

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES R. DARLING and DEPARTMENT OF THE INTERIOR,  
BUREAU OF RECLAMATION, Willows, CA

*Docket No. 98-2051; Submitted on the Record;  
Issued April 18, 2000*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained a recurrence of disability on April 4, 1998 causally related to his March 12, 1998 employment injury.

On March 13, 1998 appellant, then a 47-year-old construction inspector, filed a traumatic injury claim alleging that on March 12, 1998 he strained his lower and middle back when he stepped in a hole while performing a survey.

In a report dated March 13, 1998, Dr. Martin Kernberg, a Board-certified radiologist who specializes in general surgery, stated that appellant related a history of an injury on March 12, 1998 when he "stepped into a hole within a ditch" and fell. He diagnosed a left paralumbar strain "consistent with [appellant's] account of injury and onset of illness." An x-ray of appellant's lumbar spine obtained on March 13, 1998 revealed a "probabl[e] disc herniation of L2-3 and L3-4" and "chronic degenerative disc changes of disease throughout the lumbar spine."

The Office of Workers' Compensation Programs accepted appellant's claim for a left paralumbar strain. He returned to limited-duty employment following his injury.

On April 10, 1998 appellant filed a notice of recurrence of disability alleging that on April 4, 1998 he sustained a recurrence of disability causally related to his March 12, 1998 employment injury. He stated that he had "not completely healed when while showering I coughed and fell to my knees in pain."

In an unsigned report dated April 6, 1998, Dr. Brian Courtney, a Board-certified internist, stated that appellant related a history of a March 12, 1998 employment injury which had not fully resolved. He noted that appellant experienced "an abrupt onset of sharp, low back pain" when he "coughed forcefully in the shower" two days prior. Dr. Courtney diagnosed a probable herniated disc with L-4 radiculopathy.

In a letter dated April 22, 1998, the Office requested that appellant provide further factual and medical information in support of his claim. Specifically, the Office requested that Dr. Courtney address whether he had recovered from his initial injury prior to his alleged recurrence of disability on April 4, 1998 and comment on the “precipitating factors that produced a recurrence.” The Office further requested that he indicate whether appellant’s coughing on April 4, 1998 was sufficient to cause his current condition without contributing from his accepted employment injury.

In a statement dated April 30, 1998, appellant related that when he returned to work following his employment injury he performed “surveying, constructing cabinets [and] moving furniture from [] storage to the main office.” He further stated that his back pain “seemed to be getting better except the popping feeling in the spine at times.” Appellant stated that when he coughed to clear his throat while he showered and brushed his teeth, he experienced a “sharp pain as though a knife was stuck in my back hit all of a sudden with pains going down the left leg.”

In a report dated May 11, 1998, Dr. Bruce L. Burke, a Board-certified neurosurgeon, opined that appellant had not recovered from his March 12, 1998 employment injury. He stated:

“It is my opinion that [appellant] suffered a tear of the annulus fibrosis of his L3-4 disc on or about March 12, 1998. On April 4, 1998, he coughed and blew out the disc which is pressing on the nerve and has not been relieved by standard medical therapy.”

Dr. Burke further opined that appellant “was predisposed to the disc-blowout on April 4, 1998 due to the weakness in the disc caused by the disc injury on March 12, 1998.” He recommended surgery to remove the disc fragment.

By letter dated June 2, 1998, the Office requested that Dr. Burke clarify his opinion regarding whether appellant’s March 12, 1998 employment injury caused his L3-4 disc herniation. The Office provided him with appellant’s description of his employment duties upon his return to work and informed him that the Office required a rationalized medical opinion supported by objective evidence in order to accept “the newly diagnosed herniated disc” as employment related.

In a report dated June 4, 1998, Dr. Burke stated that he could not support his finding regarding the cause of appellant’s herniated disc at L3-4 with contemporaneous evidence and noted that the Office could not prove that his conclusion was incorrect.

In a form report dated June 8, 1998, Dr. Burke diagnosed a recurrent left L3-4 disc herniation and checked “yes” that the condition was caused or aggravated by employment. He noted that a magnetic resonance imaging (MRI) scan revealed a herniated disc at L3-4 on the left side. Dr. Burke requested authorization for a left L3-4 microdiscectomy.

By decision dated June 16, 1998, the Office denied appellant’s claim on the grounds that the evidence failed to establish a causal relationship between his March 12, 1998 employment injury and his disability beginning April 4, 1998 due to a herniated disc at L3-4.

The Board finds that the case is not in posture for decision.

It is an accepted principle of workers' compensation law and the Board has so recognized that when the primary injury is shown to have arising out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional condition.<sup>1</sup>

Once the work-connected character of any condition is established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.<sup>2</sup> If a member weakened by an employment injury contributes to a later fall or other injury, the subsequent injury will be compensable as a consequential injury, if the further complication flows from the compensable injury, *i.e.*, so long as it is clear that the real operative factor is the progression of the compensable injury, with an exertion that in itself would not be unreasonable under the circumstances, the condition is compensable.<sup>3</sup>

Proceedings under the Federal Employees' Compensation Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>4</sup>

In a report dated May 11, 1998, Dr. Burke opined that at the time of his March 12, 1998 employment injury appellant sustained "a tear of the annulus fibrosis of his L3-4 disc" and that when appellant coughed on April 4, 1998 he "blew out the disc." He attributed the "disc blowout" to weakness resulting from the March 12, 1998 employment injury. In a form report dated June 8, 1998, Dr. Burke diagnosed a herniated disc at L3-4 based on an MRI scan, checked "yes" that the condition was employment related and requested authorization for surgery. Although Dr. Burke's opinion does not contain sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial evidence that he sustained a consequential injury resulting from his March 12, 1998 employment injury, it raises an uncontroverted inference of causal relationship sufficient to require further development by the Office.<sup>5</sup> The Board further notes that an x-ray obtained contemporaneously with appellant's March 12, 1998 employment injury revealed a probable disc herniation at L3-4.

On remand, the Office should prepare a statement of accepted facts and obtain from appellant copies of x-rays predating his accepted employment injury as well as a copy of his MRI scan. The Office should then refer appellant, the case record and the statement of accepted

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<sup>1</sup> Larson, *The Law of Workmen's Compensation* § 13.00; see *John R. Knox*, 42 ECAB 193 (1990).

<sup>2</sup> *Id.* at § 13.11(a).

<sup>3</sup> *Robert W. Meeson*, 44 ECAB 834 (1993).

<sup>4</sup> *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

facts to an appropriate neurosurgeon for an evaluation and a rationalized medical opinion on whether appellant sustained a consequential injury causally related to his accepted employment injury and, if so, whether surgery was warranted as an appropriate treatment for the condition appellant sustained after coughing while taking a shower. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated June 16, 1998 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Dated, Washington, D.C.

April 18, 2000

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member