

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JERRY E. SUMPTER and DEPARTMENT OF LABOR,
MINE SAFETY & HEALTH ADMINISTRATION, Mt. Hope, WV

*Docket No. 00-2336; Submitted on the Record;
Issued June 12, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant sustained a recurrence of disability commencing August 11, 1999, causally related to his accepted February 22, 1999 cervical and lumbar strain injuries; and (2) whether appellant sustained a new back injury on August 11, 1999, causally related to factors of his federal employment.

The Office of Workers' Compensation Programs accepted that on February 22, 1999 appellant, then a 55-year-old mine safety and health inspector, sustained cervical and lumbar strains on February 22, 1999 when he slipped and fell on ice.¹ Appellant stopped work on the date of injury and returned to regular duty on March 1, 1999.

On July 30, 1999 appellant was seen at a regional cancer center for follow up of preexisting polycythemia. At that time he complained of low back pain and spasm and x-rays demonstrated only lipping of his lumbar spine but no evidence of disc problems. The examining physician opined that appellant might have "compression fractures related to P. vera [polycythemia vera] or hyper expansive marrow and he should have an MRI [magnetic resonance imaging] scan of his spine."

On August 12, 1999 appellant filed a claim alleging that on August 11, 1999 he sustained a recurrence of disability causally related to his February 22, 1999 muscle strain injuries when he was "crawling in low part of coal mine, I then straightened up in a higher location and felt a sharp pain in my low back and neck."²

¹ Appellant had a prior history of back injury in a motor vehicle accident three to five years earlier with two bulging discs in his neck.

² The Office, however, developed this case as two separate claims using the same claim form; one for a recurrence on August 11, 1999 (No. 11-0170612) and one for a new injury on August 11, 1999 (No. 11-0178344).

By letter dated August 20, 1999, the Office requested further information including a physician's opinion supporting causal relation with his February 22, 1999 injuries. However, no such evidence was submitted.

By decision dated September 21, 1999, the Office denied appellant's recurrence of disability claim, finding that he failed to submit rationalized medical evidence sufficient to establish his claim.

Appellant requested reconsideration of the September 21, 1999 decision. In support he submitted a September 15, 1999 computerized tomography scan report revealing a central disc herniation at L5-S1 and a September 5, 1999 report of MRI scans of the cervical, thoracic and lumbar spines revealing degenerative disc pathology at C6-7, mild extrinsic thecal sac compression at the C5-6 and C6-7 levels by tiny marginal osteophytes, mild encroachment on the left C6-7 neural foramen by tiny marginal osteophytes, mild thoracic dextroscoliosis with apex convexity at C6 vertebral body level, no evidence of fractures of the thoracic spine and mild posterior bulging of mildly desiccated discs at L4-5, L5-S1 without evidence of spinal stenosis or nerve root impingement. Also submitted were an emergency room intake report regarding his February 22, 1999 injury and form treatment reports dealing with that injury.

By decision dated January 14, 2000, the Office denied modification of the September 21, 1999 decision, finding that the evidence submitted in support was insufficient to warrant modification. The Office found that none of the medical evidence submitted contained a rationalized medical opinion relating appellant's condition on August 11, 1999 to his February 22, 1999 injuries.

Appellant requested reconsideration of the January 14, 2000 decision and in support he submitted a February 3, 2000 letter, regarding his prior motor vehicle accident in 1994 and a report of a November 21, 1994 MRI scan, which was noted as revealing mild disc bulging at C6-7. A physical therapist's 1994 report and a copy of appellant's 1994 claim form were also submitted.

By decision dated April 6, 2000, the Office denied modification of the January 14, 2000 decision, finding that the evidence submitted in support was insufficient to warrant modification. The Office noted that appellant claimed a new injury on August 11, 1999 due to crawling through a low part of coal mine, straightening up in a higher location and then feeling a sharp pain in his low back and neck.

By letter dated April 18, 2000, appellant described his injury of August 11, 1999, noting that he crawled in a low area of the coal mine performing his inspection job, that when he straightened up he felt a sharp pain in his lower back and neck and that the immediate effects were stiffness and a tightening of his back muscles. Appellant claimed that for two days thereafter he was unable to bend or walk without severe pain and he indicated that an MRI scan was performed on September 5, 1999.

By decision dated May 16, 2000, the Office rejected appellant's claim for new injury on August 11, 1999 finding that the medical evidence submitted was insufficient to establish a relationship between appellant's current condition and a work injury of August 11, 1999. The

Office found that no rationalized medical opinion evidence was submitted which supported causal relation with any August 11, 1999 employment factor and that no objective change in appellant's condition on August 11, 1999 had been established.

