

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN C. STOECKLEIN and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Monroeville, PA

*Docket No. 02-511; Submitted on the Record;  
Issued September 5, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

The issue is whether appellant sustained an employment-related recurrence of disability effective March 1, 2000.

On December 4, 1997 appellant, then a 43-year-old internal revenue agent, was standing on his office chair attempting to block off an air conditioning vent when he fell, landing on his trash can. He claimed that he sprained his right knee and pulled muscles in his lower back. Appellant stopped working on December 5, 1997 and returned to work on December 8, 1997. The Office of Workers' Compensation Programs accepted appellant's claim for a medial meniscus tear of the right knee and lumbar strain.

On March 29, 2000 appellant filed a claim for a recurrence of disability. He indicated that when he awoke on March 1, 2000, he felt acute pain in his lower back on the right side. Appellant commented that by March 6, 2000, the acute pain had subsided but the pain had numbness had traveled throughout his lower back and into his hips. In a December 14, 2000 decision, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that the recurrence of disability beginning March 1, 2000 was causally related to his December 4, 1997 employment injury. Appellant requested a hearing before an Office hearing representative, which was conducted on June 18, 2001. In an August 24, 2001 decision, the Office hearing representative affirmed the Office's December 14, 2000 decision. In a September 13, 2001 letter, appellant requested reconsideration. In a November 26, 2001 merit decision, the Office denied appellant's request for modification of the prior decision.

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability causally related to his December 4, 1997 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.<sup>1</sup>

Appellant submitted several medical reports in support of his claim. In a May 1, 2000 report, Dr. Donald D. Yoon, a general practitioner, stated that he had been treating appellant for recurrent back pain since March 6, 2000. Dr. Yoon noted that appellant had been completely free of back pain since his last treatment on March 12, 1999. He stated that appellant had relapse of right side thoracolumbar pain, which was originally injured at work on December 4, 1997. While Dr. Yoon related appellant's back pain in March 2000 to the December 4, 1997 employment injury, he did not describe the cause of appellant's back pain and did not explain how the employment injury would cause a recurrence of disability over two years later, particularly after a year of no symptoms. His report therefore has little probative value and is insufficient to meet appellant's burden of proof.

A May 5, 2000 report, unsigned by a physician, indicated that a magnetic resonance imaging (MRI) scan of the lumbar spine showed a questionable tiny central disc herniation at L5-S1 of questionable clinical significance. The report noted a history of the employment injury but did not contain any opinion on whether the employment injury was related to the finding on the MRI lumbar scan. In a May 15, 2000 report, Dr. Steven P. Karr, a Board-certified radiologist, reported that an MRI scan of the thoracic spine showed mild posterior bulging of the T11-12 disc, impinging on the thecal sac but not compressing the spinal cord. He gave no opinion on whether the MRI scan findings were related to the employment injury. In a July 24, 2000 report, Dr. Linda M. Russin, an osteopath, stated that an MRI scan of the cervical spine showed evidence of small disc herniations at the C4-5 and C6-7 which caused minimal encroachment on the ventral surface of the thecal sac. Dr. Russin stated that there was no evidence of cord impingement. She gave no opinion on whether these findings were related to the employment injury.

In a May 10, 2000 report, Dr. Robb E. Fishman, a chiropractor, indicated that he originally treated appellant for his December 4, 1997 employment injury. Dr. Fishman stated that appellant was in stable condition until March 2000 when his injury had an acute exacerbation. He reported that his findings were consistent with the original injury. Dr. Fishman concluded that appellant's flare-up of pain was directly related to the employment injury. Section 8101(2) of the Federal Employees' Compensation Act recognizes a chiropractor as a physician "only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by a-ray to exist..."<sup>2</sup> Dr. Fishman did not diagnose a subluxation in his most recent report and did not cite x-rays to establish that appellant had a subluxation. He therefore does not qualify as a physician within the meaning of section 8101(2) of the Act and his report cannot be considered competent medical evidence.

In a May 18, 2000 report, Dr. John J. Doyle, a Board-certified neurologist, indicated that he saw appellant on April 20, 2000 for back pain following multiple mild traumatic back

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<sup>1</sup> *Dominic M. DeScala*, 37 ECAB 369 (1986).

<sup>2</sup> 5 U.S.C. § 8101(2); *see Marjorie S. Geer*, 39 ECAB 1099, 1101-02 (1988).

injuries. Dr. Doyle noted that appellant had been referred for lumbar and thoracic MRI scans. He reported that appellant's motor function was almost totally normal except for a mild weakness in the left hip flexor. Dr. Doyle indicated that appellant's sensory examination was normal. He stated that all MRI scans showed no significant cord or root compression. Dr. Doyle commented that the physical examination showed no significant weakness or sensory disturbances related to spinal root compression. He concluded that appellant's symptoms were probably related to muscle stiffness and pain. In an August 21, 2001 report, Dr. Doyle stated that in April 2000 appellant had a recurrence of low back pain with some radiation into the legs. He noted that appellant had several previous back injuries but none had required medical attention until the December 4, 1997 employment injury. Dr. Doyle related that appellant noted his recurrent back pain was similar to the pain he experienced at the time of the employment injury. He noted that appellant had some mild disc changes in one thoracic and one lumbar vertebrae but had no significant compression of the nerve elements. Dr. Doyle concluded that it was likely that employment injury was at least in part responsible for the recurrence of appellant's symptoms. Although he related the recurrence of appellant's back pain to the employment injury, Dr. Doyle did not give any detailed physiological description on how appellant's December 4, 1997 employment injury would have caused the recurrence of disability over two years later, particularly after a period of no symptoms. His conclusion was equivocal and speculative. It therefore had diminished probative value and was insufficient to establish that appellant sustained a recurrence of disability causally related to the employment injury.

The decisions of the Office of Workers' Compensation Programs dated November 26 and August 24, 2001 are hereby affirmed.

Dated, Washington, DC  
September 5, 2002

Michael J. Walsh  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member