

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

WILLIAM J. CHIRGWIN, Appellant

and

**DEPARTMENT OF THE ARMY,
Huntington, WV, Employer**

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**Docket No. 06-195
Issued: July 17, 2006**

Appearances:
William J. Chirgwin, pro se
Jim C. Gordon, Jr., Esq., for the Director

Oral Argument May 18, 2006

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 1, 2005 appellant filed a timely appeal of the October 12, 2005 merit decision of the Office of Workers' Compensation Programs denying his recurrence claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on and after February 10, 1988 causally related to the accepted employment injury of December 23, 1967. On appeal, appellant contends that the Office failed to fully consider the medical evidence.

FACTUAL HISTORY

The Office accepted that appellant, then 29 years old, sustained a lumbosacral strain resulting from a work injury of February 23, 1967. This case was assigned file number A13-264425. Appellant underwent a laminectomy in 1960 and a spinal fusion in 1967. The

record reflects that, in file number A6-432868, the Office accepted a low back strain superimposed on preexisting degenerative disc disease resulting from a traumatic injury of February 10, 1988 when appellant was kicked in the back by a coworker. He was paid compensation benefits for temporary total disability for all appropriate periods claimed and was placed on the periodic rolls, effective July 3, 1988. Appellant subsequently retired on disability in December 1988. By decision dated July 29, 1998,¹ the Board affirmed the Office's termination of appellant's compensation benefits effective November 12, 1994 finding that the weight of the medical evidence established that he did not have residuals of his accepted injury. Appellant's impartial medical examiner, Dr. Carl Roncaglione, a Board-certified orthopedic surgeon, opined in an April 5, 1994 report that appellant no longer had disability due to the February 10, 1988 injury.²

On September 20, 2001 appellant claimed a recurrence of disability commencing February 10, 1988. He attributed his disability to being kicked by a coworker in the same location as past back problems.

In a letter dated October 4, 2001, the Office advised appellant that additional factual and medical information was needed.

In a December 19, 2001 statement, appellant contended that a failed surgical back from the 1967 fusion caused his degenerative conditions at L4-5. He submitted a December 15, 1992 report, Dr. Colin Craythorne, a Board-certified orthopedic surgeon. Appellant noted that x-rays of the lumbar spine showed moderate narrowing at L4-5 and L5-S1 and stated that evidence of a successful spinal fusion was not particularly clear. Dr. Craythorne stated that appellant had a failed surgical back and was totally disabled. In a July 28, 1995 report, he reviewed appellant's chart and opined that the injury of February 1988 caused appellant's continuing back problems and that there was a permanent aggravation of the preexisting condition. Dr. Craythorne stated that it was unknown whether the February 1988 injury was sufficient to cause a permanent acceleration of appellant's preexisting lumbar spine condition. A copy of his February 24, 1988 report pertaining to the February 10, 1988 work injury was also received.

In an October 24, 1995 report, Dr. Luis Loimil, a Board-certified orthopedic surgeon, noted the history of the February 10, 1988 work injury and the medical care received. He additionally noted that appellant had injured his low back in 1960, reinjured his back in 1966 and underwent surgery for a spinal fusion, and had another back injury in 1984. Dr. Loimil stated that "whatever injury caused his present condition," appellant was totally disabled. In an October 11, 1996 report, he stated that appellant's February 10, 1988 injury apparently triggered appellant's current situation and noted that appellant had a long history of back problems which

¹ Docket No. 96-1682; *petition for recon. denied* (issued November 16, 1998).

² In the April 5, 1994 report, Dr. Roncaglione reviewed appellant's history and noted examination findings. He found little or no relation between the lumbosacral fusion and the accepted employment incident. Dr. Roncaglione found no neuromuscular malfunction or deficit and opined that appellant's subjective complaints of pain could not be anatomically related. He reported that any anatomical or structural alteration caused by the accepted employment injury should have resolved spontaneously with a return to appellant's "preinjury level" reasonably within a few days or weeks. Dr. Roncaglione concluded that none of the pathology currently diagnosed was related the February 10, 1988 work injury.

included being off work for a year and a half in 1960 and having to undergo a spinal surgery with spinal fusion when he reinjured his back in 1966. Dr. Loimil stated “there is no question that the injury of 1988 obviously aggravated the preexistent condition, where your back was weak from the previous injuries and it seems to be in the end determined the disabled condition you are in now.”

In a September 13, 2000 report, Dr. Wesley Johnson, a Board-certified orthopedic surgeon, noted appellant’s medical history pertaining to his back and indicated that the 1967 surgery did not take. He stated that “there is a pretty high chance that the symptoms are related to his previous discectomy and fusion attempt.” Dr. Johnson recommended conservative treatment.

By decision dated January 10, 2002, the Office denied appellant’s claim for recurrence of disability on the grounds that the medical record failed to establish that the claimed disability was causally related to the accepted work injury. The Office noted that Drs. Craythorne and Loimil related appellant’s claimed current condition to a new injury which was sustained at work on February 10, 1988.

In a January 19, 2002 letter, appellant requested an oral hearing, which was held on July 31, 2002. He testified that the surgery in 1967 was not successful and that his current disability was a result of that failure. No new medical evidence was submitted.

The employing establishment submitted comments to the hearing transcript, asserting that appellant’s recurrence claim was based on his February 10, 1988 work injury which the Office found was resolved in 1994 when it terminated benefits. The employing establishment emphasized that Dr. Roncaglione’s impartial medical opinion found little, if any, relationship between the lumbosacral pathology and subsequent lumbosacral fusion and the work-related incident of February 10, 1988.

By decision dated December 31, 2002, the Office’s hearing representative affirmed the January 10, 2002 decision, finding that appellant did not establish that he sustained a recurrence of disability as alleged.

