

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DAVID SANDERS and DEPARTMENT OF THE NAVY,  
MILITARY SEALIFT COMMAND, Oakland, CA

*Docket No. 01-1326; Submitted on the Record;  
Issued November 12, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant established that he sustained a recurrence of disability causally related to an accepted employment injury.

On April 22, 1992 appellant, then a 42-year-old merchant seaman, filed a notice of occupational disease alleging that his employment duties, including heaving straining and lifting, caused the aggravation of his epididymitis and prostatitis. The Office of Workers' Compensation Programs accepted appellant's claim for aggravation of epididymitis and he received compensation benefits from February 13 to July 17, 1992. Appellant was terminated from federal employment on December 5, 1992.

Appellant filed a claim for recurrence on April 2, 1997 claiming that he suffered a recurrence of disability on August 1, 1994 while working aboard a steamship in private industry. He stated that soon after he began the job in July 1994, he began to have a burning pain in his lower back and testicle area, pain in the groin area, with frequent and painful urination and pain with ejaculation.

By decision dated July 28, 1997, the Office denied appellant's claim for recurrence of disability. By decision dated January 5, 1998, the Office hearing representative affirmed the Office's July 28, 1997 decision.

Appellant requested reconsideration on November 19, 1998 and submitted a May 7, 1998 report from Dr. David Schwartzwald, a Board-certified urologist. By decision dated March 2, 1999, appellant's request for reconsideration was denied. He appealed to the Board and the Board remanded the case to the Office on October 24, 2000 for a merit review of Dr. Schwartzwald's May 7, 1998 report. By decision dated January 5, 2001, the Office denied modification of its July 28, 1997 decision.

The Board finds that appellant has not established that he sustained a recurrence of disability causally related to the accepted July 15, 1991 employment injury.

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 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.<sup>1</sup>

It is an accepted principle of workers' compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury. If a member weakened by an employment injury contributes to a later fall or other injury, the subsequent injury will be compensable as a consequential injury.<sup>2</sup> An employee who asserts that a nonemployment-related injury was a consequence of a previous employment-related one has the burden of proof to establish that such was the fact.<sup>3</sup>

In this case, appellant's burden includes submitting rationalized medical opinion evidence, showing that his claimed recurrence of disability was the direct and natural result of the accepted work-related aggravation in 1991. He has the burden to establish that his recurrence is directly attributable to federal employment factors and not factors of his current, private employment. The Office procedure manual states: "A recurrence of disability differs from a new injury in that with a recurrence, no event other than the previous injury accounts for the disability."<sup>4</sup> The Board finds that the medical evidence of record fails to demonstrate that the claimed recurrence of disability of August 1, 1994 is causally related to the 1991 injury.

In support of his claim, appellant submitted office notes from Dr. Schwartzwald dated February 12, 1997 stating:

"[Appellant] was reevaluated in the office today after a long hiatus from the practice. He began working again on a ship and discovered recurrence of all of his symptoms -- back pain, difficulty in urinating, problems with his erections, problems with pain in the testicles, etc. [Appellant] is back to square one, which is an exacerbation of his preexisting condition."

Even though Dr. Schwartzwald concludes that appellant suffered a recurrence, he only discussed it in terms of appellant's symptoms and does not explain how the exacerbation of symptoms is a result of the July 15, 1991 injury. In a report dated September 16, 1997, he

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<sup>1</sup> *Louise G. Malloy*, 45 ECAB 613 (1994).

<sup>2</sup> *Sandra Dixon-Mills*, 44 ECAB 882 (1993).

<sup>3</sup> *Margarette B. Rogler*, 43 ECAB 1034 (1992).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.4 (January 1995).

discussed appellant's 1991 injury and states: "[s]ubsequently, in 1994 [appellant] had [a] recurrence of his symptoms. These symptoms are not only specific to epididymitis but also include chronic prostatitis and urethral syndrome." He continued:

"To say that [appellant's] claim has been denied for [a] recurrence of his symptoms because the recurrence is not causally related to the injury is inappropriate. [He] was an employee of the federal government, working in the armed forces to serve and protect our country. [Appellant] was injured while performing his duties, which has been documented and accepted by the federal government."

Again, Dr. Schwartzwald does not explain how appellant's claimed recurrence is a result of the injury in 1991. He states that appellant's current symptoms are specific to epididymitis, chronic prostatitis and urethral syndrome, even though the Office accepted appellant's claim only for an aggravation of epididymitis.

In his last report dated May 7, 1998, Dr. Schwartzwald stated that since "the early 1990's," appellant had been prone to reaggravating his injury and that he would have the injury and weakness in the musculature of the scrotum for the rest of his life. He indicated that appellant should avoid all types of heavy labor or his condition would likely recur. Dr. Schwartzwald stated:

"I do not agree with your decision that there is a second injury occurring as an independent, intervening incident which is not compensable. The second injury sustained was directly a consequence of an impairment that occurred at the time of the employment injury. Therefore[,] this second injury arises out of and was in the course of employment and should be compensable."

The Board finds that Dr. Schwartzwald's reports are insufficient to establish that appellant's claimed recurrence is a direct result of the 1991 aggravation and not due to independent, intervening factors. Even though Dr. Schwartzwald concludes that appellant's claimed recurrence is a direct consequence of the original employment injury, he does not support his conclusion with medical rationale.

Appellant has failed to submit rationalized medical evidence establishing that his claimed recurrence of disability on August 1, 1994 was causally related to the aggravation of epididymitis on July 15, 1991. Accordingly, the January 5, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
November 12, 2002

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member