

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH S. SCHULTZ and DEPARTMENT OF THE AIR FORCE,
NEW JERSEY NATIONAL GUARD, Fort Dix, NJ

*Docket No. 02-1042; Submitted on the Record;
Issued September 19, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability beginning February 14, 2001 causally related to his June 21, 2000 employment injury.

On June 27, 2000 appellant, then a 30-year-old powered support system mechanic, sustained a traumatic injury to his neck and low back on June 21, 2000 by pulling on a tow bar. He stopped work on June 28, 2000.

The Office of Workers' Compensation Programs accepted that appellant sustained a strain of the lumbosacral spine and a strain of the cervical spine. Appellant received continuation of pay until he returned to limited duty on August 7, 2000.

On April 5, 2001 appellant filed a claim for a recurrence of disability causally related to his June 21, 2000 employment injury. He and the employing establishment indicated that he stopped work on February 14, 2001 and appellant stated that his lower back pain had gotten worse, that he now had pain down his leg and that his condition never fully resolved after his June 21, 2000 injury.

In a report dated February 15, 2001, appellant's attending physician, Dr. Cary Skolnick, stated that appellant had "recurrent lumbar spine pain again," diagnosed lumbar radiculopathy and indicated that appellant should be out of work for two weeks. In a note dated March 19, 2001, Dr. Skolnick stated that a magnetic resonance imaging (MRI) scan showed mild spondylolisthesis, that appellant was offered epidural steroids and that appellant was out of work. In a May 22, 2001 note, he stated: "His subsequent office visits from February 15, 2001 on for his recurrent lumbar spine pain is a continual problem related to his work-related injury on June 21, 2000."

By decision dated June 13, 2001, the Office found: "The evidence did not provide a history of the claimed condition nor did it explain how the condition found on examination was causally related to the specific incident of June 21, 2000. Therefore, based on these findings,

your claim is denied, as you have not met the requirements for establishing that your condition was caused by the work-related injury.”

By letter dated July 10, 2001, appellant requested reconsideration and submitted additional reports from Dr. Skolnick. In a report dated June 15, 2001, Dr. Skolnick stated: “I cannot give you a final prognosis on this patient, but I do believe, with a reasonable degree of medical certainty, that his back pain at this point is related to his worker’s compensation injury which occurred while pulling a tow bar from a heavy air conditioning unit.” In a June 21, 2001 addendum to this report, Dr. Skolnick stated:

“In answer to your denial letter on [appellant] of June 13, 2001, please be advised that the condition of spondylolisthesis which arises out of spondylolysis secondary to the accident of June 21, 2000 is causally related. Trauma does cause spondylolysis and then can cause spondylolisthesis secondary to slippage of one vertebrae on another because of a traumatic incident alone. Therefore, because of that medical-related evidence and all of the x-ray evidence already provided to you with the MRI, it is medically indicated that this is related to the June 21, 2000 episode. This is totally consistent with pulling a tow bar from a heavy air conditioning unit that did happen on June 21, 2000. He did feel a pain at that time which is consistent as well with the x-ray findings and resultant spondylolisthesis.”

By decision dated July 19, 2001, the Office denied modification of its prior decision, finding that “Dr. Skolnick has not provided a well-reasoned medical opinion that shows, or even claims, a definitive link between the accepted strains (ligamentous injuries) and the claimed spondylosis (bone, degenerative condition), which severely limits the probative value of Dr. Skolnick’s opinions.”

The Board finds that further development of the medical evidence is necessary.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.¹ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.² However, proceedings under the Federal Employees’ Compensation Act are not adversarial in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation benefits, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.³

¹ *John E. Blount*, 30 ECAB 1374 (1974).

² *Frances B. Evans*, 32 ECAB 60 (1980).

³ *Isidore J. Gennino*, 35 ECAB 442 (1983).

The reports from Dr. Skolnick state that appellant's disability beginning February 14, 2001 is causally related to his June 21, 2000 employment injury and his June 21, 2001 note provides an explanation of this relationship. These reports are not sufficient to meet appellant's burden of proof, as Dr. Skolnick does not explain how the June 21, 2000 injury caused spondylolysis, and, in concluding that appellant's spondylolisthesis is related to his June 21, 2000 injury, does not address the July 3, 2000 lumbar x-rays showing no evidence of misalignment or dislocation.

The fact that these reports contain deficiencies preventing appellant from discharging his burden does not mean that they may be disregarded by the Office. It merely means that their probative value is diminished.⁴ Given the absence of any opposing medical evidence, the Board finds that these reports are sufficient to require that the Office further develop the medical evidence by referring appellant to an appropriate medical specialist for a reasoned medical opinion on the relationship between his recurrence of disability beginning February 14, 2001 and his June 21, 2000 employment injury. After such further development as it deems necessary, the Office should issue an appropriate decision.

The July 19 and June 13, 2001 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, DC
September 19, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁴ *Shirley A. Temple*, 48 ECAB 404 (1997).