

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUBEN J. MAESTAS and DEFENSE LOGISTICS AGENCY,
KIRTLAND AIR FORCE BASE, NM

*Docket No. 00-1800; Submitted on the Record;
Issued April 6, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a recurrence of disability on June 12, 1999 based on his August 19, 1993 work-related injury.

On August 19, 1993 appellant, then a 44-year-old precious metal processor, filed a claim for traumatic injury (Form CA-1) alleging that on that day he sustained a back injury while in the performance of duty.

By letter dated September 17, 1993, the Office of Workers' Compensation Programs advised appellant that it had accepted his work-related injury for lumbar strain, noting also that it had resolved.

On August 17, 1999 appellant filed a claim for recurrence of disability alleging that his back pain has increased over time, "now it [i]s down to my legs, especially when moving around drums that weigh (up to 500 pounds.)" He noted that the date of recurrence of disability was June 12, 1999.

In a medical report dated June 22, 1999, Dr. Claude D. Gelinas, appellant's treating physician and Board-certified orthopedic surgeon, stated that he had reviewed x-rays and determined that appellant had lumbar spondylosis.

In a medical report dated July 12, 1999, Dr. Gelinas stated that upon review of appellant's job description and his initial injury form appellant's symptoms are related to his August 1993 work-related injury.

In a medical report dated October 25, 1999, Dr. Gelinas stated that appellant remained symptomatic with low back pain and that he had reached the date of maximum medical improvement. He noted that appellant would require a permanent light-duty restriction.

By letter dated February 2, 2000, the Office advised appellant that the information he had submitted was insufficient to establish that he sustained a recurrence of disability as alleged. The Office requested that appellant submit a description of his duties after he returned to work following his August 1993 injury, medical records pertaining to his condition including copies of all treatment notes and test results related to his claimed condition since August 1993, and a medical report from his treating physician which describes his symptoms and the doctor's opinion, with medical reasons, on the cause of his condition including an explanation if the doctor feels that his current medical condition was related to appellant's August 1993 injury.

In support of his claim, appellant submitted several medical reports from Dr. Gelinis from June 22, 1999 to February 23, 2000. These reports essentially reflect treatment plans and appellant's current medical condition. However, in his March 16, 2000 report, Dr. Gelinis stated that based on appellant's history of injury that he had had no back problems until 1994, his August 19, 1993 work-related injury was an aggravation of a preexisting degenerative condition.

By decision dated March 30, 2000, the Office denied appellant's claim.

The Board finds that appellant has not sustained his burden of proof in establishing that he sustained a recurrence of total disability causally related to his August 19, 1993 employment injury.

An individual 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 compensation is claimed is causally related to the accepted injury.¹ This burden includes the necessity of furnishing 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 rationale.² Where no such rationale is present, medical evidence is of diminished probative value.³

In this case, none of appellant's medical reports established that appellant's current condition of low back pain was causally related to his initial work-related injury of August 19, 1993. Although Dr. Gelinis opined in his July 12, 1999 report that appellant's symptoms were related to his August 1993 work-related injury, that opinion was not supported by a rationalized medical opinion and thus is insufficient to meet appellant's burden of proof.⁴

¹ *Carolyn F. Allen*, 47 ECAB 240 (1995); *Jose Hernandez*, 47 ECAB 288 (1966); *Alfredo Rodriguez*, 47 ECAB 437 (1996).

² *Id.*

³ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

⁴ Appellant also submitted a report from Burl C. Tatum, a chiropractor, but his opinion is not probative as section 8101(2) of the Federal Employees' Compensation Act provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. *Sheila A. Johnson*, 46 ECAB 323 (1994).

The March 30, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
April 6, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member