

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT J. LAKE and DEPARTMENT OF THE AIR FORCE,
SACRAMENTO AIR LOGISTICS CENTER, HILL AIR FORCE BASE, UT

*Docket No. 01-397; Submitted on the Record;
Issued March 6, 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 total disability on or after March 13, 1998 due to his April 30, 1986 employment injury.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of total disability on or after March 13, 1998 due to his April 30, 1986 employment injury.

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 she 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 limited-duty job requirements.¹

On April 30, 1986 appellant, then a 38-year-old metal tank sealer, sustained a low back strain and a mild disc herniation at L4-5 while digging holes at work. He stopped work and received compensation for periods of disability. Appellant participated in a vocational rehabilitation program and, in May 1992, he returned to limited work for a private employer as a

¹ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

machinist.² In September 1999, appellant filed a claim alleging that he sustained a recurrence of total disability on March 13, 1998 due to his April 30, 1986 employment injury.³ By decision dated September 23, 1999, the Office denied the claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of total disability on or after March 13, 1998 due to his April 30, 1986 employment injury. By decision dated and finalized August 23, 2000, an Office hearing representative affirmed the Office's September 23, 1999 decision.

The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained a recurrence of total disability on or after March 13, 1998 due to his April 30, 1986 employment injury.

In support of his claim, appellant submitted a June 19, 2000 report of Dr. Maria Patten, an attending osteopath. In her report, Dr. Patten indicated that upon examination in March 1998 there were no obvious abnormalities or asymmetries of the thoracolumbar spine. She noted that appellant exhibited normal rotation and side bending; flexed to about 70 percent of normal range; extended to 50 percent of normal range; had normal gait and could heel walk and toe raise without difficulty; and reported localized pain in the L4 and S1 areas without significant tenderness on deep palpation. Dr. Patten diagnosed chronic low back pain and chronic pain syndrome and history of herniated nucleus pulposus at L4-5 without radiculopathy on examination.⁴ She indicated that during her last examination in June 1998 appellant exhibited "no obvious deformity of his back" and had full range of motion upon flexion, extension and rotation. Dr. Patten indicated that appellant could not perform the sitting and standing required by the machinist position. She indicated that appellant could only work four hours per day; stand for two hours per day; walk for two hours per day; and sit for one hour per day.

Dr. Patten's opinion is of limited probative value on the relevant issue of the present case because it does contain a clear opinion that appellant's condition worsened due to residuals of his April 30, 1986 employment injury.⁵ She recommended increased work restrictions in June 2000 but she did not adequately explain the objective basis for these restrictions. Dr. Patten did not adequately delineate the objective findings from the March 1998 examination which would

² The position involved the mechanical grinding of small ceramic objects weighing a few grams and allowed appellant to alternate between sitting and standing. Appellant was provided with an ergonomically designed chair. In November 1993, the Office of Workers' Compensation Programs adjusted appellant's compensation based on its determination that the machinist position fairly and reasonably represented his wage-earning capacity. In October 1993, appellant was laid off from his machinist position. In April 1995, the Office determined that appellant received a \$12,342.81 overpayment of compensation which was not subject to waiver. In May 1995, the Office affirmed its November 1993 determination. By decision dated September 23, 1997, the Board affirmed the Office's prior decisions regarding wage-earning capacity and the overpayment.

³ Appellant indicated that an attending physician told him that, as of March 13, 1998, he was not physically capable of working as a machinist.

⁴ Dr. Patten also indicated that appellant had degenerative disc disease in his low back.

⁵ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

explain why increased work restrictions were justified. She did not provide any clear indication that the change in work restrictions was necessitated by the employment-related injury which occurred twelve years prior. Appellant's claim was accepted in 1986 for a low back strain and a mild disc herniation at L4-5, and Dr. Patten did not explain how this condition would have worsened such that appellant could no longer perform the limited duties of the machinist position. Such rationale is especially necessary in that Dr. Patten specifically indicated that appellant did not have any radiculopathy from his low back. She suggested that appellant's degenerative disc condition contributed to his problems, but the Office has not accepted that this degenerative disc condition is employment related.⁶

For these reasons, appellant did not meet his burden of proof to establish that he sustained a recurrence of total disability on or after March 13, 1998 due to his April 30, 1986 employment injury.

The August 23, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
March 6, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁶ Appellant also did not show any change in the nature and extent of the limited-duty job requirements.