

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY L. HOLMES and DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY, Washington, DC

*Docket No. 00-2347; Submitted on the Record;
Issued December 6, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a recurrence of disability on November 26, 1999 causally related to his accepted June 27, 1994 L4-5 herniated disc.

The Board has duly reviewed the case record and finds that appellant failed to establish that he sustained a recurrence of disability commencing November 26, 1999, causally related to his accepted June 27, 1994 herniated disc.

On July 7, 1994 appellant, then a 38-year-old television production engineer, filed a claim for a traumatic injury, alleging that on June 27, 1994 while lifting video equipment at work he injured his lower back. The Office of Workers' Compensation Programs accepted appellant's claim on July 17, 1996. On October 19, 1995 appellant filed a new claim, alleging that on September 28, 1995 he sustained an injury to his lower back from lifting television monitors at work. On March 4, 1996 appellant filed a claim for a recurrence commencing that day. These claims were accepted by the Office.¹

On December 2, 1999 appellant filed a claim for a recurrence, alleging that on November 26, 1999 he sustained a recurrence of disability causally related to his accepted June 27, 1994 injury. The Office denied appellant's claim on June 13, 2000, finding that the evidence of record failed to establish a causal relationship between the accepted condition and the claimed recurrence on November 26, 1999.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim, including the fact that the

¹ Appellant's July 7, 1993 claim (A25-451823) and October 19, 1995 claim (A25-476714) were doubled in 1998 with A25-451823 being the mater number.

² 5 U.S.C. §§ 8101-8193.

individual is an “employee of the United States” within the meaning of the Act and that the claim was filed within the applicable time limitations of the Act.³ An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,⁴ that the injury was sustained while in the performance of duty⁵ and that the disabling condition for which compensation is claimed was caused or aggravated by the individual’s employment.⁶ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁷

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. This burden includes the necessity of furnishing medical evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the accepted employment injury and supports that conclusion with sound medical reasoning.⁸

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.⁹

The medical evidence in support of appellant’s recurrence of disability claim consists of progress notes by Dr. William A. Hanff, a Board-certified orthopedic surgeon, covering November 30, 1999 through February 8, 2000 in which he noted pain in the lower back; and a February 15, 2000 report by Dr. James R. Howe, a Board-certified neurosurgeon, who stated that, “I reviewed an MRI [magnetic resonance imaging] of the lumbosacral spine done two months ago. The study shows advanced degenerative changes at the L5-S1 disc.” Neither Drs. Hanff nor Howe addressed the issue of a causal relationship between a recurrence of disability on November 26, 1999 and appellant’s accepted June 27, 1994 L4-5 herniated disc.

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Robert A. Gregory*, 40 ECAB 478 (1989).

⁵ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *Steven R. Piper*, 39 ECAB 312 (1987).

⁷ *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *Lourdes Davila*, 45 ECAB 139 (1993); *Louis G. Malloy*, 45 ECAB 613 (1994).

⁹ *Terry R. Hedman*, 38 ECAB 222 (1986).

None of the medical evidence provided a rationalized medical opinion explaining how a claimed recurrence of disability commencing November 26, 1999 was causally related to appellant's accepted June 27, 1994 L4-5 herniated disc. By letter dated March 17, 2000, the Office advised appellant of the specific type of evidence needed to support his recurrence claim, but such evidence has not been submitted. Therefore, the Board finds that the evidence of record is insufficient to meet appellant's burden of proof.

The decision of the Office of Workers' Compensation Programs dated June 13, 2000 is affirmed.¹⁰

Dated, Washington, DC
December 6, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ The Board notes that Item 52 in the record contains a name other than appellant in this case.