

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

JEFFERY STAKER, Appellant)

and)

**DEPARTMENT OF THE AIR FORCE,)
GRISSOM AIR FORCE BASE, IN,)
Employer**)

**Docket No. 03-2236
Issued: January 14, 2004**

Appearances:
Jeffery Staker 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
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 15, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 13, 2003. 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 due to his work-related condition effective December 3, 2001.

FACTUAL HISTORY

On December 20, 1999 appellant, then a 34-year-old firefighter, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that he injured his back when he stood up from the latrine. The pain was sufficient enough to cause appellant to go to the emergency room. In support of his claim, appellant submitted a report from Dr. William D. Harvey, the emergency room doctor, who stated that x-rays revealed no significant lumbar abnormality. Dr. Harvey added that further evaluation is advised if warranted by the clinical

findings. In a December 13, 2001 decision, the Office accepted appellant's claim for a lumbar strain. He missed two days of work from the injury.

On December 3, 2001 appellant filed a recurrence of disability claim (Form CA-2a) alleging that he has been in constant pain since the original injury. In a December 13, 2001 letter, the Office requested more information from appellant. In support of his claim, appellant submitted January 8, 2002 progress notes from a chiropractic clinic signed by Major Arden Anderson, a chiropractor, that indicated that appellant said he was in constant pain and opined that appellant had possible disc protrusion at L4. Dr. Anderson diagnosed low back instability. In a January 25, 2002 decision, the Office denied appellant's claim finding that he failed to submit sufficient medical evidence to establish that he sustained a recurrence of his accepted condition.

In an August 19, 2002 letter, appellant requested an oral hearing and submitted a March 4, 2002 report from Dr. Phillip Pryor who wrote that appellant complained of low back pain for two years after injuring his back when he jumped down from the tailgate of a truck. On examination appellant presented with good range of motion, a negative straight leg raising test and symmetric reflexes. His back was not tender and his gait was normal. Dr. Pryor wrote that appellant's December 1999 x-ray was read as normal when it actually showed a narrowed disc at L5-S1. He recommended that a magnetic resonance imaging (MRI) scan be performed with a diagnosis of disc disruption. In a March 7, 2001 report, Dr. Joseph George, a radiologist, wrote that an MRI scan revealed a broad-based central disc protrusion at the L5-S1 level with slightly inferior extension which does not produce significant central spinal stenosis or compromise of neural structures. He also identified a mild bilateral neuroforaminal stenosis at this level. At the L4-5 level, Dr. George identified a central radial tear and minimal annular disc bulge which does not produce central spinal stenosis.

In a March 19, 2003 letter, Dr. Pryor wrote that he disagreed with the denial of appellant's recurrence. He also stated that his March 4, 2002 letter supported that appellant's back condition is causally related to the accident of December 20, 1999.

At the March 25, 2003 hearing, appellant testified that the pain from his original injury waxed and waned but never stopped entirely, so he started to see a chiropractor on his own. He stated that between his original injury and the recurrence he worked at his regular job, which at times required significant physical exertion. Appellant also testified that he exercised regularly. He stated that strenuous activity did not aggravate his symptoms and that he relied on stretching, chiropractic treatments and medication to deal with the pain. Appellant stated that, after the December 1999 injury, he frequently had lower back pain so in March 2002 he saw a spine specialist, Dr. Pryor, who stated that appellant's original x-ray in December 1999 was misread and actually showed a disc protrusion. Finally, appellant indicated that he was seeking to update his original accepted condition in case of future problems with his back.

In a June 13, 2003 decision, the hearing representative affirmed the January 25, 2002 denial of a recurrence of disability, finding the medical evidence insufficient to support that appellant sustained a recurrence of disability.

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

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.³

ANALYSIS

In the present case, appellant submitted a report from Dr. Major Anderson, a chiropractor, who stated that appellant may have a disc protrusion. However, the opinion of Dr. Anderson, has no probative value on the issue of whether appellant sustained a recurrence of disability because his reports do not constitute medical evidence within the meaning of the Federal Employees' Compensation Act. Under section 8101(2) of the Act, chiropractors are only considered physicians and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.⁴ However, Dr. Anderson did not indicate, in any of his reports, findings of subluxations demonstrated by x-rays to exist. The Office's regulations at 20 C.F.R. § 10.5(bb) have defined subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae anatomically which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.⁵ Dr. Anderson is therefore not considered a physician under the Act.

Appellant also submitted medical evidence from Dr. Pryor, who wrote in his March 4, 2002 report, that appellant's original x-ray was misread and actually showed a disc protrusion. Dr. Pryor wrote, in a March 12, 2003 letter, that he felt appellant's condition was related to his accepted injury. However, Dr. Pryor's report did not explain how the disc protrusion was causally related to the accepted condition or how appellant could continue to work in the strenuous position of a firefighter and engage in vigorous exercise for over two years with a disc

¹ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

² *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

³ *See Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

⁴ 5 U.S.C. § 8107(a). *See Jack B. Wood*, 40 ECAB 95, 109 (1988).

⁵ 20 C.F.R. § 10.5(bb); *see also Bruce Chameroy*, 42 ECAB 121, 126 (1990).

protrusion in his back. Dr. Pryor's report also has a factual inconsistency with appellant's statements. Appellant alleged that he originally was injured rising from the latrine, but Dr. Pryor wrote that his December 1999 injury was caused by jumping off a tailgate. Finally, appellant has asserted that he had continuous back pain and was seeking relief through medications and chiropractic treatments; but the medical reports from Dr. Anderson cover only a few days over the last few years. The medical evidence of record does not include a reasoned medical opinion on causal relationship between disability on or after December 3, 2001 and the employment injury.

CONCLUSION

For these reasons, appellant has not met his burden of proof to establish that he sustained a recurrence of disability causally related to his December 1999 back strain.

ORDER

IT IS HEREBY ORDERED that the decision of the Office of Workers' Compensation Programs dated June 13, 2003 is affirmed.

Issued: January 14, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member