

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ABRAHAM J. SMALLS and DEPARTMENT OF THE NAVY,
CHARLESTON NAVAL SHIPYARD, S.C.

*Docket No. 97-2499; Submitted on the Record;
Issued May 14, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability after April 3, 1996 that was causally related to his accepted October 17, 1991 employment injury of cervical strain.

On October 18, 1991 appellant, then a 41-year-old rigger, filed a notice of traumatic injury and claim, alleging that he sustained an injury to his cervical spine on October 17, 1991 while in the performance of duty. The Office of Workers' Compensation Programs initially accepted appellant's claim for cervical strain and subsequently accepted that appellant sustained herniation of nucleus pulposus at the C4 to C5 and C5 to C6 levels as a result of his injury. Appellant received appropriate compensation for temporary total disability and returned to limited-duty work on January 25, 1993.

On May 12, 1994 appellant filed a claim for a schedule award. In a decision dated May 25, 1994, the Office awarded appellant a schedule award for a four percent loss of use of his right arm for a total of 12.48 weeks of compensation from March 2 to May 28, 1994.

On October 21, 1996 appellant filed a claim for recurrence of disability beginning April 3, 1996. The employing establishment indicated that appellant had elected disability retirement effective September 16, 1994. In a decision dated February 14, 1997, the Office denied appellant's claim for recurrence of disability on the grounds that he had failed to respond to its November 21, 1996 request for medical evidence in support of his claim. By merit decision dated July 9, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to establish modification of the prior decision.

The Board has duly reviewed the entire case record on appeal and finds that appellant did not establish a recurrence of disability after April 3, 1996 that was causally related to his accepted employment injury of cervical strain.

Where appellant claims recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.¹ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

In the present case, appellant submitted two medical reports he believed established that he had sustained a recurrence of disability. In a report dated December 22, 1996, Dr. Steven C. Poletti, a Board-certified orthopedic surgeon and appellant's treating physician, noted that he had seen appellant on April 22, 1994, May 31, 1995 and April 3, 1996 and there was "no addendum to his impairment. Nothing has changed on him. There is nothing about his medical condition that has changed since I have seen him previously." Dr. Poletti concluded that there was nothing that indicated that appellant was now unable to perform the job he was performing at the time of his retirement. Dr. Poletti's report does not support appellant's contention that he sustained a recurrence of disability as the physician indicated that appellant's condition had not changed and he was capable of performing his job as of the date of retirement. Appellant also submitted a report by Dr. Cary E. Fletcher who treated him for pulmonary problems. However, Dr. Fletcher indicated that he could not assess appellant's work capabilities as he was not an orthopedic surgeon. Although Dr. Fletcher indicated that appellant had a recurrence of disability from an orthopedic standpoint, his report lacks probative value as he was not treating appellant for his orthopedic condition and he has not offered any rationale for his conclusion. Appellant has not established that he sustained a recurrence of disability after April 3, 1996 that was causally related to his accepted employment injury.

¹ *John E. Blount*, 30 ECAB 1374 (1979).

² *Frances B. Evans*, 32 ECAB 60 (1980).

The decisions of the Office of Workers' Compensation Programs dated July 9 and February 14, 1997 are hereby affirmed.

Dated, Washington, D.C.
May 14, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member