

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

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**D.T., Appellant**

**and**

**DEPARTMENT OF THE NAVY, NORFOLK  
NAVAL SHIPYARD, Norfolk, VA, Employer**

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**Docket No. 07-1941  
Issued: January 8, 2008**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 17, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 5, 2007 with respect to 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 has established a recurrence of disability on or after September 10, 1990.

**FACTUAL HISTORY**

On May 16, 1989 appellant, then a 41-year-old sheet metal worker, filed a traumatic injury claim alleging that on May 15, 1989 he sustained a bilateral trapezius strain when he slipped on the deck of a ship. The reverse of the claim form is dated June 9, 2006 and the employing establishment indicated that the claim had not been initially forwarded to the Office as it was a no lost time, no medical expense claim. According to the employing establishment,

appellant's employment was terminated April 4, 1990. A form report (CA-20) dated September 18, 1989 from an employing establishment physician diagnosed bilateral trapezius strain and checked a box "yes" that the condition was employment related.

On August 10, 2006 appellant filed a notice of recurrence of disability. He reported the date of the recurrence of disability as September 10, 1990 and April 8, 1992. Appellant stated that after the fall at work his back was painful and as time went on his condition worsened. He submitted medical evidence, including an April 19, 1996 report from Dr. Stephen Montgomery diagnosing a lumbar strain in March 1996, and a March 9, 2001 report from Dr. Fred Benedict, diagnosing a degenerative L5-S1 disc with chronic mechanical back pain.

The Office notified appellant by letter dated August 22, 2006 that his March 15, 1989 claim was accepted for a sprain to the thoracic region of the back.<sup>1</sup> By decision dated September 28, 2006, the Office denied the claim for a recurrence of disability commencing September 10, 1990. Appellant requested an oral hearing before an Office hearing representative, which was held on April 24, 2007. He submitted a claim for compensation (Form CA-7) dated January 16, 2007, for disability commencing June 30, 2001.<sup>2</sup>

In a report dated May 15, 2007, Dr. Jerome Ecker, an internist, provided a history that appellant first experienced lumbar pain in 1989 after a fall sustained while aboard ship. He stated that appellant reported that chronic lumbar pain appeared shortly after the injury, resulting in light duty status. According to Dr. Ecker, appellant subsequently worked as a welder and then in 1994 began working in a series of light-duty jobs until he applied for Social Security disability. He noted that diagnostic tests showed degenerative L5-S1 changes in 1996 and severe narrowing of the L5-S1 disc space in 2001.

By decision dated July 5, 2007, the hearing representative affirmed the September 28, 2006 decision. The hearing representative found that appellant had not established a recurrence of disability as of September 10, 1990 or June 30, 2001.

### **LEGAL PRECEDENT**

A person 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 he claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the

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<sup>1</sup> It is not clear what medical evidence the Office relied on in accepting the claim.

<sup>2</sup> Appellant also referred to a period from April 15, 1989 to June 1, 1990. The Office decisions do not discuss this period.

disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>3</sup>

A recurrence of disability means “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.”<sup>4</sup>

### **ANALYSIS**

Appellant filed a claim for a recurrence of disability and he identified two dates: September 10, 1990 and April 8, 1992. He also submitted a Form CA-7 claim for compensation for the period June 30, 2001 to the present. It is appellant’s burden of proof to establish that on these dates he had an employment-related condition and that the condition disabled him for work.<sup>5</sup>

The medical evidence of record is not sufficient to establish a recurrence of disability on or after September 10, 1990. None of the medical reports of record provide a complete history, a diagnosis, a rationalized opinion on causal relationship between the diagnosed condition and the employment injury, and a rationalized opinion as to a period or periods of disability. Dr. Ecker, for example, notes that appellant had lumbar pain from a 1989 injury and he referred to 1996 tests showing degenerative lumbar changes. He did not provide a rationalized opinion with respect to a diagnosed lumbar condition and the 1989 employment injury, or an opinion as to the nature and extent of an employment-related disability. In the absence of probative medical evidence, the Board finds that appellant did not meet his burden of proof to establish an employment-related disability for the periods claimed.

### **CONCLUSION**

Appellant did not meet his burden of proof to establish a recurrence of disability on or after September 10, 1990.

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<sup>3</sup> *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

<sup>4</sup> 20 C.F.R. § 10.5(x).

<sup>5</sup> The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity. 20 C.F.R. § 10.5(f); *see e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated July 5, 2007 and September 28, 2006 are affirmed.

Issued: January 8, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board