

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSE TREVINO, JR. and DEPARTMENT OF THE ARMY,
CORPUS CHRISTI ARMY DEPOT, Corpus Christi, TX

*Docket No. 02-599; Submitted on the Record;
Issued July 22, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
DAVID S. GERSON

The issue is whether appellant met his burden of proof in establishing that he had a recurrence of total disability beginning June 11, 1998 that was causally related to his June 9, 1997 employment injury.

The case has been on appeal previously.¹ In a September 14, 2000 decision, the Board noted that appellant injured his back on June 9, 1997 and the Office of Workers' Compensation Programs accepted his claim for lumbosacral strain. He returned to light-duty work on July 28, 1997 but stopped working on May 28, 1998 and filed a claim for a recurrence of disability. The Board found that the medical evidence submitted by appellant either did not address whether appellant's disability was causally related to his employment injury or was speculative on whether appellant's back pain was due to a work-related aggravation of preexisting conditions. The Board concluded, therefore, that appellant had not met his burden of proof in establishing that his condition after June 11, 1998 was causally related to his employment injury.

In an October 17, 2000 letter, appellant requested reconsideration. He noted that he was retired from his employing establishment job and receiving social security disability payments. Appellant submitted an August 20, 1998 report from Dr. Rufino Gonzalez, a Board-certified orthopedic surgeon, that had been submitted previously. He submitted an August 23, 2000 report from Dr. John P. Masciale, an orthopedic surgeon, who stated that a functional capacity evaluation showed that appellant could perform only intermittent sedentary activity, which was the basis for appellant obtaining social security disability and for his medical retirement from the employing establishment. He concluded that appellant was not capable of gainful employment.

Appellant subsequently submitted an August 8, 2001 report from Dr. Masciale who diagnosed L4 spondylolisthesis, chronic lumbar strain, acute back and abdominal pain of unclear etiology. He noted that appellant complained of an increase in back pain but stated that he was

¹ Docket No. 99-1930 (issued September 14, 2000).

unsure of the cause of the increase in pain. Dr. Masciale indicated that appellant did not report any new injuries, exacerbations or problems.

In a November 16, 2001 merit decision, the Office denied appellant's request for modification of the Office's prior decision.

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability due to his employment injury of June 9, 1997.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.²

In this case, the reports of Dr. Masciale indicated that appellant was disabled due to L4 spondylolisthesis and chronic lumbar strain. However, Dr. Masciale did not give any opinion on the cause of appellant's diagnosed conditions and gave no indication that appellant's disability was causally related to his employment injury or to other factors of his employment. These reports, therefore, fail to establish that appellant's recurrence of disability was caused by the June 9, 1997 employment injury. Appellant has not met his burden of proof in showing that his recurrence of disability was causally related to the employment injury.

The decision of the Office of Workers' Compensation Programs, dated November 16, 2001, is hereby affirmed.

Dated, Washington, DC
July 22, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

² *George DePasquale*, 39 ECAB 295 (1987); *Terry R. Hedman*, 38 ECAB 222 (1986).