

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VINCENT W. MACELROY and DEPARTMENT OF THE NAVY,
NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 02-1484; Submitted on the Record;
Issued October 21, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability as of February 11, 2002 causally related to his accepted March 18, 1996 cervical and thoracic strain.

On March 18, 1996 appellant, a 50-year-old pipefitter, injured his back and neck standing on a ladder and installing a sprinkler system. He filed a claim for benefits on the date of injury, which the Office of Workers' Compensation Programs accepted for cervical and thoracic strain.

On December 20, 2001 Dr. Todd Bezilla, an osteopath, submitted a report referring appellant to Dr. Joseph P. Guagliardo, an osteopath, for surgical evaluation and opinion as to whether appellant would possibly benefit from surgical intervention due to his complaints of chronic pain.

On December 20, 2001 Dr. Guagliardo submitted a note stating that he believed appellant had a probable herniated disc and left shoulder impingement. He recommended that appellant undergo a magnetic resonance imaging (MRI) scan for his cervical spine and left shoulder.

On February 11, 2002 appellant filed a Form CA-2 claim for benefits, alleging that he sustained a recurrence of disability on February 11, 2002 which was caused or aggravated by his March 18, 1996 employment injury.

By letter dated February 14, 2002, the Office advised appellant that it required additional factual and medical evidence, including a medical report, to support his claim that his current condition was caused or aggravated by his accepted March 18, 1996 employment injury. Appellant did not respond to this request.

By decision dated March 25, 2002, the Office denied appellant compensation for a recurrence of his accepted cervical and thoracic conditions. The Office found that appellant failed to submit medical evidence sufficient to establish that the claimed condition or disability as of February 11, 2002 was caused or aggravated by the March 18, 1996 employment injury.

The Board finds that appellant has not sustained a recurrence of disability as of February 11, 2002 causally related to the March 18, 1996 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.¹

The record contains no such medical opinion. Indeed, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates his disability for work as of February 11, 2002 to his March 18, 1996 employment injury. For this reason, he has not discharged his burden of proof to establish his claim that he sustained a recurrence of disability as a result of his accepted employment injury.

The only medical evidence appellant submitted were the brief reports from Drs. Bezilla and Guagliardo which related appellant's complaints of neck and shoulder pain and recommended that he undergo MRI testing, but did not contain a probative, rationalized opinion as to whether appellant's current condition was causally related to appellant's March 18, 1996 employment injury. As the reports from Drs. Bezilla and Guagliardo were the only evidence appellant submitted in support of his claim for a recurrence of disability, appellant failed to provide a rationalized, probative medical opinion indicating that his current condition was caused or aggravated by the accepted March 18, 1996 employment injury.²

As there is no medical evidence addressing and explaining why the claimed condition and disability as of February 11, 2002 was caused or aggravated by his March 18, 1996 employment injury, appellant has not met his burden of proof in establishing that he sustained a recurrence of disability.³

¹ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

² *William C. Thomas*, 45 ECAB 591 (1994).

³ On appeal appellant submitted new evidence. However, the Board 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(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(c).

The March 25, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 21, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member