

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALEX E. TEXEIRA and DEPARTMENT OF THE NAVY,
NAVAL SUBMARINE BASE, Pearl Harbor, HI

*Docket No. 00-522; Submitted on the Record;
Issued February 14, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant established that he sustained a recurrence of disability for the period August 30 through September 5, 1997 causally related to his employment injuries.

On June 25, 1984 appellant, then a 31-year-old warehouse worker, developed back pain while lifting and stacking batteries on a pallet. On September 19, 1985 he developed back pain while placing a motor back on a pallet after it had fallen off. On June 12, 1986 appellant developed back pain after lifting a ball valve on to a pallet. After the latter employment injury, the Office of Workers' Compensation Programs accepted appellant's claim for low back strain. Appellant received continuation of pay for the period June 13 through 30, 1986. He subsequently received a light-duty position as a clerical worker.

On October 25, 1997 appellant filed a claim for a recurrence of disability. He indicated that he stopped work on August 30, 1997 and returned to work on September 6, 1997. Appellant commented that he could not sit, stand or move without pain. He noted that he had to crawl from his bed to his bathroom due to pain. Appellant contended that he had never healed from his June 12, 1986 employment injury.

In a January 12, 1998 decision, the Office rejected appellant's claim on the grounds that the evidence of record was insufficient to establish the relationship between the employment injury and his current medical condition. Appellant requested a hearing before an Office hearing representative which was conducted on June 2, 1998. In a July 23, 1998 decision, the Office hearing representative found that appellant had submitted sufficient medical evidence to require further development of the claim. She set aside the Office's January 12, 1998 decision and remanded the case for referral of appellant to a Board-certified specialist for a second opinion on the issue of causal relationship between his employment injuries and his claim for a recurrence of disability. In a May 4, 1999 decision, the Board found that appellant had not established a recurrence of disability causally related to his employment injuries.

The Board finds that appellant has not met his burden of proof in establishing that he had a recurrence of disability from August 30 through September 5, 1997 causally related to his accepted employment injuries.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which he seeks compensation was causally related to his employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.¹

In a December 17, 1997 report, Dr. Bernard Portner, a Board-certified physiatrist, noted that appellant had been treated for a work-related lumbar spinal problem since 1986. He related that appellant was seen on September 3, 1997 with a complaint that his back pain had become much worse while sitting at a computer for an extended period. Dr. Portner indicated that appellant stayed off work for several days because of severe pain. He diagnosed lumbar disc derangement with lumbar spine instability. Dr. Portner commented that appellant's clinical course was marked by exacerbations and remissions. He concluded that appellant's current complaints were directly related to the June 12, 1986 employment injury because his back complaints had never resolved. Dr. Portner stated that appellant's flare-up of back pain was simply a worsening of his previous condition secondary to sitting for a prolonged period while using a computer at work.

In a June 2, 1998 report, Dr. Portner again indicated that appellant had suffered from back pain continually since the June 12, 1986 employment injury. He noted that appellant often did not seek medical treatment because he allowed each episode to resolve by itself in a few days. Dr. Portner commented that he had not seen appellant for several years prior to 1995 when the symptoms reached a point at which they would not resolve without medical intervention. He stated that he was unaware of any additional trauma or injury, which would contribute to appellant's persistent spinal pain. Dr. Portner indicated that appellant's episodes of increased pain often occurred after some stressor, such as lifting or prolonged sitting but added that these activities were not in and of themselves new injuries. He stated that these new incidents stressed the spine, which already had latent symptoms and caused a temporary exacerbation.

The Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Gabriel W.C. Ma, a Board-certified orthopedic surgeon, for an examination and second opinion on the relationship between appellant's employment injuries and his recurrence of disability. In an October 7, 1998 report, Dr. Ma indicated that appellant had slight pain on the right side of the lumbosacral junction on palpation. He noted that appellant had full range of motion in the legs with no obvious sensory or motor deficit. Dr. Ma reported that the straight leg raising test was essentially negative. He indicated that x-ray findings were normal except for minimal narrowing of the L4-5 disc, which he suggested, might be early signs of degenerative disc disease. Dr. Ma diagnosed chronic low back pain. He noted that appellant had no objective pathology even though he had subjective complaints. Dr. Ma stated that appellant had no residual injury or documented pathology in his lower spine. He commented that appellant had no physical limitations as a result of his work-related condition. In response to an Office inquiry,

¹ *Dominic M. DeScala*, 37 ECAB 369 (1986).

Dr. Ma indicated that he had no opinion on when appellant's total disability due to the employment-related condition ceased.

Dr. Ma recommended that appellant be referred for a psychiatric examination. The Office referred appellant to Dr. Mohan Nair, a Board-certified psychiatrist. In a March 23, 1999 report, Dr. Nair diagnosed a personality disorder of schizoid, paranoid and avoidant type. He stated that the diagnosis showed appellant was awkward in interpersonal relationships, avoided confrontations and was suspicious of the actions of others toward him. Dr. Nair indicated that the diagnosed condition caused appellant to have a moderate degree of pervasive anxiety. He concluded that these conditions were not related to his employment.

Dr. Portner's conclusion that appellant's recurrence of disability was related to his employment injuries was based solely on his conclusion that appellant's complaints had never ceased since the June 12, 1986 employment injury. However, he noted that appellant did not seek medical treatment for his back condition for several years. Dr. Portner did not describe any physiological basis for appellant's complaints of back pain and did not provide any explanation on how appellant's back pain would persist to the point that it would cause a recurrence of disability 11 years after the June 12, 1986 employment injury. His reports therefore have limited probative value. Dr. Ma, on the other hand, indicated that appellant had no objective findings to support his back complaints and had no residuals from his employment injury. His report was rationalized and supported by findings from his physical examination of appellant. Dr. Ma's report therefore has more probative value than those of Dr. Portner and establish that appellant's recurrence of disability for the period August 30 through September 5, 1997 is not causally related to the accepted employment injuries.

The decision of the Office of Workers' Compensation Programs dated May 4, 1999 is hereby affirmed.

Dated, Washington, DC
February 14, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member