

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID L. BOYD and DEPARTMENT OF THE NAVY,
PUBLIC WORKS CENTER, Norfolk, VA

*Docket No. 00-2566; Submitted on the Record;
Issued July 16, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained a recurrence of disability on or about May 1, 1998, causally related to his June 1, 1993 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing.

On June 1, 1993 appellant, then a 45-year-old boilermaker, sustained a back injury in the performance of duty. The Office accepted appellant's claim for low back strain.

Appellant filed a notice of recurrence of disability on February 23, 1999 alleging that he suffered back pain when lifting and bending at work.

The Office denied the claim on May 12, 2000 based on appellant's failure to establish a causal relationship between his claimed recurrence of disability and his June 1, 1993 employment injury.

Appellant subsequently filed a request for an oral hearing, which was postmarked June 13, 2000.

In a decision dated July 26, 2000, the Office found that appellant did not submit his request for a hearing within 30 days of the Office's May 12, 2000 decision, and therefore, he was not entitled to a review of the written record as a matter of right. Additionally, the Office considered the matter in relation to the issue involved and denied appellant's request on the basis that the issue could equally well be addressed through the reconsideration process.

The Board finds that appellant failed to establish that he sustained a recurrence of disability on or about May 1, 1998, causally related to his June 1, 1993 employment injury

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.¹ 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.² 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.³ Moreover, the physician's conclusion must be supported by sound medical reasoning.⁴

While appellant sought treatment in May 1998 for numbness in his left leg, was later diagnosed with lumbar spondylosis at L4-S1 and underwent surgery for this condition on March 2, 1999, the record is devoid of any rationalized medical opinion evidence attributing appellant's current condition to his accepted employment injury of June 1, 1993. In a report dated June 6, 1999, appellant's neurosurgeon, Dr. Sujit S. Prabhu, noted a diagnosis of lumbar radiculopathy and spondylosis and explained that the "condition can be aggravated by employment activity." Dr. Prabhu reported that appellant "did not give history of precipitating event."

In a similarly dated report, Dr. Edward Gold, a Board-certified orthopedic surgeon, diagnosed herniated disc at L4-5, L5-S1, left sciatica and chronic low back pain. He noted June 1, 1993 as the date of injury and further explained that appellant "[i]njured back lifting heavy boiler." Dr. Gold attributed appellant's current condition to his employment. He explained that appellant's "chronic low back pain [was] due to employment activity." Dr. Gold further indicated that appellant's "HNP [herniated nucleus pulposus] [and] sciatica began in May 1998 while still at work." He explained that the "need for surgery [was] due to work[-]related injury."

Dr. Prabhu's June 6, 1999 opinion is insufficient to satisfy appellant's burden of proof inasmuch as he did not specifically attribute appellant's current condition to his June 1, 1993 employment injury, but merely noted that the "condition *can be* aggravated by employment activity." (Emphasis in the original.) An opinion regarding causal relationship must not be speculative or equivocal and should be expressed in terms of a reasonable degree of medical certainty.⁵

Dr. Gold's June 6, 1999 opinion is similarly deficient. Although, he attributed appellant's current condition to his June 1, 1993 employment injury, he relied on an inaccurate history of injury. Dr. Gold reported that appellant injured his back "lifting [a] heavy boiler," but

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

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

³ *Norman E. Underwood*, 43 ECAB 719 (1992).

⁴ See *Robert H. St. Onge*, *supra* note 1.

⁵ *Norman E. Underwood*, *supra* note 3.

appellant described the cause of his June 1, 1993 injury as “fitting boiler tubes which requires lifting [and] pushing overhead in twisted position.” Furthermore, he provided no explanation of how a low back strain sustained more than five years earlier either caused or contributed to appellant’s current condition of herniated disc at L4-5, L5-S1 and left sciatica. Dr. Gold’s opinion is not supported by rationale and thus is of limited probative value.⁶ Accordingly, the Board finds that appellant has failed to meet his burden of proof.

The Board also finds that the Office properly denied appellant’s request for an oral hearing.

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of issuance of the decision. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of issuance of the decision.⁷ The Office has discretion, however, to grant or deny a request that is made after this 30-day period.⁸ In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.⁹

Appellant’s request for an oral hearing was postmarked June 13, 2000, which is more than 30 days after the Office’s May 12, 2000 decision. As such, appellant is not entitled to a hearing as a matter of right. Additionally, the Office considered whether to grant a discretionary review and correctly advised appellant that the issue of whether his claimed recurrence of disability was causally related to his June 1, 1993 employment injury could be equally well addressed by requesting reconsideration.¹⁰ Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant’s untimely request for an oral hearing.

⁶ *Jacquelyn L. Oliver*, 48 ECAB 232, 236 (1996).

⁷ 20 C.F.R. § 10.616(a) (1999).

⁸ *Herbert C. Holley*, 33 ECAB 140 (1981).

⁹ *Rudolph Bermann*, 26 ECAB 354 (1975).

¹⁰ The Board has held that a denial of review on this basis is a proper exercise of the Office’s discretion. *E.g.*, *Jeff Micono*, 39 ECAB 617 (1988).

The July 26 and May 12, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
July 16, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member