

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

R.H., Appellant

and

**DEPARTMENT OF THE AIR FORCE, IDAHO
AIR NATIONAL GUARD, Boise, ID Employer**

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**Docket No. 08-1694
Issued: February 2, 2009**

Appearances:
Wendy R. Hatten, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 27, 2008 appellant filed a timely appeal from an April 15, 2008 decision of the Office of Workers' Compensation Programs denying 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 had a recurrence of disability on August 3, 2002 causally related to his May 17, 1990 accepted cervical strain.

FACTUAL HISTORY

This is the second appeal in this case.¹ By decision dated March 19, 2007, the Board affirmed Office decisions dated December 15, 2005 and March 3, 2006, which denied

¹ Docket No. 06-1389 (issued March 19, 2007). On May 17, 1990 appellant, then a 30-year-old aircraft mechanic, sustained a cervical strain when he was ejected from an RF-4C aircraft.

appellant's request for reconsideration of the denial of his claim for a recurrence of disability on December 30, 1996 causally related to his May 17, 1990 employment injury. The law and the facts of the previous Board decision are incorporated herein by reference.

On May 27, 2007 appellant filed a claim for a recurrence of disability on August 3, 2002 causally related to his May 17, 1990 accepted cervical strain.²

By letter dated February 13, 2008, the Office asked appellant to submit additional evidence, including a detailed description of what occurred on August 3, 2002. It also requested a rationalized medical opinion explaining how his recurrence of disability on August 3, 2002 was causally related to his May 17, 1990 employment injury.

In a March 11, 2008 letter, appellant, through his representative, contended that he sustained shoulder and thoracic spine injuries on May 17, 1990, in addition to the accepted cervical strain. He argued that the medical evidence was sufficient to establish that he sustained a recurrence of disability on August 3, 2002 causally related to his May 17, 1990 employment injury.

An October 15, 2007 report from the Boise Veterans Administration Medical Center addressed appellant's spinal and lower extremity conditions. However, the report is not signed. Therefore, it cannot be determined whether a physician prepared the report. The record contains numerous medical reports discussing appellant's spinal and lower and upper extremity conditions. However, none of these reports specifically addresses the issue of whether appellant sustained a recurrence of disability on August 3, 2002 causally related to his accepted May 17, 1990 cervical strain.

By decision dated April 15, 2008, the Office denied appellant's claim for a recurrence of disability on August 3, 2002 on the grounds that the medical evidence failed to establish causal relationship to the May 17, 1990 employment injury.³

LEGAL PRECEDENT

An employee 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.⁴ 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

² Appellant's claim for a recurrence of disability on October 31, 2002 was denied by Office decision dated November 22, 2004.

³ Subsequent to the April 15, 2008 Office decision, appellant submitted additional evidence. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

⁴ *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

conclusion with sound medical rationale.⁵ Where no such rationale is present, medical evidence is of diminished probative value.⁶

The Office's implementing federal regulations provide:

*“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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”*⁷

ANALYSIS

Appellant has the burden to provide medical evidence establishing that he sustained a recurrence of disability beginning August 3, 2002 causally related to his accepted cervical strain sustained on May 17, 1990.

By letter dated February 13, 2008, the Office requested that appellant submit additional evidence, particularly a medical report with a rationalized opinion explaining how his recurrence of disability on August 3, 2002 was causally related to his May 17, 1990 employment injury. Appellant submitted no such evidence.

The October 15, 2007 report from the Boise Veterans Administration Medical Center was not signed by a physician. The Board has held that medical evidence must be in the form of a reasoned opinion by a qualified physician.⁸ Therefore, this report does not constitute probative medical evidence.

The other medical reports of record speak to appellant's spinal and lower and upper extremity conditions. However, the reports do not address the issue of whether appellant sustained a recurrence of disability on August 3, 2002 causally related to his accepted May 17, 1990 cervical strain. There is no medical evidence of record establishing that appellant sustained a recurrence of disability as alleged. For this reason, the Office properly denied his claim.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a recurrence of disability on August 3, 2002 causally related to his May 17, 1990 accepted cervical strain.

⁵ *Lourdes Davila*, 45 ECAB 139 (1993).

⁶ *Michael Stockert*, 39 ECAB 1186 (1988).

⁷ 20 C.F.R. § 10.5(x).

⁸ *See Robert J. Krstyen*, 44 ECAB 227, 229 (1992).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 15, 2008 is affirmed.

Issued: February 2, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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