

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRIAN K. ALLEN and DEPARTMENT OF THE NAVY,
PORTSMOUTH NAVAL SHIPYARD, Portsmouth, N.H.

*Docket No. 97-2612; Submitted on the Record;
Issued July 1, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he sustained a recurrence of disability commencing October 12, 1994 causally related to his December 2, 1991 employment injury.

In the present case, appellant filed a claim alleging that he injured his back in the performance of duty on December 2, 1991 while he was tightening a collar with a wrench. The Office of Workers' Compensation Programs accepted the claim for a low back strain. The record indicates that appellant returned to light-duty work on December 18, 1991.¹

On November 4, 1994 appellant filed a notice of recurrence of disability commencing October 12, 1994. By decision dated December 11, 1995, the Office denied the claim for a recurrence of disability commencing October 12, 1994. In a decision dated March 25, 1996, the Office denied modification of the prior decision. By decision dated January 27, 1997, the Office determined that appellant's request for reconsideration was not sufficient to warrant reopening the case for review of the merits of the claim. In a decision dated May 15, 1997, the Office reviewed the case on its merits and denied modification of the December 11, 1995 decision.

The Board has reviewed the record and finds that appellant has not established a recurrence of disability commencing October 12, 1994.

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 she 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

¹ The record also indicates that appellant was off work from January 6 to 13, 1992.

disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

In this case, the medical evidence is not of sufficient probative value to establish a recurrence of disability on or after October 12, 1994 causally related to the accepted employment injury. A treating neurologist, Dr. Stephen G. Pappas, provided an opinion in a January 10, 1996 report that “it is my impression that [appellant] is suffering from lumbar degenerative dis[c] disease with associated lumbar radiculopathy directly related to a work injury sustained in December 1991....” The Board notes, however, that Dr. Pappas did not appear to have an accurate medical history. He indicated that, following appellant’s employment injury, lumbar spine films had disclosed two fractured lumbar vertebra, and that appellant was out of work for several months. The evidence of record does not support either of those statements. The accepted injury in this case was a lumbar strain, and the only evidence of x-ray results is found in an April 9, 1992 report from a chiropractor, who diagnosed subluxation, sprain/strain, and lumbalgia. There is no evidence that appellant sustained any fractured vertebra. Furthermore, the record does not indicate, as noted above, that appellant was out of work for several months.

In addition to the lack of a complete and accurate background, Dr. Pappas did not provide medical reasoning to establish causal relationship between a diagnosed condition and the employment injury, nor does he discuss disability commencing on October 12, 1994. Similarly, a form report (Form CA-20) dated February 19, 1996, in which Dr. Pappas diagnosed lumbar disc and checked a box “yes” that the condition was causally related to employment, is of little probative value without further explanation.³

Appellant also submitted a report dated February 14, 1997 from Dr. Randolph C. Bishop, a neurosurgeon. Dr. Bishop stated in his history that appellant had sustained a back injury pulling on a large wrench on December 2, 1991, and “that evening the pain began to be much more severe and resulted in the development of a chronic pain syndrome through the years. He gradually recovered from the injury in 1991, but had persistent back pain that would intermittently require him to miss work and has basically rendered him unable to perform the type of activities he was able to do prior to this injury at work.... [Appellant] had recurrence of the severe type pain at work while bending and stooping when the same symptoms of low back and left leg pain returned causing him to miss some work and having an increased amount of pain severity since that time.” He provided a diagnosis of low back pain syndrome secondary to degenerative disc disease at L5-S1, but he does not provide a reasoned medical opinion on causal relationship with the employment injury. The statements provided in the history are of little probative value without additional explanation. Dr. Bishop indicated that appellant had developed a chronic pain syndrome, but he also stated that appellant gradually recovered from the 1991 injury. He does not provide a reasoned medical opinion on causal relationship between a diagnosed condition and the employment injury, nor does he discuss an employment-related disability commencing October 12, 1994. Dr. Bishop stated that appellant denied any trauma or accident “since his October 1994 incident,” although he had not previously referred to an

² *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

³ *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

incident in October 1994. To the extent that Dr. Bishop is referring to his previous statement of a recurrence of pain at work while bending and stooping, this would appear to be more relevant to a claim for a new injury, rather than a recurrence claim.⁴

Accordingly, the Board finds that the medical evidence of record is not of sufficient probative value to establish a recurrence of disability commencing on or after October 12, 1994. It is, as noted above, appellant's burden of proof and the Board finds he has not met his burden in this case.

The decision of the Office of Workers' Compensation Programs dated May 15, 1997 is affirmed.

Dated, Washington, D.C.
July 1, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁴ The Office advised appellant as to the definition of a recurrence by letter dated April 19, 1995, and indicated in the March 26, 1996 decision that if appellant were attributing a condition to continuing employment factors, a new occupational disease claim would be appropriate.