

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FREDERICK A. JONES and DEPARTMENT OF THE NAVY,
NORFOLK NAVAL SHIPYARD, Portsmouth, VA

*Docket No. 02-1575; Oral Argument Held July 17, 2003;
Issued October 17, 2003*

Appearances: *Frederick Jones, pro se; Julia Mankata-Tamakloe, Esq.,*
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a recurrence of disability on June 12, 2001 causally related to his July 24, 1985 employment injury.

This case has previously been before the Board on appeal.¹ By decision dated January 17, 1997, the Board found that, in a decision dated August 11, 1994, the Office of Workers' Compensation Programs properly denied appellant's request for a hearing.² The law and facts as set forth in the Board's prior decision are hereby incorporated by reference.

Following the January 17, 1997 decision of the Board, on September 4, 2001 appellant filed a notice of recurrence of disability (Form Ca-2a), alleging that he sustained a recurrence of disability on June 12, 2001 as a result of his July 24, 1985 employment injury because he experienced continuous lower back pain.

By letter dated September 10, 2001, the employing establishment controverted the claim. Elizabeth Robinson, an employee relations specialist, advised that appellant was not working for

¹ Docket No. 95-78 (January 17, 1997). Further, by decision dated May 12, 1998, Docket No. 96-1562, the Board affirmed a schedule award for a two percent impairment of the right upper extremity due to an employment-related right thumb dislocation.

² The Office had initially accepted the claim for lumbar and left knee sprains, recurrent herniated disc at L5-S1 and depression. He returned to light duty on January 2, 1986, received intermittent compensation thereafter, and retired on disability on July 21, 1989. He then filed a Form CA-7, claim for compensation. In a November 14, 1990 decision, the Office denied appellant's claim for compensation on the grounds that he failed to establish that his claimed medical condition was causally related to the July 24, 1985 employment injury.

them on June 12, 2001, that he had voluntarily retired on disability on July 21, 1989, and had been working for Greenbriar Chrysler since 1997.

The Office requested additional factual and medical information in a letter dated January 18, 2002.

In a February 19, 2002 response, appellant explained that on June 12, 2001 he woke up with severe pain on the left side of his body including his back and was unable to move. He indicated that he believed this was related to his July 24, 1985 employment injury as this injury had never truly resolved, and his condition had, in fact, deteriorated. Appellant also submitted medical evidence in support of his recurrence claim.³

A magnetic resonance imaging (MRI) scan of the lumbar spine dated July 30, 2001 demonstrated a left disc protrusion at L5-S1 which deformed the thecal sac, mild disc bulging at L4-5 and mild bilateral facet joint arthropathy at L5-S1. In a report dated August 29, 2001, Dr. Raymond Iglecia, who is Board-certified in psychiatry and neurology and had treated appellant since 1986, indicated that he had treated appellant for chronic pain due to a work-related injury appellant sustained in 1985 wherein he injured his lower back and left knee. He stated that appellant was treated for his injury and eventually returned to work in a light-duty capacity, retiring in 1989 on disability. Dr. Iglecia reviewed the July 30, 2001 MRI scan findings and noted that these were the same results as the findings in MRI scans that were performed in 1991 and 1992. He advised that appellant had improved, but was still limited when bending, twisting, turning, stooping or kneeling. Dr. Iglecia also acknowledged that appellant was now working at the Greenbriar Chrysler Plymouth dealer as a valet parker and experienced difficulties when stooping down to get into the smaller vehicles.

In a March 5, 2002 decision, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that he sustained a recurrence of disability causally related to the July 24, 1985 accepted employment injury.

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability beginning on June 12, 2001 causally related to his July 24, 1985 employment injury.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁴

³ Appellant additionally submitted medical evidence which included diagnostic and medical reports that predated his alleged recurrence on June 12, 2001.

⁴ *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

In this case, the Office accepted that on July 24, 1985 appellant sustained employment-related lumbar and left knee sprains, recurrent herniated disc at L5-S1 and depression in the performance of duty on July 24, 1985. Appellant subsequently filed a notice of recurrence of disability commencing June 12, 2001. The Office requested that he provide medical evidence that would establish a causal relationship between his current conditions and his present disability. The Board, however, finds that appellant did not submit sufficient reasoned medical evidence that his present condition was causally related to his July 24, 1985 employment injury.

Appellant submitted an August 29, 2001 report from his treating physician, Dr. Iglecia, who did not provide any explanation or medical evidence to explain why appellant's present condition was causally related to the July 24, 1985 employment injury other than to state that he had treated appellant for chronic pain. Further, he did not explain why appellant's subsequent employment at Greenbriar Chrysler had no effect on the injury. Appellant also submitted a July 30, 2001 MRI scan report. This, however, did not contain any opinion on causal relationship.

It is appellant's burden of proof to submit a physician's rationalized opinion on the issue of whether there is a causal relationship between his diagnosed condition and the implicated employment factors.⁶ Appellant did not do so in the case at hand. Accordingly, the Board finds that appellant has not met his burden of proof in this case as he has not submitted a reasoned medical opinion explaining why his recurrence of disability beginning June 12, 2001 was caused or aggravated by the July 24, 1985 employment injury.

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *Calvin E. King*, 51 ECAB 394 (2000).

The decision of the Office of Workers' Compensation Programs dated March 5, 2002 is hereby affirmed.

Dated, Washington, DC
October 17, 2003

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member