disc, which they attributed to the original September 6, 1994 employment injury. Dr. Michael B. Rozboril, a Board-certified internist, stated on September 9, 1998:

“To the best of my knowledge it is very reasonable to assume that the fall was directly related to his subsequent back problem. He denies any intervening injury between the time of the work-related fall and the time he first sought medical attention. Therefore, I feel there is a causal relationship between this fall and his back condition.”

In a report dated October 16, 1998, Dr. Wilkins reviewed appellant’s records and noted that his back problem dated back to a fall on September 6, 1994 when he complained of back and leg pain following that injury. He added:

“I saw you on March 5, 1997 and operated upon you two days later, performing a decompressive L4-5 laminectomy for treatment of a disc herniation at L4-5. Because your symptoms began at the time of your fall, I believe that the condition for which I treated you was related to the fall.”

Dr. Levin stated on November 3, 1998 that appellant first injured his back in 1994 while at work and had had multiple treatments for his problem. He concluded: “It is obvious from his history that the problem began from his injury where he fell back on September 7, 1994.”

On August 31, 1999 Dr. Levin stated: “I would hope that the Workers’ Compensation Board would accept your explanation that you injured your back at work and the pain has progressed to a point where you are unable to do your normal activities and thus award you on this alone.”

Drs. Rozboril, Wilkins and Levin opined that appellant’s herniated disc condition was causally related to his 1994 employment injury, essentially because appellant related that his back symptoms began at that time. However, there is no evidence of record to substantiate appellant’s complaints of pain or to show that he sought medical treatment for his back until June 13, 1996. Furthermore, while the medical evidence indicates that appellant has extensive degenerative disease in his back none of the physicians discussed the significance of his degenerative condition in light of his complaints of back and hip pain in 1994.

Further, none of the medical reports specifically addresses when appellant sustained the herniated disc. Neither the x-rays nor the computerized tomography scan performed during the summer of 1996 confirmed the herniated disc. A progress note dated October 22, 1996 noted that appellant’s wife had called to remind the doctor that the patient had fallen recently. It appears the herniated disc was confirmed only after that date.

Appellant has not submitted the rationalized medical opinion evidence necessary to establish that his current back condition was caused by the accepted employment injury.

The decisions of the Office of Workers’ Compensation Programs dated September 29 and May 26, 1999 are hereby affirmed.

Dated, Washington, DC  
April 13, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Priscilla Anne Schwab  
Alternate Member