

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS ANTICO and DEPARTMENT OF THE TREASURY,
BUREAU OF THE MINT, Philadelphia, PA

*Docket No. 00-1840; Submitted on the Record;
Issued June 4, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof in establishing a recurrence of disability commencing February 24, 1999 causally related to his September 25, 1998 employment injury.

On April 8, 1999 appellant, then a 45-year-old press operator filed a traumatic injury claim alleging that on September 25, 1998, he sustained an injury when an electrical panel cover from an overhead crane fell and hit him on the right shoulder. The claim was accepted for a contusion of the right shoulder. Appellant returned to work that day, following treatment by the employing establishment medical staff.

On April 18, 1999 appellant filed a recurrence of disability claim alleging that on February 24, 1999 he experienced pain and discomfort while performing his duties, which he attributed to the accepted work injury. He also filed a claim for wage-loss compensation beginning February 24, 1999 and stopped work. Appellant was not medically cleared for light duty until April 17, 2000.¹

On April 21, 1999 the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to make a determination on the claim and requested additional evidence.

Appellant submitted a May 10, 1999 report from Dr. Mark Kotapka, a Board-certified orthopedic surgeon who noted that appellant was being treated for bilateral cervical radiculopathy. Dr. Kotapka stated: "As you recall, his problem is almost certainly degenerative in nature, but does appear to have been exacerbated by his work injury." Appellant submitted a May 18, 1999 report from Dr. Peter Gross, an osteopath who noted that appellant was being treated for "complaints of right shoulder/cervical pain of unknown etiology." Dr. Kotapka

¹ The record does not reflect whether or not appellant returned to work on April 17, 2000.

further stated that appellant had been followed periodically since being injured at work on September 25, 1998. Dr. Gross stated: "At that time it was my impression that [appellant] was suffering from right trapezius myotosis.... Around March 1, 1999 [appellant] was scheduled for a[n] MRI [magnetic resonance imaging] of the cervical spine due to persistent symptoms. It was at that time that we were informed that he had cervical herniations with bilateral spurring."

By decision dated June 3, 1999, the Office denied the recurrence of disability claim on the grounds that the evidence failed to establish that the claimed recurrence was causally related to the September 25, 1998 accepted injury. By letter dated June 25, 1999, appellant requested reconsideration and submitted new evidence.

Appellant submitted a report dated June 15, 1999 from Dr. Gross who discussed appellant's treatment since September 28, 1998, when he initially presented with right shoulder and cervical pain and indicated that he had been injured at work on September 25, 1998. Dr. Gross further stated:

"He contacted the office several times over the next five months stating that he was n[o]t feeling any relief and was concerned that his condition was more serious than we initially thought. He returned on February 24, 1999 and upon physical exam[ination] it was determined that his condition had not improved as we had expected. [Appellant] was scheduled for a[n] MRI of his cervical spine to rule out any disc herniations or disc disease. The results showed that he had cervical herniations with bilateral spurring. I concluded his pain was in fact coming from these new findings. Prior to September 1998 [appellant] had not had any shoulder or cervical problems. His condition became worse over the course of treatment between September 1998 and February 24, 1999."

By merit decision dated June 30, 1999, the Office denied modification of the prior decision on the grounds that the evidence submitted in support was insufficient to warrant modification. By letter dated July 30, 1999, appellant requested reconsideration and submitted new evidence.

Appellant submitted a July 29, 1999 report from Dr. Kotapka in which he related the history of appellant's work injury on September 25, 1999 and stated that the MRI scan disclosed changes generally thought to be of a more chronic nature. He further stated that it was well recognized though that an acute injury could exacerbate a chronic condition and result in increased pain. Appellant also submitted a report from Dr. Gross dated July 22, 1999 in which he stated:

"There seems to be some miscommunication as to whether or not the injury he suffered on September 25, 1998 directly caused the right shoulder pain and cervical pain he has been experiencing since his first visit on September 28, 1998.... His diagnoses since his first visit have been a cervical strain, right trapezius myositis and cervical radiculopathy. A letter dated May 18, 1999 from my office clearly states he has had cervical and shoulder pain. [Appellant] has been seen since Monday, September 28, 1998 for his work-related injury on a regular basis...."

By merit decision dated October 28, 1999, the Office denied modification of the prior decision on the grounds that the evidence submitted in support was insufficient to warrant modification. By letter dated November 19, 1999, appellant requested reconsideration and submitted new evidence.²

Appellant submitted a November 12, 1999 report from Dr. Kotapka in which he stated:

“I am sorry for the confusion resulting from [appellant’s] visit to my office for an evaluation of his visit on April 5, 1999 and the subsequent communications related to his workers’ compensation claim.