Thereafter, appellant submitted further medical evidence. As this evidence was not before the Office at the time of its May 16, 2000 decision, it is not now before the Board on this appeal.³

The Board finds that appellant has failed to establish that he sustained a recurrence of disability commencing August 11, 1999, causally related to his accepted February 22, 1999 cervical and lumbar strain injuries.

As used in the Federal Employees' Compensation Act,⁴ the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.⁵ An individual who claims a recurrence of disability due to an accepted employment 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. 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 reasoning.⁶ Causal relationship is a medical issue and can be established only by rationalized medical evidence.⁷

In support of his claim of recurrent disability, appellant submitted a July 30, 1999 medical report noting the existence of back pain and spasm at that time and finding that appellant might have vertebral compression fractures due to his P. vera. As this report identified low back pain and spasm as preexisting the alleged recurrence of disability, it does not support a recurrence of such symptoms as occurring on August 11, 1999. Moreover, as this report suggests a relationship between appellant's P. vera and his back pain at that time, it also does not support any relationship with his February 22, 1999 accepted cervical and lumbar strains. As appellant submitted no other probative medical evidence, the Office properly denied his claim.

Thereafter, appellant submitted radiographic reports identifying the existence of degenerative disc and vertebral pathology. However, none of this evidence contained any medical opinion causally relating these degenerative processes to appellant's February 22, 1999 soft tissue muscular strain injuries. Therefore, none of this evidence supports appellant's recurrence claim. Additionally, submitted were several form reports regarding appellant's

³ See 20 C.F.R. § 501.2(c).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948).

⁶ *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. §§ 10.104(a) and (b) and 10.104(1) and (2).

⁷ *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

February 22, 1999 treatment. As this evidence preexisted appellant's alleged recurrence of disability and did not address any recurrence of disability, it is not probative on that issue. Therefore, the Office properly denied modification on the grounds that this evidence was insufficient to warrant modification of the prior decision.

Appellant subsequently submitted a personal statement about his 1994 motor vehicle accident, a 1994 physical therapist's report and a 1994 MRI scan report. As this evidence addresses a 1994 injury, it is not now probative on a claimed August 11, 1999 recurrence of disability as related to February 22, 1999 muscular strain injuries. Further, a report from a physical therapist does not constitute probative medical evidence under the Act.⁸

In this case, none of the medical evidence appellant submitted in support of his recurrence claim contained a physician's rationalized opinion supporting a causal relationship of his condition on or after August 11, 1999 with the February 22, 1999 muscular strains. Therefore, he has failed to establish his recurrence claim.

The Board further finds that appellant has failed to establish that he sustained a new back injury on August 11, 1999, causally related to factors of his federal employment.

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.⁹ A person who claims benefits under the Act¹⁰ has the burden of establishing the essential elements of his claim.¹¹ Appellant must establish that he sustained an injury in the performance of duty and that his disability resulted from such injury.¹² As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.¹³ The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.¹⁴ Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.¹⁵

In the present case, appellant described his injury of August 11, 1999 as occurring after he had crawled in a low area of the coal mine and then stood up and felt sharp lower back and neck pain. However, the medical evidence he submitted in support of this claim was the same evidence submitted in support of the recurrence claim. As noted above, this evidence lacked any

⁸ *Jennifer L. Sharp*, 48 ECAB 209 (1996); *Thomas R. Horsfall*, 48 ECAB 180 (1996).

⁹ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537-39 (1953).

¹⁰ 5 U.S.C. §§ 8101-8193.

¹¹ *Nathaniel Milton*, 37 ECAB 712, 722 (1986); *Paul D. Weiss*, 36 ECAB 720-21 (1985).

¹² *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

¹³ *Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

¹⁴ *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

¹⁵ *Bruce E. Martin*, 35 ECAB 1090, 1093 (1984); *Dorothy P. Goad*, 5 ECAB 192-93 (1952).

physician's rationalized medical opinion diagnosing a specific condition or injury resulting from appellant's activities on August 11, 1999 or discussing causal relation. Mere diagnostic radiological reports revealing osteodegenerative conditions do not establish causal relation with any specific employment factor of employment. Therefore, they are insufficient to establish the occurrence of an occupational injury or illness. As appellant failed to submit any rationalized medical evidence establishing that he sustained a new injury on August 11, 1999, he has not established his new injury claim.

Accordingly, the May 16, April 6 and January 14, 2000 and September 21, 1999, decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
June 12, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member