

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of LEONARD H. DAVIS and DEPARTMENT OF THE ARMY,  
Fort Myer, VA

*Docket No. 98-79; Submitted on the Record;  
Issued August 3, 1999*

---

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant sustained a recurrence of disability beginning January 1993 that was causally related to his employment injury of May 22, 1991.

In a decision dated July 11, 1997, the Office of Workers' Compensation Programs denied appellant's claim of recurrence on the grounds that the weight of the medical evidence -- represented by the May 14, 1997 opinion of Dr. M.A.M. Tawfick, an orthopedic surgeon and Office referral physician -- established that residuals of the accepted lumbar strain resolved within six to eight weeks of the date of injury.

The Board finds that this case is not in posture for a determination of whether appellant sustained a recurrence of disability beginning January 1993 that was causally related to his employment injury of May 22, 1991. An unresolved conflict in medical opinion warrants referral to an impartial medical specialist pursuant to 5 U.S.C. § 8123(a).

On May 14, 1997 Dr. Tawfick reported that appellant suffered a lumbar strain on May 22, 1991, which resulted in a temporary aggravation of the previous condition of chronic lumbar disc degeneration. Indicating that appellant had received adequate treatment, Dr. Tawfick stated that appellant was expected to recover from the lumbar strain within six to eight weeks and would return to his status quo after that period of time. He reported that appellant's current chronic lumbar disc degeneration had no relation to the lumbar strain he sustained on May 22, 1991.

On January 13, 1993 appellant's attending physician, Dr. John D. Voss, a specialist in internal medicine and Assistant Professor of Medicine and Health Care Sciences at the George Washington University Medical Center, reported that appellant had been his patient since August 1990. Dr. Voss described appellant's May 22, 1991 employment injury, which caused a sharp stabbing pain in his back. He noted that appellant stopped work for several minutes, resumed work and over the next weekend continued to have pain radiating down his leg of

increasing severity. After describing appellant's medical course and his latest clinical findings, Dr. Voss reported that appellant had presented with an 18-month history of low back discomfort secondary to a combination of lumbosacral spondylosis and sciatica. He stated that appellant had not improved to a degree that he could return to his full-time work status and noted that appellant was currently applying for disability retirement. Dr. Voss stated that appellant was disabled and would not be able to return to usual work status. In an attached form report, he indicated with an affirmative mark that appellant's sciatica and lumbosacral spondylosis was caused or aggravated by his employment injury.

In a report dated January 25, 1993, Dr. Voss recommended that appellant refrain from any work and pursue his options in terms of disability retirement because of appellant's increasing difficulties with pain related to his job activities.

On February 11, 1993 Dr. Voss reported that a consulting rheumatologist, Dr. David Borenstein, felt that appellant's symptoms were primarily related to lumbosacral spondylosis aggravated by his injury at work. Noting appellant's poor response to therapy, Dr. Voss stated that appellant was applying for early retirement because it had become clear over the past 18 months that he simply could not meet or perform his job requirements. "It is estimated," Dr. Voss reported, "that [appellant] has made as complete a recovery as he is going to make and his recovery is only a partial recovery. A full recovery is not expected. Because of his back pain, he simply cannot perform the job requirements of a carpenter which include frequent bending, stooping, lifting and carrying heavy objects, spending time working on ladders or with his hands overhead for an extended period of time." Dr. Voss noted that he had tried multiple times to place appellant on a light-duty status and slowly work back to full duty but that this "has always been unsuccessful."

In a report dated January 24, 1995, Dr. M. Carmen Visus, a specialist in internal medicine and an associate of Dr. Voss, described appellant's employment injury and noted minimal improvement over the following months. Dr. Visus stated that appellant was suffering from chronic musculoskeletal lower back pain as a result of his work-related injury and was unlikely to improve further. He reported: "[Appellant] retired in 1993 secondary to disability from this injury."

Section 8123(a) of the Federal Employees' Compensation Act provides in part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."<sup>1</sup>

The Office physician, Dr. Tawfick, and appellant's physicians, Drs. Voss and Visus, disagree on whether appellant fully recovered from his May 22, 1991 employment injury and whether his disability for work beginning in January 1993 was causally related to that employment injury. Dr. Tawfick reported that appellant was expected to recover from his lumbar strain (and presumably from the temporary aggravation of his preexisting chronic lumbar disc degeneration, though he did not expressly address this) within six to eight weeks and that

---

<sup>1</sup> 5 U.S.C. § 8123(a).

appellant's current condition, in 1997, had no relation to the injury of May 22, 1991. Such an opinion negates appellant's claim of an injury-related recurrence of disability in January 1993. Dr. Voss, however, reported that the employment incident of May 22, 1991 caused or aggravated appellant's lumbosacral spondylosis and sciatica. Noting the continuity of appellant's symptoms and his poor response to therapy, Dr. Voss reported contemporaneous to the claimed period of disability that appellant had made only a partial recovery, that a full recovery was not expected and that appellant simply could not perform the job requirements of a carpenter because of his back pain. About two years later Dr. Visus also supported a continuing, injury-related chronic musculoskeletal lower back pain and noted that appellant had retired in 1993 secondary to disability from this injury.

To resolve the conflict in opinion between appellant's physicians and the Office referral physician, the Office shall refer appellant, together with the medical record and a proper statement of accepted facts, to an appropriate impartial specialist for a well-reasoned opinion on whether appellant's disability for work beginning in January 1993 was causally related to his May 22, 1991 employment injury. In resolving this issue, the specialist should explain whether the incident that occurred at work on May 22, 1991 caused or aggravated appellant's lumbar spondylosis, sciatica or chronic lumbar disc degeneration. After such further development of the evidence as may be necessary, the Office shall issue an appropriate final decision on appellant's claim of recurrence.

The July 11, 1997 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.  
August 3, 1999

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member