

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD BUTTORFF and DEPARTMENT OF DEFENSE, DEFENSE
CONTRACT MANAGEMENT COMPANY, Wyomissing, PA

*Docket No. 02-1940; Submitted on the Record;
Issued March 13, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he sustained a recurrence of disability on November 17, 1995 causally related to his May 23, 1995 accepted employment injury.

This case has previously been before the Board on appeal. In an August 23, 2000 decision, the Board set aside, in part, the December 18, 1998 decision of the Office of Workers' Compensation Programs and remanded the case to the Office to resolve a conflict in the medical opinion evidence as to whether appellant sustained a recurrence of disability on November 17, 1995, causally related to his May 23, 1995 accepted employment injury. Appellant's physician, Dr. James Heintz, a Board-certified orthopedic surgeon, opined that appellant's ongoing mechanical back pain was related to his work injury in 1995, while second opinion physician Dr. Joseph R. Sgarlat, a Board-certified orthopedic surgeon, opined that appellant's current condition was due to the congenital narrowing of the lumbar bony canal and due to excess weight. The facts of the case as set forth in that decision are incorporated herein by reference.¹

On remand, the Office referred appellant, along with medical records, a statement of accepted facts and a list of specific questions to Dr. Peter A. Feinstein, a Board-certified orthopedic surgeon, for an impartial medical examination by letter dated September 29, 2000. By letter of the same date, the Office advised Dr. Feinstein of the referral.

Dr. Feinstein submitted a November 6, 2000 report finding that appellant had made a full and complete recovery based on the accepted condition of lumbar strain and that his current symptoms were not work related and were due to other factors. He stated:

“In summary then, at the current time, this individual's physical examination, in the context of his clinical complaints, which appear to be clearly mechanical in nature, as well as the objective findings on MRI [magnetic resonance imaging]

¹ Docket No. 99-1350 (issued August 23, 2000).

scan, indicate that this individual has ongoing complaints secondary to obesity and that obesity irritating this individual's congenital and developmental severe spinal stenosis at the L3-4 and L4-5 levels.

"It would appear that his work injury may have been a sprain or strain in his lumbar spine, which normally takes anywhere from six weeks to three months to heal, and there is nothing to indicate that there were any complicating factors to prevent the normally expected time frame, regarding healing for that type of injury.

"Therefore, I believe that this individual has made a full and complete recovery, based on the accepted lumbosacral spine strain as work related.

"He continues to remain symptomatic at the current time, based on nonwork-related conditions, specifically the congenital narrowing of the lumbar bony canal, degenerative changes of the facet joints and obesity, as well as a concomitant condition of depression.

"His ongoing symptomatology must also be taken in the context of preexisting problems with his back that would be consistent with a congenital or long-standing condition, as well as a history of a subsequent automobile accident, which would also have great potential to contribute to his ongoing complaints.

"In answer to other specific questions, I believe any total disability that would be related to the work condition would fall within that six-week to maximum three-month time frame, after which any complaints would not be related to the work condition.

"Given what appears to be a complete recovery from any work-related disability, I would not limit this individual in any way, based on his work condition.

"This individual's prognosis is guarded, given that he has a lifelong congenital stenosis in his lumbar spine in the face of obesity. This will continue to become more symptomatic for his unless he loses 75 to 100 pounds of weight. If he is incapable of accomplishing that, he will eventually require epidural steroid injections and, most likely, surgical intervention for his congenital, preexisting condition."

By decision dated December 14, 2000, the Office denied appellant's claim for recurrence of disability, finding that the weight of the medical evidence demonstrated that appellant's condition and disability for work were not related to the May 23, 1995 work injury.

Appellant disagreed with the Office's decision and requested an oral hearing, which was held on July 25, 2001.

By decision dated April 16, 2002, the Office hearing representative affirmed the December 14, 2000 decision, finding that the medical evidence of record demonstrated that appellant's disability in November 1995 was not related to the May 23, 1995 work injury.

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability on November 17, 1995 causally related to his May 23, 1995 accepted employment injury.

As noted above, the Board found in its previous decision a conflict of medical opinion regarding whether appellant's condition on or after November 17, 1995 was causally related to his accepted employment injury. The Board directed the Office on remand to refer appellant to an impartial medical specialist to resolve this conflict.

Section 8123 of the Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician, who shall make an examination.² In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.³

In his November 6, 2000 report, Dr. Feinstein noted appellant's history of injury and performed a medical examination and reviewed the medical records and the statement of accepted facts. He noted that only lumbosacral strain was accepted as work related. He discussed other nonwork-related injuries, including the hunting accident in 1994, an automobile accident in 1978 and 1996 and damage to appellant's knee in the military in 1968. He reviewed the diagnostic imaging studies, including an x-ray dated January 25, 1996 which was unremarkable for any pathology and one dated April 30, 1997, which showed degenerative changes with spurring in the right shoulder. A cervical spine film of the same date, he stated, was unremarkable. He noted that he agreed with the diagnosis of spinal stenosis at levels L3-4 and L4-5 as indicated by the MRI scan on October 1, 1996. He stated that the MRI did not indicate any traumatic findings in terms of a herniated disc or nerve root compression on the basis of trauma.

Dr. Feinstein concluded that appellant's complaints of mechanical back pain were secondary to obesity and his obesity was also irritating his spinal stenosis. He stated that a lumbar strain condition would normally heal anywhere from six weeks to three months after the date of injury. Dr. Feinstein opined that appellant had made a full and complete recovery based on the accepted lumbosacral strain. He also discussed appellant's current symptomatology and found that it was due to appellant's preexisting congenital and long-standing condition and a history of automobile accidents. Dr. Feinstein stated that appellant should have only been disabled for a period of six weeks up to three months, after which time any complaints he had would not be work related. He opined that appellant could be gainfully employed in a sedentary-type job and recommended that appellant lose 75 to 100 pounds to better his lifelong congenital stenosis.

² 5 U.S.C. § 8123; *see Shirley L. Steib*, 46 ECAB 309 (1994).

³ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

Dr. Feinstein's report is based on a proper factual and medical background and contains an explanation for his opinion that appellant has no current disability due to his accepted employment injury, noting specifically that a lumbar strain condition should resolve within six weeks to three months from the date of injury. He also discussed the lack of objective findings, which would indicate that a traumatic injury may still exist, noting instead that the x-rays and MRI report showed degenerative changes, which were not related to the lumbar strain. Dr. Feinstein explained that appellant's current complaints and symptomatology were the result of his spinal stenosis and severe obesity and not the result of the work-related incident in 1995. He specifically noted the congenital narrowing of the lumbar bony canal, which also contributed to appellant's condition. The Board finds that Dr. Feinstein's report is well reasoned and is based upon a proper factual and medical background supported by sound medical rationale and therefore must be given special weight. Dr. Feinstein addressed appellant's symptomatology and explained that his current condition was degenerative in nature and also partly due to his severe obesity. The objective findings also supported Dr. Feinstein's opinion that the effects of the May 23, 1995 traumatic injury had ceased and what remained was spinal stenosis aggravated by severe obesity. As Dr. Feinstein established by the weight of the medical evidence that appellant's condition on or after November 17, 1995 was not related to the work injury on May 23, 1995, appellant has not met his burden of proof and the Office properly denied his claim.

The decision of the Office of Workers' Compensation Programs dated April 16, 2002 is hereby affirmed.

Dated, Washington, DC
March 13, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member