

**United States Department of Labor
Employees' Compensation Appeals Board**

JUBALI YUMAN, Appellant

and

**DEPARTMENT OF JUSTICE, FEDERAL
BUREAU OF PRISONS, FEDERAL
CORRECTIONAL COMPLEX, Beaumont, TX,
Employer**

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**Docket No. 03-1495
Issued: January 27, 2004**

Appearances:
Jubali Yuman, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On May 22, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated May 8, 2003, which denied his claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a recurrence of disability on February 14, 2003 causally related to his January 22, 2002 employment injury.

FACTUAL HISTORY

On January 22, 2002 appellant, then a 33-year-old correctional officer, filed a traumatic injury claim alleging that he injured his lower back while climbing stairs. The Office accepted his claim for a lumbar strain.

In a report dated January 23, 2002, Dr. Patrick McMeans, appellant's attending physician, provided findings on examination and diagnosed lumbar intervertebral disc syndrome, lumbar radiculitis and myofascial pain. In a November 14, 2002 disability certificate, he indicated that appellant could return to work without restrictions on November 18, 2002.

On February 14, 2003 appellant filed a notice of recurrence of disability (Form CA-2a). He indicated that he had back pain while attending a training course February 10 and 11, 2003.

In a form report dated February 17, 2003, Dr. McMeans diagnosed lumbar intervertebral disc syndrome, lumbar radiculitis and myofascial pain. He provided as the history of the injury given by appellant that he was climbing a spiral staircase to his guard post when he felt pain in his low back. Dr. McMeans indicated by checking the block marked "yes" that the conditions were causally related to appellant's January 22, 2002 employment injury.

In a report dated April 3, 2003, Dr. McMeans stated that appellant underwent lumbar epidural steroid injections for his back pain, experienced almost complete resolution of his symptoms and returned to regular duty on November 18, 2002. He stated:

“[Appellant] returned complaining of the same symptoms on February 12, 2003. He related no history of any further injury. [Appellant] stated the pain returned and began to increase over a period of 3 to 4 days. An examination revealed a decrease in lumbar range of motion especially in flex[ion] and extension, moderate muscle guarding and spasms were present in the lower lumbar spine. In the absence of any further precipitating cause for the return of symptoms, it was determined that this was an exacerbation of the previous injury and the same diagnosis was made.

“[Appellant] was removed from active work status with passive and active therapeutic modalities initiated. He was seen from February 19 through March 13, 2003 (9 visits). This resulted in resolution of his symptoms. [Appellant] was returned to unrestricted job duties on March 19, 2003.”

By decision dated May 8, 2003, the Office denied appellant's claim for a recurrence of disability on February 14, 2003 on the grounds that the evidence of record failed to establish that his recurrence was causally related to his January 22, 2002 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.¹ 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

¹ Charles H. Tomaszewski, 39 ECAB 461 (1988).

conclusion with sound medical rationale.² Where no such rationale is present, medical evidence is of diminished probative value.³

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 employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁴

ANALYSIS

In a November 14, 2002 disability certificate, Dr. McMeans indicated that appellant could return to work without restrictions on November 18, 2002.

In a form report dated February 17, 2003, Dr. McMeans diagnosed lumbar intervertebral disc syndrome, lumbar radiculitis and myofascial pain. He provided as the history of the injury given by appellant that he was climbing a spiral staircase to his guard post when he felt pain in his low back. Dr. McMeans indicated by checking the block marked "yes" that the back conditions were causally related to appellant's January 22, 2002 employment-related lumbar strain. However, the Board has held that an opinion on causal relationship which consists only of checking "yes" to a form report question on whether the claimant's disability was related to the history given is of little probative value.⁵ Without any explanation or rationale, such a report is insufficient to establish causal relationship.⁶ Such medical rationale is particularly important in light of the fact that Dr. McMeans released appellant to regular work in November 2002. Due to this deficiency, this report is not sufficient to establish that appellant sustained a recurrence of disability on February 14, 2003 causally related to his January 22, 2002 employment injury.

In Dr. McMeans' report dated April 3, 2003, he did not provide sufficient medical rationale to establish that appellant's conditions were causally related to his January 22, 2002 lumbar strain, nor did he provide sufficient explanation as to why he believed appellant's back conditions in 2003 were causally related to the January 22, 2002 lumbar strain that had apparently resolved when Dr. McMeans released appellant to regular work in November 2002. As noted above, neither the fact that appellant's claimed condition became apparent during a period of employment, nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship. Therefore, this report is insufficient to establish that appellant sustained a recurrence of disability on February 14, 2003 causally related to his January 22, 2002 employment injury.

² *Lourdes Davila*, 45 ECAB 139 (1993); *Mary S. Brock*, 40 ECAB 461 (1989).

³ *Michael Stockert*, 39 ECAB 1186 (1988).

⁴ *Walter D. Morehead*, 31 ECAB 188 (1986).

⁵ *Debra S. King*, 44 ECAB 203 (1992); *Donald W. Long*, 41 ECAB 142 (1989).

⁶ *Id.*

CONCLUSION

Appellant failed to provide rationalized medical evidence establishing that his claimed recurrence of disability on February 14, 2003 was causally related to his January 22, 2002 accepted employment injury. Therefore, the Office properly denied his claim for compensation.

ORDER

IT IS HEREBY ORDERED THAT the May 8, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 27, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member