

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANTIAGO B. ABREO and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Big Springs, TX

*Docket No. 01-1110; Submitted on the Record;
Issued September 11, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant sustained a recurrence of disability beginning October 1, 1996 causally related to his employment injuries.

This case has previously been on appeal before the Board. By decision dated December 23, 1998, the Board found that the Office of Workers' Compensation Programs properly reduced appellant's compensation effective March 3, 1996 on the basis of his capacity to earn wages as an electronics worker for four hours per day. The Board noted that appellant's attending physician, Dr. Charles M. Younger, a Board-certified orthopedic surgeon, set forth work tolerance limitations in a February 14, 1995 report that would not preclude appellant from performing the duties of an electronics worker. The Board found that later reports from Dr. Younger indicating that appellant was totally disabled considered factors other than appellant's physical capability, namely his age and experience.¹

On January 31, 2000 appellant filed a claim for a recurrence of disability on October 1, 1996 related to his March 16, 1970 employment injury.² Appellant stated, "My condition is now deteriorated to the point that at times, I cannot get out of bed for days at a time."

Appellant submitted two reports from Dr. Younger. In a report dated February 25, 1999, Dr. Younger stated that appellant, when seen for a recheck that day, stated that he was somewhat worse than when last seen 13 months earlier. Appellant complained that he had fallen 3 or 4 times, that he had been "dragging his left leg some due to discomfort with weight bearing," that he was only able to sit for about 1 hour at a time before having to get up and change positions, and that he was able to walk and stand for up to 30 minutes at a time before changing positions. Dr. Younger described appellant's findings on physical examination and concluded: "Objectively, he appears to be about the same. Subjectively, he is a little worse than 13 months

¹ Docket No. 97-428.

² Appellant also sustained employment injuries, also to his back, on September 29, 1970 and April 4, 1973.

ago as one would expect as he has gained another year.” In a report dated March 1, 1999, Dr. Younger stated:

“I have reviewed this chart and I think, at present, he is unable to work four hours per day as an electronic worker. From a practical standpoint, no one is going to hire any one to work only four hours per day. If he did this, it would not be four continuous hours, but he may be able to work an hour, rest a while, work another hour, rest a while, and might be able to get three to four hours in during the workday. I feel his condition prohibits him from performing any type of work that would be meaningful throughout a workday.”

By letter dated March 3, 2000, the Office advised appellant that he must follow the appeal rights provided with its decision determining his loss of wage-earning capacity, and that his claim for a recurrence of disability could not be adjudicated.

Appellant submitted a March 1, 2000 report from Dr. Younger describing his work tolerance limitations. Dr. Younger indicated that appellant could sit two hours, walk or stand less than one hour and lift zero hours. Dr. Younger indicated that appellant could not work eight hours per day because of severe back and leg pain.

By decision dated August 23, 2000, the Office found that the evidence was not sufficient to support that the claimed recurrence of disability was causally related to appellant’s approved injury.

The Board finds that appellant has not established that he sustained a recurrence of disability beginning October 1, 1996 causally related to his employment injuries.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.³ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁴

The reports from Dr. Younger are not sufficient to establish a recurrence of disability causally related to appellant’s employment injuries. The February 25, 1999 report indicates that, objectively, appellant’s condition remained about the same. The March 1, 1999 report repeats the same defect noted by the Board on the prior appeal to be present in this doctor’s prior reports: it considers a factor other than appellant’s physical capability, namely the willingness of employers to hire someone on a part-time basis. As noted in the Board’s decision on the prior appeal, a rehabilitation counselor, not a physician, is the appropriate person to assess such factors.

³ *John E. Blount*, 30 ECAB 1374 (1974).

⁴ *Frances B. Evans*, 32 ECAB 60 (1980).

In addition, Dr. Younger, by reporting that appellant's physical condition remained the same but that subjectively he was worse, is essentially repeating appellant's contention that he now hurts too much to work. In the absence of a worsened physical condition, this is not a basis for accepting a claim for a recurrence of disability.⁵ In addition, Dr. Younger's reports do not indicate that any worsening of appellant's condition, even the subjective one, is causally related to his employment injuries. Dr. Younger's February 25, 1999 report appears to attribute this worsening instead to aging.

The decision of the Office of Workers' Compensation Programs dated August 23, 2000 is affirmed.

Dated, Washington, DC
September 11, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

⁵ *Anna Chrun*, 33 ECAB 829 (1982).