

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES L. MINER and DEPARTMENT OF THE NAVY,
MARINE CORPS RECRUIT DEPOT, Parris Island, SC

*Docket No. 00-2357; Submitted on the Record;
Issued July 16, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant sustained a recurrence of disability on or about April 1, 1998, causally related to his accepted employment injuries.

On September 18, 1997 appellant, a 42-year-old laborer, sustained a neck injury in the performance of duty. He explained that he hit a hole while using a riding lawn mower, which resulted in neck and back pain. Appellant ceased work on September 19, 1997 and returned to his regular duties on September 23, 1997. The Office of Workers' Compensation Programs accepted appellant's claim for cervical strain.¹

Appellant filed a notice of recurrence of disability (Form CA-2a) on April 10, 1998 alleging that he sustained a recurrence of disability on April 8, 1998 causally related to his prior employment-related injuries. He filed a second claim for recurrence of disability on August 27, 1998 due to increased neck and lower back pain.

In September 1998, Dr. Eugene A. Eline, Jr, an osteopath, diagnosed cervical and lumbar degenerative disc disease with radiculopathy. In a follow-up report dated October 7, 1998, he diagnosed herniated nucleus pulposus at L5-S1, with left lumbar radiculopathy and cervical spondylosis, with right C6-7 foraminal stenosis. In January 1999, Dr. Eline recommended that appellant undergo an anterior cervical discectomy and fusion at C6-7. He subsequently performed the recommended procedure on February 11, 1999.

After further development of the record, the Office issued a decision on March 19, 1999 denying appellant's claim for recurrence of disability. The Office explained that the evidence failed to establish that the disability beginning in April 1998 was causally related to the employment injuries of April 11 and September 18, 1997.

¹ Appellant sustained a prior employment-related neck injury on April 11, 1997, when he struck his head on a tree limb while riding a lawn mower (A06-0676478). At the time of his initial injury, it was determined that he had degenerative arthritis of the cervical spine. In accordance with Office procedure, the two claims were doubled under a single claim number (A06-0688988).

On January 3, 2000 appellant requested reconsideration. His request was accompanied by additional factual and medical evidence, including several physicians' opinions, physical therapy treatment records and operative reports for surgery performed on appellant's cervical and lumbar spine in February and July 1999. Additionally, appellant submitted a January 3, 2000 affidavit detailing the circumstances that gave rise to his claimed employment injuries.

By decision dated March 21, 2000, the Office denied modification. The Office explained that appellant failed to establish that his claimed disability after April 1998 was causally related to his accepted employment injuries. Additionally, the Office noted that based upon the medical evidence and appellant's January 3, 2000 statement, appellant clearly sustained a series of new employment incidents following the September 18, 1997 employment injury.

The Board finds that appellant failed to establish that he sustained a recurrence of disability on or about April 1, 1998 causally related to his accepted employment injuries.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.² This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury. The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.³ While a physician's opinion supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁴ Moreover, sound medical reasoning must support the physician's conclusion.⁵

In the instant case, the record contains conflicting factual and medical evidence regarding the cause of appellant's claimed disability after April 1, 1998. While Dr. Eline attributed appellant's cervical and lumbar radiculopathy and the need for surgery to the April 11 and September 18, 1997 employment incidents, he also identified what appeared to be separate traumatic injuries occurring on April 8 and August 24, 1998 as the cause of appellant's current disability. An opinion regarding causal relationship must not be speculative or equivocal and should be expressed in terms of a reasonable degree of medical certainty.⁶ The cause of appellant's current disability is further clouded by the August 7, 1998 report of Dr. Vincent Rhodes, a physician, who noted that appellant complained of low-back pain dating to March 31, 1998. Dr. Rhodes explained that, while appellant had a history of cervical arthritis, the etiology of appellant's current complaints was unclear.

² 20 C.F.R. § 10.104(b) (1999); *see Robert H. St. Onge*, 43 ECAB 1169 (1992).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁴ *Norman E. Underwood*, 43 ECAB 719 (1992).

⁵ *See Robert H. St. Onge*, *supra* note 2.

⁶ *Norman E. Underwood*, *supra* note 4.

A “recurrence of disability” is defined as “an inability to work after an employee has returned to work, caused by a *spontaneous* change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”⁷ In contrast, a “traumatic injury” is defined as “a condition of the body caused by a specific event or incident or a series of events or incidents, within a single workday or shift.” (Emphasis added.) The condition “must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence, and member or function of the body affected.”⁸

In his January 3, 2000 affidavit, appellant attributed his current disability to separate traumatic injuries sustained on April 8 and August 24, 1998 while utilizing a riding lawn mower. He, however, did not file separate claims for traumatic injuries occurring on those dates. Instead, appellant filed notices of recurrence of disability relating his current disability to his initial April 11, 1997 employment incident. His description of the events that gave rise to his current disability indicates that it was not the result of a “*spontaneous* change in a medical condition ... without an intervening injury.”⁹ (Emphasis added.) As the record fails to clearly establish a causal relationship between appellant’s accepted employment injuries and his claimed recurrence of disability on or about April 1, 1998, the Board finds that appellant has failed to meet his burden of proof.

The March 21, 2000 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 16, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

⁷ 20 C.F.R. § 10.5(x) (1999).

⁸ 20 C.F.R. § 10.5(ee) (1999).

⁹ 20 C.F.R. § 10.5(x) (1999).