

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD T. ZYATS and DEPARTMENT OF THE ARMY,
ARMY DEPOT, Tobyhanna, PA

*Docket No. 01-908; Submitted on the Record;
Issued April 25, 2002*

DECISION and ORDER

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

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on or after March 9, 1999 due to his March 9, 1972 employment injury.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability on or after March 9, 1999 due to his March 9, 1972 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.¹ 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.² Where no such rationale is present, medical evidence is of diminished probative value.³

On March 9, 1972 appellant, then a 35-year-old sheet metal worker, sustained a mild herniated L5-S1 disc and left hip osteoarthritis when he was moving heavy material at work. He stopped work for a few days after March 9, 1972 and began working in a limited-duty job; he later returned to regular duty. Appellant retired from the employing establishment on disability retirement effective May 31, 1996.⁴ He claimed that he sustained a recurrence of disability on and after March 9, 1999 due to his March 9, 1972 employment injury. By decision dated November 30, 1999, the Office of Workers' Compensation Programs denied appellant's claim on

¹ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

² *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

³ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁴ Appellant underwent a total left hip replacement in January 1993. By award of compensation dated January 13, 1994, the Office granted appellant a schedule award for a 40 percent permanent impairment of his right leg.

the grounds that he did not meet his burden of proof to establish that he sustained a recurrence of disability on or after March 9, 1999 due to his March 9, 1972 employment injury. The Office determined that the weight of the medical evidence rested with the opinion of Dr. Michael C. Raklewicz, a Board-certified orthopedic surgeon, who served as an impartial medical examiner.⁵ By decision dated January 3, 2001, the Office affirmed its November 30, 1999 decision.

In June 1999 the Office determined that there was a conflict in the medical opinion between Dr. Joseph G. Cesare, appellant's attending Board-certified orthopedic surgeon, and Dr. Peter A. Feinstein, a Board-certified orthopedic surgeon acting as an Office referral physician, regarding whether appellant had employment-related disability on or after March 9, 1999.⁶ In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Federal Employees' Compensation Act, to Dr. Raklewicz for an impartial medical examination and an opinion on the matter.⁷

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁸ The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Raklewicz, the impartial medical specialist selected to resolve the conflict in the medical opinion. The report of Dr. Raklewicz establishes that appellant did not sustain a recurrence of disability on or after March 9, 1999 due to his March 9, 1972 employment injury.

In a report dated October 18, 1999, Dr. Raklewicz indicated that appellant had full range of lumbar spine motion, good range of left hip motion and some decreased right hip motion. He indicated that appellant had significant degenerative disease of his right hip. Dr. Raklewicz determined that appellant did not have any continuing residuals of his March 9, 1972 employment injury. His opinion is based on a proper factual and medical history and contains a detailed description of the findings on examination, including the results of diagnostic testing. Dr. Raklewicz provided medical rationale for his opinion by explaining that the type of injury that appellant sustained on March 9, 1972 would have resolved. He noted that appellant's continuing problems were due to his nonwork-related right hip problem.⁹

⁵ By decision dated April 4, 2000, the Office denied appellant's request for merit review. Appellant has not requested an appeal of this decision before the Board.

⁶ In reports dated between January and July 1999, Dr. Cesare indicated that appellant was disabled and suggested that this disability was due to employment-related back and hip conditions. In a report dated June 4, 1999, Dr. Feinstein determined that appellant's back and hip problems were not due to the March 9, 1972 employment injury but rather were due to the natural aging process and nonwork-related degenerative disease.

⁷ Section 8123(a) of the Act provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. § 8123(a).

⁸ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

⁹ Appellant's claim was accepted for osteoarthritis of the left hip. The record does not contain evidence showing that appellant's right hip condition is employment related.

Appellant submitted a December 22, 1999 report in which Dr. Cesare indicated that he had complained of back and right leg symptoms since 1972. Dr. Cesare diagnosed lumbosacral spine syndrome with right radicular pain, progressive arthritis of the right hip, and peripheral neuropathy. He stated, "In my opinion, in light of his continued complaints regarding his back and right leg, I would relate his present symptoms and underlying arthritic changes to the injury sustained in 1972."

This report, however, is of limited probative value on the relevant issue of the present case in that Dr. Cesare did not provide adequate medical rationale in support of his conclusion on causal relationship.¹⁰ Dr. Cesare suggested that appellant's continuing symptoms showed the existence of an employment-related recurrence of disability, but the Board has held that the mere fact an employee experiences such symptoms does not show causal relationship between the employment injury and the claimed disability.¹¹ Appellant's claim was accepted for a mild herniated L5-S1 disc and left hip osteoarthritis sustained on March 9, 1972 and Dr. Cesare has not explained how these conditions could cause disability 27 years after the fact. He has not explained why appellant's problems were not solely due to his nonwork-related degenerative disease of the right hip.¹²

For these reasons, appellant did not meet his burden of proof to establish that he sustained a recurrence of disability on or after March 9, 1999 due to his March 9, 1972 employment injury.

The decision of the Office of Workers' Compensation Programs dated January 3, 2001 is affirmed.

Dated, Washington, DC
April 25, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹⁰ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

¹¹ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹² Appellant also submitted December 1999 and May 2000 reports of Dr. Cesare, but these did not contain any opinion on the cause of appellant's problems.