“As I stated in my previous letter of July 29, 1999, I did not relate the events of [appellant’s] work injury in a factual manner. This was based, obviously, on my concern for his medical condition at the time and not as part of a fact-finding mission in support of his workers’ compensation claim. I have stated in my July 29[, 1999] letter that [appellant] had related to me that his injury was to the shoulder and neck, when he was struck from above by an object that fell. I have stated ... that although his MRI scan showed no evidence of acute spinal injury, it was certainly well known that a chronic degenerative condition could be exacerbated by such an injury.”

By merit decision dated February 9, 2000, the Office denied modification of the prior decision on the grounds that the evidence submitted in support was insufficient to warrant modification. By letter dated March 7, 2000, appellant, through counsel requested reconsideration and submitted new evidence.

Appellant’s counsel submitted reports dated January 3 and 28, 2000 from Dr. Steven Valentino, an osteopath who evaluated appellant on these dates for complaints of neck and bilateral arm symptoms. In his January 3, 2000 report, Dr. Valentino stated that he consulted with appellant regarding his symptoms, reviewed his medical file and conducted a medical examination. He reported that appellant indicated his symptoms began on September 25, 1998, when the accepted employment injury occurred. Dr. Valentino related that “a 19-pound rectangular electric panel which was duct taped to the top of a crane fell 15 to 20 feet and hit the right side of his neck causing a flexion mechanism of injury to the cervical spine. He complained of neck pain which increased over the ensuing weekend.” Dr. Valentino further stated that appellant continued to work until February 1999, when his symptoms progressively

² The Board notes that appellant made his request for reconsideration through correspondence with his state Senator.

increased. In his January 28, 2000 report, he diagnosed cervical degenerative disc disease with radiculopathy and peripheral neuropathy with history of diabetes. Dr. Valentino then stated: “His cervical radiculopathy and exacerbation of cervical degenerative disc disease is directly apportioned to his history of work injury.”

Appellant’s counsel also submitted a report dated March 20, 2000 from Dr. Gross in which he stated that he had treated appellant beginning in September 1998 due to a work-related injury and that his medical status and prognosis had remained unchanged. He reported, however, that appellant could return to work on April 17, 2000 with some work restrictions.

By merit decision dated March 21, 2000, the Office denied modification of the prior decision on the grounds that the evidence submitted in support was insufficient to warrant modification.

The instant appeal follows.

The Board finds that appellant has failed to meet his burden of proof in establishing a recurrence of disability commencing February 24, 1999 causally related to his September 25, 1998 employment injury.

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.³ 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.⁴ Where no such rationale is present, medical evidence is of diminished probative value.⁵

In the instant case, no rationalized medical opinion was submitted that supports the April 18, 1999 claim alleging a causal relationship between appellant’s alleged recurrence of disability commencing February 24, 1999 and his September 25, 1998 employment injury. In the June 15, 1999 report, Dr. Gross stated that appellant was treated on February 24, 1999 and scheduled for a MRI scan of his cervical spine, which later showed cervical herniations with bilateral spurring. He then stated that appellant’s condition became worse over the course of treatment between September 1998 and February 24, 1999. This report fails to set forth the complete medical background of appellant, address his disabling condition commencing February 24, 1999 or explain the nature of the relationship between the condition on February 24, 1999 and the September 25, 1998 employment injury. In the July 22, 1999 report, Dr. Gross discussed appellant’s symptoms of February 24, 1999, which allegedly caused disability; however, he did not conclusively relate such symptoms to the injury on September 25,

³ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

⁴ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁵ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

1998 or state that appellant's condition was in any way disabling. In the January 28, 2000 report, Dr. Valentino stated that appellant's cervical radiculopathy and exacerbation of cervical degenerative disc disease was directly apportioned to his employment injury, however, he did not provide a medical explanation showing a causal relationship between the claimed recurrence and the accepted employment injury.

The medical evidence in this case indicates that appellant was being treated for a cervical condition thought to be of a chronic nature, and no medical rationale was provided to explain how appellant's current condition is causally related to the accepted employment injury. An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁶ Appellant failed to submit rationalized medical evidence establishing that his claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied his claim for compensation.

The decisions of the Office of Workers' Compensation Programs dated March 21 and February 9, 2000 and October 28, June 30 and 3, 1999 are affirmed.

Dated, Washington, DC
June 4, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

⁶ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).