

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL RATTIE and DEFENSE LOGISTICS AGENCY,
DEFENSE CONTRACT ADMINISTRATION SERVICE, Cedar Rapids, IA

*Docket No. 00-82; Submitted on the Record;
Issued June 4, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant met his burden of proof in establishing that he sustained a recurrence of disability on or after February 26, 1997 causally related to his accepted December 22, 1993 employment injury.

On December 29, 1993 appellant then a 35-year-old command support chief filed a traumatic injury claim alleging that on December 22, 1993, he injured his back and right groin while moving a microfiche machine. The Office of Workers' Compensation Programs accepted the claim for L3-4 herniated disc and authorized the decompression and discectomy surgery at that level performed January 1, 1994. Appellant stopped work on December 23, 1994 and returned to full-time regular duty on February 14, 1995.

Appellant filed a claim for a recurrence of disability commencing February 26, 1997 causally related to his accepted December 22, 1993 employment injury. On the claim form appellant stated:

“Since returning to work after [the] original injury [plus] surgery (February 14, 1994) I was fine until this episode began in February of 1997. Since then, I get back, groin, leg [and] buttock pain. Pain persists, but has times when it is more severe than others.

“Recurrence happened after a TDY [temporary duty] trip where I spent 5 hours driving one day and 5 hours driving back the next day. I believe it is related to the original injury because after a variety of tests, both a neurosurgeon and a neurologist have told me my symptoms are caused by scar tissue from the operation from the original injury.”

In an October 15, 1997 letter, the Office advised appellant to submit additional medical and factual evidence supportive of his recurrence claim.

Appellant submitted evidence including a report from Dr. Laura Fleck, a Board-certified neurologist and clinical director, of the Allegheny Back Institute dated June 17, 1997. Dr. Fleck reported that appellant suffered a work-related accident in December 1993 and underwent a discectomy in January 1994 with significant improvement of his symptoms. She then related that appellant later began awakening at night with right gluteal pain and that in January 1997 appellant went to get up from the floor while watching a Steelers game and had acute onset of back and right groin pain. Dr. Fleck related that appellant's pain later reportedly worsened in February 1997 after a prolonged drive. She further stated:

“In regard to causality, I am unable to clearly link [appellant's] current symptoms to the previous work-related accident. According to the history, which was related to me, after [his] surgery in January 1994, he had no ongoing symptoms or functional limitations. [Appellant] was, in fact, symptom free until late 1996. I would, therefore, describe his current situation as an exacerbation of his preexisting condition.”

Appellant also submitted a report from Dr. Joseph Grennan, an attending physician dated July 11, 1997. He noted that appellant did well after his surgery in 1994 until January of that year, when he had an onset of back and right lower extremity pain, similar to the pain experienced in 1993. Dr. Grennan reviewed x-ray films dated March 24, 1997, which showed disc degeneration and a magnetic resonance imagining scan performed April 18, 1997, which showed significant degenerative changes, post surgical changes and enhanced scars. He also reviewed a computerized tomography scan performed May 22, 1997, which showed spinal stenosis of L2-3, L3-4 secondary to disc bulges and facet hypertrophy.¹ He concluded that with regard to appellant's symptoms, he had a probable post laminectomy syndrome secondary to scarring and possible discogenic low back pain.

Appellant further submitted a subsequent report from Dr. Fleck dated July 21, 1997, in which she provided an addendum to the history and physical of June 17, 1997 and stated:

“Additionally, I have addressed the causality as it relates to [appellant's] original work-related injury of 1993. On further questioning, it appears that [he] noted significant improvement with surgical intervention. [Appellant] was, however, noting ongoing though tolerable right-sided low back and gluteal symptoms. These waxed and waned on an intermittent basis, depending on his level of activity. By 1996 the gluteal symptoms became increasingly intense and more constant, particularly awakening him at nighttime. It was then, in January 1997, that the pain actually began to extend to [appellant's] right groin and leg, related to standing up after watching a Steelers game. “Based on the above additional information, it would appear to me that [appellant] never fully recovered from the work-related accident of 1993. Despite surgery, he continued to have right-sided low back and gluteal symptoms that are consistent with residual disc disease. I, therefore, do feel, within a reasonable degree of medical certainty, that [appellant's] ongoing symptoms are a result of the work-related accident he

¹ The radiology reports discussed by Dr. Grennan are also contained in the record.

suffered in December 1993. I feel that his increase in symptoms in January 1997 was merely an exacerbation of that preexisting work-related injury.”

By decision dated November 26, 1997, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on February 26, 1997, causally related to the original employment injury.

In a letter dated December 15, 1997, appellant requested an oral hearing before an Office hearing representative, which was held July 28, 1998. During the hearing, appellant testified about the employment injury and his alleged recurrent condition and further submitted factual and medical evidence to support his claim.

By decision dated May 18, 1999, the Office hearing representative affirmed the November 26, 1997 decision denying appellant’s recurrence claim. The Office hearing representative found that appellant failed to establish by rationalized medical opinion evidence that he sustained a recurrence of disability commencing February 26, 1997, causally related to the employment injury.

The Board finds that this case is not in posture for decision.

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.² 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.³ Where no such rationale is present, medical evidence is of diminished probative value.⁴

In the present case, appellant submitted a supplemental report from Dr. Fleck, supporting his assertion that he sustained a recurrence of disability causally related to the original employment injury. She indicated that following the work-related injury in 1993, appellant noted significant improvement with surgical intervention, however, he never fully recovered from the injury and suffered from ongoing though tolerable right-sided low back and gluteal symptoms. Dr. Fleck stated that in 1996 appellant’s gluteal symptoms became increasingly intense and more constant, which occasionally awakened him at night. She reported that in January 1997, his pain began to extend to the right groin and leg, related to standing up after watching a Steelers game. Dr. Fleck stated that despite surgery, appellant continued to have right-sided low back and gluteal symptoms consistent with residual disc disease.

² *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

³ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁴ *Michael Stockert*, 39 ECAB 1186-88 (1988).

Although Dr. Fleck's supplemental report is not sufficiently rationalized to discharge appellant's burden of proving that he sustained a recurrence of disability causally related to his accepted employment injury, it raises an uncontroverted inference of causal relationship sufficient to require further development of the record by the Office.⁵ Additionally, the Board notes that in this case the record contains no contrary medical opinion.

Upon remand the Office should further develop the medical evidence as necessary. After such further development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

Consequently, the May 18, 1999 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further development in accordance with this decision.

Dated, Washington, DC
June 4, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

⁵ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).