

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ERNEST T. TIRCUIT and DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE, New Orleans, LA

*Docket No. 02-49; Submitted on the Record;
Issued April 9, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability on January 26, 2001 causally related to his accepted February 25, 1987 employment injury.

The Board has reviewed the case record and finds that appellant has failed to establish that he sustained a recurrence of disability on January 26, 2001 causally related to his accepted February 25, 1987 employment injury.

On February 25, 1987 appellant, then a 47-year-old employing establishment employee, filed a traumatic injury claim alleging that he hurt his neck and shoulders on that date as a result of a motor vehicle accident.

The Office of Workers' Compensation Programs accepted appellant's claim for subluxations of the spine at C5, C6 and C7.

On March 30, 2001 appellant filed a claim alleging that he sustained a recurrence of disability on January 26, 2001.

In a July 11, 2001 decision, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on January 26, 2001 causally related to his February 25, 1987 employment injury.¹

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted

¹ The Board notes that, on appeal, appellant has submitted additional evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision. *See Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501.2(c).

injury. This burden requires 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 who supports that conclusion with sound medical reasoning.²

The only evidence submitted by appellant in support of his recurrence of disability claim consisted of a medical report and a letter from Dr. Patrick Bolerjack, a chiropractor. In his February 2, 2001 report, Dr. Bolerjack noted appellant's complaints of neck pain and stiffness, headaches, dizziness, sleeping problems and upper thoracic spinal pain with stiffness. Dr. Bolerjack noted his findings on physical and x-ray examination. Further, he noted that his x-ray findings were not evident in 1987 and that they were consistent with the long-term effects of an old injury of over 10 years in duration. Dr. Bolerjack also noted that his physical examination findings were consistent with an old injury that the body had compensated for over many years, but that it could no longer do so. He opined that, due to the lack of any other causes and the time it took for the present condition to evolve, appellant's current problems were a result of his 1987 motor vehicle accident. Dr. Bolerjack diagnosed nonallopathic lesions of the cervical spine, degeneration of cervical intravertebral disc, muscle spasm and headaches. He noted appellant's future medical treatment.

Dr. Bolerjack's May 9, 2001 letter revealed that the current ICD-9 codes no longer contained specific subluxation codes. He further noted that the wording in the description was replaced by nonallopathic lesions of the spine and that was why he had not referred to subluxations in this case.

Although Dr. Bolerjack opined that appellant's current medical conditions were caused by his February 25, 1987 employment injury, his opinion is insufficient to satisfy appellant's burden. The Board has previously held that the opinion of a physician that a condition is causally related to an employment injury because the employee was asymptomatic before the employment injury is insufficient, without supporting medical rationale, to establish causal relationship.³ Dr. Bolerjack failed to provide any medical rationale explaining how or why appellant's current conditions were causally related to his 1987 employment injury. Thus, his opinion is of little probative value. Further, as appellant sought compensation for time loss from work due to his alleged recurrence of disability, Dr. Bolerjack did not address whether appellant had any disability for work causally related to his February 25, 1987 employment injury.

Because appellant has failed to submit rationalized medical evidence establishing that he sustained a recurrence of disability on January 26, 2001 causally related to his accepted employment injury, the Board finds that he has not met his burden of proof.

² *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1993); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

³ *See Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996); *Thomas D. Petrylak*, 39 ECAB 276 (1987).

The July 11, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 9, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member