

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT B. BARGER and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Altoona, PA

*Docket No. 03-449; Submitted on the Record;
Issued June 27, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant established that he sustained a recurrence of disability as a result of his November 16, 1987 work-related injury.

The Office of Workers' Compensation Programs accepted appellant's November 16, 1987 work-related injury of lumbosacral strain; the Office subsequently authorized a microdiscectomy on November 5, 1987 and an L3-4 and L5 laminectomy decompression on February 28, 1992. Appellant did not return to work following the work-related injury and was entered on the periodic rolls on December 29, 1987. On February 6, 1990 the Office enlarged the claim to include somatoform pain disorder.

On January 22, 2002 appellant filed a claim for a recurrence of disability, alleging that he never recovered from prior injury.

By letter dated January 30, 2002, the Office advised appellant regarding what kind of information he needed to support his claim.

By decision dated April 4, 2002, the Office denied appellant's claim for a recurrence of disability on the grounds that he submitted no evidence to support his claim.

By letter dated May 14, 2002, appellant requested reconsideration. In support of his request, appellant submitted an April 18, 2002 report from Dr. O. Terry Andrew, a Board-certified internist, who stated that appellant "is unable to work because of his unremitting back pain that is multifactorial in etiology. Degenerative arthritis of his lumbar spine, degenerative disc disease with radiculopathy, adverse arachnoiditis and myofascial spasm pain all contribute. His recent magnetic resonance imaging scan was reviewed by a neurologist who felt there was evidence for adhesive arachnoiditis."

By letter dated June 17, 2002, the Office referred appellant to Dr. Trevor Yardley, a Board-certified orthopedic surgeon, for a second opinion. In an attached statement of accepted

facts, the Office noted that it had accepted appellant's claims for lumbosacral strain and herniated disc at L5-S1 as well as a L5-S1 microdiscectomy and an L3-4 and L5 bilateral laminectomy decompression. The Office did not include appellant's somatoform pain disorder.¹

In a report dated June 28, 2002, Dr. Yardley stated that appellant had chronic pain syndrome with chronic back pain. In response to the question of whether the diagnosed condition was causally related to appellant's November 1987 work-related injury, Dr. Yardley noted that "The time period appears to be excessive."

By decision dated August 19, 2002, the Office denied appellant's claim for a recurrence of disability. The Board finds that the case is not in posture for decision.

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.²

In the present case, the Office undertook the development of the medical evidence by referring appellant to Dr. Yardley for a second opinion medical examination. However, the statement of accepted facts did not include appellant's somatoform pain disorder which the Office accepted in February 6, 1990 and included in an April 16, 1992 statement of accepted facts. The Federal Employees' Compensation Act's Manual states that "When the [Office medical adviser], second opinion specialist or referee physician renders a medical opinion based on a statement of accepted facts which is incomplete or inaccurate or does not use the statement of accepted facts as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether."³ Dr. Yardley should have based his medical opinion on a complete statement of accepted facts, which should have included the Office's acceptance on February 6, 1990 that appellant's somatoform pain disorder was causally related to his October 26, 1987 work-related injury. Since Dr. Yardley rendered his medical opinion based on incomplete factual information, the probative value of his report is limited. The Board finds that Dr. Yardley's medical opinion is of diminished probative value since it was based on an incomplete set of facts.

On remand, the Office should refer appellant and a statement of accepted facts including appellant's somatoform pain disorder to Dr. Yardley for a supplemental report for a determination as to whether his current medical condition is causally related to his work-related

¹ In a report dated December 29, 1989, Dr. Donald B. Crider, Board-certified in psychiatry and neurology, diagnosed appellant with somatoform pain disorder. The Board notes that, in an April 16, 1992 statement of accepted facts, the Office included appellant's somatoform pain disorder as an accepted injury.

² *Kenneth R. Love*, 50 ECAB 193 (1998); *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1993); *Robert St. Onge*, 43 ECAB 1169 (1992).

³ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600(3) (1990).

injuries. After such development as the Office deems necessary, a *de novo* decision shall be issued.

The decisions of the Office of Workers' Compensation Programs dated August 19 and April 4, 2002 are set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, DC
June 27, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member