In an April 2, 2003 letter, appellant requested reconsideration, contending that the evidence in his file and in Dr. Roncaglione’s report was fraudulent as his 1967 surgery resulted in a failed surgical back as diagnosed by Dr. Craythorne. No new evidence was submitted.

By decision dated September 4, 2003, the Office denied appellant’s reconsideration request without a review of the merits.

Appellant subsequently appealed to the Board. In an April 18, 2005 order, the Board granted the Director’s motion to set aside the September 4, 2003 Office decision and remand the case so that the case files could be doubled.³

³ Docket No. 04-764 (issued April 18, 2005).

By decision dated October 12, 2005, the Office denied modification of its December 31, 2002 decision. The Office reviewed the medical evidence under both claim numbers and found that Dr. Roncaglione, the impartial medical specialist, under file number A6-432868, was aware of appellant's medical history and work-related injuries. He opined, in his report of April 5, 1994, that appellant's injury-related condition due to the February 10, 1988 injury had ceased. The Office further noted that appellant's appeal rights were exhausted under file number A6-432868.

LEGAL PRECEDENT

The Office's implementing regulations define a recurrence of disability as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁴ If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken, and an appropriate new claim should be filed.⁵

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.⁶ This 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 employment factors and supports that conclusion with sound medical reasoning.⁷ An award of compensation may not be made on the basis of surmise, conjecture, speculation or on a claimant's unsupported belief of causal relation.⁸

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such an opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and that such a relationship must be supported with affirmative evidence, explained by medical rationale and be based on a complete and accurate medical and factual background of the claimant.⁹ Medical conclusions unsupported by

⁴ 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). *See also Philip L. Barnes*, 55 ECAB ____ (Docket No, 02-1441, issued March 31, 2004).

⁵ Federal (FECA) Procedure Manual, *supra* note 4 at Chapter 2.1500.3 (May 1997); *Donald T. Pippin*, 54 ECAB 631 (2003).

⁶ *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁷ *Ronald A. Eldridge*, 53 ECAB 218 (2001); *see Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁸ *Patricia J. Glenn*, 53 ECAB 159 (2001).

⁹ *Conard Hightower*, 54 ECAB 796 (2003).

medical rationale are of diminished probative value and are insufficient to establish causal relation.¹⁰

ANALYSIS

The Office accepted that appellant sustained a lumbosacral strain due to work factors on February 29, 1967. On September 20, 2001 he claimed a recurrence of disability commencing February 10, 1988 which he attributed to his work injury of February 10, 1988 and the failure of his 1967 back surgery.

In a July 28, 1995 report, Dr. Craythorne indicated that the 1988 employment injury caused appellant's continuing back problems and that there was a permanent aggravation of appellant's preexisting degenerative condition. On October 11, 1996 Dr. Loimil stated that "there was no question that the injury of 1988 obviously aggravated the preexistent condition." The Board has held that, in order to establish a claim for a recurrence of disability, a claimant must establish that he experienced a spontaneous material change in the employment-related condition without an intervening injury.¹¹ The reports from Dr. Craythorne and Dr. Loimil negate that appellant sustained a spontaneous recurrence of disability due to his accepted 1967 back injury. Appellant's assertions pertain to a claim for a new injury and not a recurrence of disability. The Board notes that appellant filed a claim for the February 10, 1988 incident which the Office adjudicated as a new injury in claim number 06-0432868. In its July 29, 1988 decision, the Board had affirmed the Office's termination of appellant's compensation benefits effective November 12, 1994 and, on November 16, 1988 denied appellant's petition for reconsideration.¹² The Board's decision on this matter became final after 30 days from the date of the filing of the decision.¹³

Appellant has also attributed his recurrence to the failure of his 1967 back surgery. The Board, however, finds a lack of rationalized medical evidence supporting the causal relationship asserted between appellant's accepted condition of February 29, 1967 and his lumbar condition on and after February 10, 1988. In a September 13, 2000 report, Dr. Johnson indicated that the 1967 surgery did not take and opined that "there is a pretty high chance that the symptoms are related to his previous discectomy and fusion attempt." However, he failed to provide a sufficient explanation of how appellant's symptoms were related to or would be the natural progression of appellant's 1967 back injury and subsequent surgery. Dr. Johnson's general conclusion that appellant's condition was caused by the 1967 injury and surgery is of diminished probative value¹⁴ and does not support appellant's claim that he experienced a spontaneous recurrence of disability causally related to his accepted 1967 back injury.

¹⁰ *Robert H. St. Onge, supra* note 6.

¹¹ *Carlos A. Marrero*, 50 ECAB 117 (1998).

¹² Docket No. 96-1682 (issued November 16, 1988).

¹³ *See* 20 C.F.R. § 501.6(d).

¹⁴ *Sandra Dixon-Mills*, 44 ECAB 882 (1993).

The medical evidence of record is insufficient to establish a progression of appellant's accepted 1967 back condition after he sustained the February 10, 1988 work injury. As previously discussed, the medical evidence notes an intervening cause (the February 10, 1988 injury) as having aggravated a preexisting problem. The Board's prior decision found that Dr. Roncaglione's impartial medical report of April 5, 1994 established that appellant had no continuing disability causally related to his February 10, 1988 accepted injury. Appellant has not submitted sufficient rationalized medical evidence to establish that he sustained a recurrence of disability causally related to the accepted 1967 injury. Accordingly, appellant has not established a recurrence of disability as of February 10, 1988.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability or a medical condition commencing February 10, 1988 causally related to his February 23, 1967 work injury.

ORDER

IT IS HEREBY ORDERED THAT the October 12, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 17, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board