

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HARRY STEIRER and DEPARTMENT OF THE ARMY,
TOBYHANNA ARMY DEPOT, Tobyhanna, PA

*Docket No. 02-2122; Submitted on the Record;
Issued December 24, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability on or after July 6, 2000 causally related to his December 29, 1989 employment injury.

On December 29, 1989 appellant, then a 40-year-old production controller slipped on ice and fell. He filed a claim for pulled muscles in his lower back. In a February 20, 1990 report, Dr. Nathan Feldman, a Board-certified radiologist, noted that a computerized tomography (CT) scan of the lumbar spine showed a central herniated disc at L4-5 and either a large bulging annulus or a central herniated disc at L3-4. The Office of Workers' Compensation Programs accepted appellant's claim for a lumbosacral strain. He stopped working on January 2, 1990 and returned to work on January 11, 1990. Appellant received continuation of pay for the period he did not work and for intermittent periods thereafter through March 6, 1990. In a May 8, 1990 report, Dr. C.T. Newton stated that an electromyogram (EMG) and nerve conduction studies of the right leg were normal.

On July 7, 2000 appellant filed a claim for recurrence of disability, beginning July 6, 2000. He stopped working on July 7, 2000. Appellant stated that he had periodic lumbar dislocation arising from his original injury in which he sustained a herniated disc. He returned to work on July 19, 2000. On October 17, 2000 appellant filed another claim for recurrence of disability beginning on October 14, 2000. He indicated that he stopped working on October 16, 2000 and returned to work on October 17, 2000.

In an April 23, 2001 decision, the Office denied appellant's claims on the grounds that the evidence of record failed to establish that the claimed recurrences were causally related to the December 29, 1989 employment injury. He requested reconsideration. In a May 14, 2002 merit decision, the Office denied appellant's request for modification of its prior decision.

The Board finds that appellant has not met his burden of proof in establishing that his recurrences of disability are causally related to his December 29, 1989 employment injury.

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.¹

The employing establishment submitted dispensary records in which appellant reported on December 15, 1987 that he twisted his lower back while getting out of a bathtub at home. Dr. Mark A. Rainey, Board-certified in occupational medicine, related that appellant requested to go home as he could not sit or walk very easily. In a January 12, 1988 dispensary note, Dr. Rainey stated that appellant had extreme lower back pain radiating down his left leg to the toe. He diagnosed a low back strain with sciatica. Appellant returned to work on February 1, 1988.

Appellant filed a claim for a recurrence of disability on April 13, 1990 but did not report any time lost from work. The Office stated that appellant had not submitted medical evidence establishing a causal relationship between his employment injury and his claimed recurrence. The Office stated that the evidence showed that appellant had a history of three separate nonoccupational-related back injuries and indicated that appellant needed a well-reasoned medical report to show a causal relationship.

In a June 12, 1990 report, Dr. Robert J. Sarnowski, a Board-certified neurosurgeon, noted the CT scan report of a herniated L4-5 disc and a possible herniated L3-4 disc. He diagnosed lumbar discogenic disease with L4-5 herniated disc.

In an October 3, 1990 report, Dr. Wayne L. Weston, a Board-certified internist, stated that his diagnosis of appellant's condition on April 26, 1990 was a lumbar sprain or strain and a history of herniated disc. He commented that he could not definitively state that appellant's recurrence was 100 percent related to the employment injury, but indicated that there was a high incidence that appellant's condition was a recurrence of the employment injury. Dr. Weston commented that he had no history of appellant having two prior back injuries. Appellant received continuation of pay for the period April 26 through April 30, 1990.

In a July 12, 1995 report, Dr. Michael Senyk, a chiropractor, indicated that appellant had a history of back pain. He reported that appellant gave a history of a herniated disc confirmed by a magnetic resonance imaging (MRI) scan taken in 1987. In a series of reports, Dr. Senyk discussed appellant's continuing back pain.

In an August 2, 2000 report, Dr. Henry C. Yeager, a Board-certified internist, stated that appellant was injured at work in 1990 and sustained a disc injury in the L4-5 region. He indicated that appellant had recurrent episodes of back pain and dysfunction related to that injury since that time. Dr. Yeager commented that appellant had such an episode earlier in the summer. He stated that after treatment the symptoms had improved but appellant still had residual muscle spasms. Dr. Yeager summarized that appellant had a problem with recurrent episodes of severe back pain and disability which had caused him to lose time from work. He commented that

¹ *Dominic M. DeScala*, 37 ECAB 369 (1986).

appellant's condition might be moving into a chronic phase. Dr. Yeager referred appellant for an MRI scan.

In an August 14, 2000 report, Dr. John J. Witowski, a Board-certified radiologist, stated that an MRI scan of the lumbar spine showed multilevel degenerative changes, more advanced at the lower three lumbar levels. He indicated that at L4-5 appellant had a moderate-sized broad-based disc herniation and spondylitic ridging. Dr. Witowski reported that appellant had a small, similar defect at L3-4 and disc bulging at L2-3 and L5-S1. He noted maximal canal narrowing at L4-5.

In a December 1, 2000 report, Dr. Yeager discussed the results of appellant's MRI scan which went back many years when he had a injury. He stated that the MRI scan results represented a significant pathology and was responsible for appellant's recurrent back pain and disability.

In an April 4, 2002 report, Dr. Enrico A. Serine, a Board-certified internist, indicated that he evaluated appellant from 1989 to 1990 for his December 29, 1989 employment injury. He stated that, as of March 9, 1990, it was his opinion that appellant has sustained a herniated nucleus pulposus at L4-5 and L3-4 with a lumbar strain. Dr. Serine indicated that appellant's back condition, to a reasonable degree of medical certainty, was related to the employment injury.

Dr. Yeager related appellant's recurrences of disability to disc herniations at L4-5 and L3-4 and disc bulging at L2-3 and L5-S1. He indicated that these conditions arose out of appellant's injury in 1990. Dr. Serine directly related appellant's herniated discs to the employment injury. The Office refused to accept that appellant's herniated lumbar discs were caused by the employment injury because he had a history of a prior nonoccupational back injury in 1987. The Office also highlighted appellant's report in 1995 that an MRI scan in 1987 showed a herniated disc in 1987. Appellant has not explained the report of a 1987 MRI scan showing a herniated disc two years prior to the employment injury. Dr. Serine's report did not make a causal connection between appellant's employment injury and his recurrences of disability over ten years later. Dr. Yeager stated that appellant's recurrences of disability arose out of his degenerative back condition which in turn were related to his 1990 injury. He, however, did not give a complete history of the employment injury and did not give a detailed explanation on how the employment injury would cause appellant's herniated discs and subsequently cause appellant's recurrences of disability over ten years later. Neither Dr. Serine nor Dr. Yeager gave a history of appellant's 1987 back injury and neither gave an opinion on why appellant's herniated discs were not related to that injury but to the December 29, 1989 employment injury. Appellant, therefore, has not submitted sufficient rationalized medical evidence that related his recurrences of disability of July 7 and October 14, 2000 to the employment injury.

The decision of the Office of Workers' Compensation Programs dated May 14, 2002 is hereby affirmed.

Dated, Washington, DC
December 24, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member