

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CASIMIR LENGA and DEPARTMENT OF AGRICULTURE  
MONONGALIELEA NATIONAL FOREST, Elkins, WV

*Docket No. 01-2201; Submitted on the Record;  
Issued April 26, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability.

The Office of Workers' Compensation Programs accepted that on April 12, 1993, appellant, then a 43-year-old equipment operator, sustained an injury when he slipped and fell on a rock covered with pine needles. The Office accepted appellant's claim for herniated disc L4-5 and authorized an L4-5 discectomy in April 1993 and a second procedure for a left L4-5 microdiscectomy in August 1993. Appellant stopped work on April 13, 1993 and returned to light duty on May 16, 1994. Appellant returned to his previous position of heavy equipment operator on February 28, 1995 with some modifications. On December 19, 1995 appellant was returned to full duty.<sup>1</sup>

In an October 19, 1999 report, Dr. John Henderson, a Board-certified family practitioner and appellant's treating physician, stated that he had been following appellant for four years. Dr. Henderson stated that appellant was suffering from chronic back pain, which was a result of lumbar disc disease. He also stated that appellant had undergone surgery, however, it was unsuccessful. Dr. Henderson noted that further surgery was not indicated and stated appellant's pain had gradually worsened over time. Furthermore, he opined that appellant's occupation as a heavy equipment operator, contributed to further deterioration and offered that if appellant continued to work, his pain and lower extremity numbness could worsen. Dr. Henderson stated

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<sup>1</sup> Appellant's physician indicated that he could perform his regular work on December 19, 1995.

that it would be in appellant's best interest to stop working in his present occupation, as there was no hope that appellant would ever improve and if he continued to work, it would only get worse.<sup>2</sup>

On November 10, 1999 appellant filed a notice of recurrence of disability alleging that he sustained a recurrence of his April 12, 1993 injury on October 19, 1999. Appellant did not lose time from work and continued to work in his position as a heavy equipment operator.

In a letter dated March 3, 2000, the Office advised appellant of the additional factual and medical information needed to establish his claim.

In a December 1, 2000 decision, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that he sustained a recurrence of disability on October 19, 1999 causally related to the April 12, 1993 accepted employment injury.

By letter dated March 2, 2001, appellant requested reconsideration and enclosed additional evidence comprised of previously submitted reports and progress notes from December 20, 1995 to March 29, 2000.<sup>3</sup> He also submitted two new medical reports from Dr. Henderson.

In his February 23, 2001 report, Dr. Henderson repeated the contents of his October 19, 1999 report. He added, "this pain is a result of lumbar disc disease 'probably secondary to a work-related injury in 1993.'"

In the undated report, Dr. Henderson related that appellant had a component of arthritis contributing to his pain and it would be better if he were to work in a drier climate such as the Southwest.

By merit decision dated June 29, 2001, the Office denied modification of the December 1, 2000 decision.

The Board finds that appellant has not established that he sustained a recurrence of disability beginning October 19, 1999 due to his April 12, 1993 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.<sup>4</sup> This burden includes the necessity of furnishing medical evidence from a

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<sup>2</sup> In a June 10, 1996 attending physician's report, Dr. Henderson checked the box "yes" in regard to whether there was evidence of concurrent or preexisting injury or disease or physical impairment. He added, "history of lumbar disc disease." Dr. Henderson further diagnosed chronic low back pain and lumbar disc disease. He answered "no" to the question of whether he believed appellant's condition was caused or aggravated by an employment activity.

<sup>3</sup> The signature is illegible, however, it appears similar to Dr. Henderson's signature in previous reports.

<sup>4</sup> *Lourdes Davila*, 45 ECAB 139 (1993); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>5</sup> An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on an appellant's unsupported belief of causal relation.<sup>6</sup>

In this case, the Office accepted that appellant sustained a herniation at L4-5 in the performance of duty on April 12, 1993. Appellant filed a notice of recurrence of disability commencing October 19, 1999. The Office requested that appellant provide medical evidence that would establish a causal relationship between his current conditions and his present disability.

In support of his claim for recurrence, appellant provided an October 19, 1999 report from Dr. Henderson, which provided a diagnosis of chronic low back pain resulting from lumbar disc disease. He noted that appellant's pain had worsened and his occupation contributed to the deterioration of his problem. Dr. Henderson's undated report did not address the cause of appellant's disability for work on or after October 19, 1999, rather, he suggested an alternate location to improve appellant's condition. These reports are of limited probative value as they did not address how the accepted injury caused disability on or after October 19, 1999 and without any further explanation or rationale, they were insufficient to establish a causal relationship.<sup>7</sup> Dr. Henderson's October 23, 2001 report, was similar to his October 19, 1999 report. Dr. Henderson added the pain was a result of the lumbar disc disease "probably secondary" to the work-related injury on April 12, 1993. This report without further explanation or rationale was of limited probative value as Dr. Henderson failed to offer a rationalized opinion to explain why he originally stated in his June 10, 1996 report that appellant's condition was not caused or aggravated by his employment activity and subsequently changed his mind.<sup>8</sup>

Appellant also submitted progress notes from his treating physician. Most of these predated his claim for recurrence. Two of the notations for January 3 and March 29, 2000, did not address appellant's condition in relation to his employment injury and are not probative.<sup>9</sup>

Appellant submitted additional reports predating his claim for recurrence. They included: a report from Dr. Henderson, undated, indicating that appellant could return to full

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<sup>5</sup> See *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

<sup>6</sup> *Ausberto Guzman*, 25 ECAB 362 (1974).

<sup>7</sup> *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

<sup>8</sup> The opinion of the physician must be based upon a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion. See *James Mack*, 43 ECAB 321 (1991).

<sup>9</sup> *Id.*

duty on December 19, 1995; a June 10, 1996 report from Dr. Henderson; a May 23, 1996 report from Dr. James D. Weinstein; progress notes from December 20, 1995 to July 15, 1999; a May 6, 1996 report from Dr. Henderson and diagnostic reports. While these reports provide bridging evidence of medical conditions after his April 12, 1993 employment injury, they are insufficient to establish appellant's claim for disability on or after October 19, 1999, as they cannot describe his condition after that date and relate it to his employment injury.

Accordingly, the Board finds that appellant has not met his burden of proof in this case as he has not submitted a reasoned medical opinion explaining why his recurrence of disability beginning October 19, 1999 was caused or aggravated by the April 12, 1993 employment injury.<sup>10</sup>

The June 29, 2001 and December 1, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
April 26, 2002

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>10</sup> The Board notes that subsequent to the Office's June 29, 2001 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).