

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HOWARD FISHER and DEPARTMENT OF THE ARMY,
ANNISTON ARMY DEPOT, Anniston, Ala.

*Docket No. 98-201; Submitted on the Record;
Issued July 7, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he had a recurrence of disability causally related to his October 29, 1995 employment injury.

On October 29, 1995 appellant, then a 47-year-old security guard, felt his left knee give way and grabbed a counter top to prevent a fall. He claimed that he pulled muscle in his back while holding himself from falling. The Office of Workers' Compensation Programs accepted appellant's claim for lumbosacral strain. Appellant did not lose time from work and returned to regular duties on March 22, 1996.

On February 18, 1997 appellant filed a claim for recurrence of disability effective January 2, 1997. He had not lost any time from work but he indicated that he was experiencing increasing back pain from a herniated disc for which he had sought medical treatment. He noted that he sought medical treatment on February 13, 1997. In a May 21, 1997 decision, the Office denied appellant's claim for a recurrence of disability on the grounds that the evidence of record failed to establish that the claimed recurrence was causally related to the employment injury. In a June 19, 1997 letter, appellant requested reconsideration. In a July 17, 1997 merit decision, the Office denied appellant's request for modification of the May 21, 1997 decision.

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability due to his employment injury.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which he seeks compensation was causally related to his employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.¹

¹ *Dominic M. DeScala*, 37 ECAB 369 (1986).

In a March 26, 1997 report, Dr. Kenneth L. Vandervoort, a Board-certified orthopedic surgeon, noted that he had treated appellant's lower back after an October 1995 injury. He stated that appellant's pain had resolved until he twisted his back again on February 13, 1997.² He commented that appellant continued to have ongoing back problems since that time. He concluded that appellant's back pain was related to the February 1997 injury. In a March 10, 1997 office note, Dr. Vandervoort indicated that appellant was still having considerable lumbar pain. He noted that a magnetic resonance imaging (MRI) scan taken a year previously showed evidence of a central disc herniation at L4-5. In a June 12, 1997 office note, Dr. Vandervoort reviewed appellant's medical history and stated that appellant's lumbar disc disease was either caused or aggravated by the work incidents in October 1995 and February 1997. Dr. Vandervoort, in his reports, only gave a conclusion that appellant's recurrence of disability was causally related to the October 29, 1995 employment injury. He did not provide any physiological explanation on how the October 29, 1995 employment injury would cause any back pain beginning in January 1997 after appellant had returned to full duty in March 1996. He also did not discuss whether the herniated L4-5 disc seen on the MRI scan was causally related to the employment injury and, if so, how it was related. As Dr. Vandervoort did not provide any rationale in support of his opinion that appellant's current back condition was causally related to the employment injury, his reports have diminished probative value and are insufficient to satisfy appellant's burden of proof.

The decisions of the Office of Workers' Compensation Programs, dated July 17 and May 21, 1997, are hereby affirmed.

Dated, Washington, D.C.
July 7, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member

² Although Dr. Vandervoort stated that appellant twisted his back on February 13, 1996, the context of the case record shows that appellant actually sought further treatment on February 13, 1997.