

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of JAMES E. GENTRY and DEPARTMENT OF JUSTICE,  
FEDERAL BUREAU OF PRISONS, Beaumont, TX

*Docket No. 00-1533; Submitted on the Record;  
Issued May 11, 2001*

---

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant established a recurrence of disability beginning September 18, 1999 that was causally related to his May 24, 1996 employment injury.

On May 24, 1996 appellant, then a 33-year-old prison guard, was crossing a rope bridge during a set of maneuvers when he slipped and fell approximately 15 feet to the ground. He complained of pain in the lower back and left hip area. Appellant stopped working that day and returned to work on May 29, 1996. The Office of Workers' Compensation Programs accepted appellant's claim for lumbar strain.

On September 21, 1999 appellant filed a claim for recurrence of disability. He indicated that on September 18, 1999 he was bending over to pick up grass after mowing his lawn when he felt severe pain in the same area that he had injured on May 24, 1996.

In an October 20, 1999 decision, the Office denied appellant's claim on the grounds that the injury he sustained was a new injury at home and therefore was not a recurrence of a prior injury.

In a January 19, 2000 letter, appellant requested reconsideration. In a March 21, 2000 decision, the Office denied appellant's request for modification of the decision.

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

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which he seeks compensation was causally related to his employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.<sup>1</sup>

---

<sup>1</sup> *Dominic M. DeScala*, 37 ECAB 369 (1986).

After appellant's injury, Dr. Mustafa Kajan, a Board-certified radiologist, reported that x-rays showed degenerative changes and early disc disease at L2-3 with spondylolisthesis, and mild spinal bifida occulta at S1. In an October 9, 1999 report, Dr. Thomas M. Smith, a Board-certified orthopedic surgeon, stated that a magnetic resonance imaging (MRI) scan showed severe degenerative changes in several lumbar discs in appellant's lower back, as well as spinal stenosis in the mid-lumbar region.

Dr. Smith remarked that the degenerative changes were unusual, given appellant's age. He indicated that appellant's fall could have initiated the degenerative changes that seemed to have accelerated in appellant's back. Dr. Smith stated that the fall occurred in 1996, which gave adequate time for the changes to take place that were seen on the MRI scan.

Dr. Smith's report relates appellant's condition in 1999 to the employment injury three years previously. His report is not contradicted by any other medical evidence of record. While the report is not sufficiently well rationalized to establish that appellant had a recurrence of disability due to the employment injury, it is sufficient to require further development of the medical evidence.<sup>2</sup>

The Office found the September 18, 1999 incident at appellant's home to be an independent intervening cause of appellant's recurrence of disability. The Office, however, did not consider whether the September 18, 1999 incident was a consequential injury caused by the effects of the May 24, 1996 employment injury. In the case of *John R. Knox*,<sup>3</sup> regarding consequential injury, the Board stated:

"It is an accepted principal of workers' compensation law, and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct. As is noted by Professor Larson in his treatise: '[O]nce the work-connected character of any injury, such as a back injury, has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.... [S]o long as it is clear that the real operative factor is the progression of the compensable injury, associated with an exertion that in itself would not be unreasonable [under] the circumstances. A different question is presented, of course, when the triggering activity is itself rash in the light of claimant's knowledge of his condition.'"<sup>4</sup> (citations omitted)

In this case, the Office asserted that the September 18, 1999 incident at appellant's home was an independent intervening cause of the injury. However, there is no medical evidence that

---

<sup>2</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>3</sup> 42 ECAB 193 (1990).

<sup>4</sup> *Id.* at 196.

appellant's disability after September 18, 1999 was due solely to the incident at home and was unrelated to the May 24, 1996 employment injury.

On remand, the Office should refer appellant, together with a statement of accepted facts and the case record, to an appropriate specialist for an examination. The specialist should provide a diagnosis of appellant's condition and give his opinion, with rationale on whether appellant's condition after September 18, 1999 was causally related to May 24, 1996 employment injury. After further development as it may find necessary, the Office should issue a *de novo* decision.

The March 21, 2000 and October 20, 1999 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, DC  
May 11, 2001

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member