

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRIAN A. NELSON and DEPARTMENT OF JUSTICE,
IMMIGRATION & NATURALIZATION SERVICE, Souix City, IA

*Docket No. 00-1681; Submitted on the Record;
Issued June 11, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability on August 15, 1999 causally related to his August 1992 employment injury.

Appellant, a 35-year-old special agent, filed a notice of recurrence of disability on October 15, 1999 alleging that on August 15, 1999 he sustained a recurrence of disability causally related to his August 1992 employment injury. By letter dated December 6, 1999, the Office of Workers' Compensation Programs noted that appellant's original records had been destroyed and requested that appellant submit any evidence in his possession. The Office accepted appellant's claim for sacroiliac sprain on September 25, 1992. After requesting additional factual and medical evidence from appellant on January 26 and February 28, 2000, the Office denied appellant's claim for recurrence of disability on March 27, 2000.¹

The Board finds that appellant failed to meet his burden of proof in establishing a causal relationship between his recurrence of disability on August 15, 1999 and his 1992 employment injury.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his recurrence of disability commencing August 15, 1999 and his August 1992 employment injury.² This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate

¹ On appeal to the Board, appellant submitted additional new evidence as well as a copy of his record before the Office. As the Office did not review the new evidence prior to reaching a final decision, the Board will not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

² *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.³

In support of his claim for recurrence of disability, appellant submitted a narrative report from Dr. Ben Crouse, a Board-certified family practitioner, received by the Office on February 15, 2000. Dr. Crouse indicated that he first examined appellant on September 3, 1999 and diagnosed lumbosacral strain. He examined appellant on October 4, 1999 and diagnosed lumbar disc prolapse with sciatic and some loss of muscle strength. Dr. Crouse noted the history provided by appellant as including a fall at age 12. He did not indicate that appellant attributed his condition to his accepted employment injury. Dr. Crouse stated, "It would be very difficult to believe that this was a result of simple sacroiliac sprain, in a diagnosis of 1992. More likely due to a different injury, perhaps the one noted above, falling on a curb at age 12 reportedly." He concluded that appellant's current condition was not due to his employment injury nor to disease, but was instead due to the fall at age 12.

There is no other medical evidence in the record which addresses the cause of appellant's current back condition. Therefore, the weight of the medical evidence establishes that appellant's current condition is not causally related to his accepted employment injury and the Office properly denied his claim.

The March 27, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 11, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

³ See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).