

disability due to back pain caused by sitting all day.¹ The Office accepted his claim for a lumbar and left knee strain. Appellant received compensation for temporary total disability until January 12, 1993.

In a report dated November 10, 1992, Dr. Ettlinger indicated that appellant would undergo a magnetic resonance imaging (MRI) scan to determine whether he had a herniated disc in his spine. The MRI report indicated degenerative disc disease at L4-5 and a bulging disc, but no disc herniation.

Dr. John R. Frankeny, a Board-certified orthopedic surgeon, released appellant to return to regular work on July 26, 1993.

In notes and a report dated February 22 and April 9, 2001, Dr. William W. DeMuth, a Board-certified orthopedic surgeon, stated that he treated appellant for left leg sciatica with a herniated disc at L4-5 revealed on an MRI scan. He stated, “[Appellant] is having significant left leg sciatica. This is a new finding for him in recent times and he has been able to work up until the most recent visit.” Dr. DeMuth recommended a microdiscectomy as surgical treatment for the herniated disc.

On February 25, 2001 appellant filed a claim for a recurrence of disability on February 13, 2001.

By decision dated May 24, 2001, the Office denied appellant’s claim on the grounds that the evidence of record was insufficient to establish that he sustained a recurrence of disability on February 13, 2001 causally related to his November 2, 1992 employment injury.

Appellant requested an oral hearing. By decision dated August 13, 2001, the Office denied his request on the grounds that the request was not timely filed within 30 days of the May 24, 2001 decision.

Appellant subsequently requested reconsideration and submitted additional evidence. In a report dated September 11, 2001, Dr. DeMuth noted that appellant had an injury to his lumbar spine on November 2, 1992 but returned to regular work in July 1993. He stated that he treated appellant beginning February 22, 2001 for a disc herniation and left leg sciatica and performed a microdiscectomy on May 1, 2001. Dr. DeMuth stated:

“It is my medical opinion that [appellant’s] recent back symptoms were aggravated by his duties at work as a mechanic, including pushing, pulling, lifting and bending, as well as the need for him to assume various awkward positions to accomplish many of his duties.”

¹ When appellant filed his recurrence claim, the Office had not yet decided his traumatic injury claim. The Office accepted his traumatic injury claim on December 10, 1992 and paid appropriate compensation from December 1992 through April 30, 1993.

By decision dated January 18, 2002, the Office denied modification of the May 24, 2001 decision on the grounds that the evidence of record did not establish that appellant had a recurrence of disability on February 13, 2001 causally related to his November 2, 1992 employment injury.²

Appellant requested reconsideration and submitted additional evidence. In a February 25, 2002 report, Dr. DeMuth stated:

“From the review of the records ... it would appear that [appellant’s] current lumbar disc herniation was a direct result of the original work-related injury in 1992, despite over eight years of relative well being. This medical opinion is based on the location of his symptoms, [appellant’s] type of employment which requires bending, twisting and lifting of motor vehicle parts which occurs during the normal course of his job duties. The disc herniation at the L4-5 level is in the same location as the original MRI scan findings in 1992.

“To a reasonable degree of medical certainty, I believe that [appellant’s] lower back issues [in] 2001 and 2002 were aggravated, accelerated and precipitated by his employment. Further, I believe that the L4-5 disc herniation was ... related to the original event in 1992....”

By decision dated May 15, 2002, the Office denied appellant’s recurrence claim on the grounds that the evidence of record established that his work-related knee and back injuries had resolved and that the herniated disc diagnosed in 2001 was not causally related to his November 2, 1992 employment injury.

LEGAL PRECEDENT

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.³ This burden includes the necessity of 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 supports that conclusion with sound medical rationale.⁴ Where no such rationale is present, medical evidence is of diminished probative value.⁵

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant’s claimed condition became apparent during a period of

² The Office noted that it had advised appellant that he might wish to file a claim for an occupational disease.

³ *Ronald C. Hand*, 49 ECAB 113 (1997); *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

⁴ *Helen K. Holt*, 50 ECAB 279 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

⁵ *Michael Stockert*, 39 ECAB 1186 (1988).

employment, nor his belief that his condition was aggravated by his employment, is sufficient to establish causal relationship.⁶

ANALYSIS

Appellant returned to regular work without restrictions on July 26, 1993 following his November 2, 1992 employment-related lumbar and left leg strains caused by a motor vehicle accident. He apparently did not seek medical treatment for his back and left leg again until February 2001, almost eight years later, when he consulted Dr. DeMuth, who diagnosed left leg sciatica and a herniated disc at L4-5. In a September 11, 2001 report, the physician stated that appellant's back condition was aggravated by work duties that included pushing, pulling, lifting and bending. This suggests a new occupational injury caused by physical job requirements performed by appellant after his return to work rather than a recurrence of disability caused by the November 2, 1992 motor vehicle accident. Dr. DeMuth did not explain how appellant's herniated disc was causally related to his November 2, 1992 employment injury or the relationship of the herniated disc to his preexisting degenerative disc disease.⁷

In a February 25, 2002 report, Dr. DeMuth opined that appellant's herniated disc was a "direct result" of the November 2, 1992 employment injury, but he provided no explanation as to why appellant was not examined or treated during the interval from July 1993 to February 2001.⁸ He also stated that appellant's disc herniation was caused by the bending, twisting and lifting required in his job. As noted, this statement suggests a new occupational injury not a recurrence of disability caused by the 1992 motor vehicle accident. Dr. DeMuth also based his opinion regarding causal relationship on the fact that appellant experienced symptoms in the same area of his back as in 1992, the L4-5 area of the spine. However, this reason, by itself, is an insufficient explanation to establish that the herniated disc in 2001 was caused by the 1992 lumbar strain, a soft tissue injury to muscles in the low back.⁹ The Office has not accepted a herniated disc with left leg sciatica as being related to appellant's November 2, 1992 employment injury and Dr. DeMuth provided insufficient medical rationale to support his opinion that this condition was caused by the November 2, 1992 employment-related lumbar and left knee sprains.

⁶ *Robert A. Boyle*, 54 ECAB ____ (Docket No. 02-2177, issued January 27, 2003); *Walter D. Morehead*, 31 ECAB 188 (1986).

⁷ As noted above, a 1992 MRI scan revealed degenerative disc disease and a bulging disc, but not a herniated disc.

⁸ For the importance of documented evidence of bridging symptoms in establishing a claim for a recurrence of disability, see *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Leslie S. Pope*, 37 ECAB 798 (1986).

⁹ *Leslie S. Pope*, *supra* note 9.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a recurrence of disability on February 13, 2001 causally related to his November 2, 1992 employment injury. Therefore, the Office properly denied his recurrence claim.¹⁰

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 15 and January 18, 2002 are affirmed.

Issued: April 15, 2004
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ The Board's decision in this case does not preclude appellant from filing a new claim for an occupational disease.