

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEONARD MARTINI and DEPARTMENT OF THE NAVY,
NAVAL OCEANS SYSTEMS CENTER, San Diego, CA

*Docket No. 98-1591; Submitted on the Record;
Issued February 11, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant's current condition is causally related to his federal employment or his accepted 1986 employment injury.

The Board has duly reviewed the case on appeal and finds it not in posture for decision.

Appellant, then a 41-year-old engineer, filed a claim on February 10, 1986 alleging that he injured his lower back lifting a box in the performance of duty on February 6, 1986. The Office of Workers' Compensation Programs accepted appellant's claim for acute lumbar sprain on March 5, 1986. Appellant filed a notice of recurrence of disability on September 4, 1997 alleging that on July 16, 1997 he sustained a recurrence of disability causally related to his accepted employment injury. Appellant attributed his recurrence of disability to prolonged sitting. By decision dated January 30, 1998, the Office denied appellant's claim both as a recurrence of disability and as an occupational disease. Appellant requested reconsideration on February 9, 1998. By decision dated April 10, 1998, the Office denied modification of its January 30, 1998 decision.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between

the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.¹

Appellant attributed his neck pain as well as upper and lower back pain to prolonged periods of computer design work. Appellant's attending physician, Dr. David L. Turner, a chiropractor, submitted reports dated December 21, 1997 and February 12, 1998 noting that appellant presented on July 21, 1997 with a cumulative injury. He stated that appellant's prolonged work at the computer had brought on mid back and cervical spine pain. Dr. Turner noted that appellant reported that he experienced acute pain on December 2 or 3, 1997 and that he had experienced constant pain since July 21, 1997. Dr. Turner examined x-rays taken on December 17, 1997 and diagnosed subluxations at C1, C2, C5 and C6 as well as T3, T4 and T7. He noted that if appellant's cervical and thoracic spine pain persisted for any length of time, then he also experienced pain in the lumbar musculature and spinal area. Dr. Turner emphasized that appellant's condition was the result of cumulative trauma and repetitive stress.

The Office referred appellant, a statement of accepted facts and list of questions for a second opinion evaluation to Dr. Thomas R. Dorsey, a Board-certified orthopedic surgeon. In a report dated March 26, 1998, he noted appellant's history of injury and current complaint of low back pain. Dr. Dorsey performed a physical examination and reviewed the December 17, 1997 x-rays. He found that the cervical spine radiograph was negative. Dr. Dorsey concluded that appellant had no evidence of significant abnormality and diagnosed lumbar musculoligamentous sprain/strain resolved. He found that appellant had no evidence of subluxation based on the submitted material and that he had no medical condition connected to factors of employment or the 1986 employment injury.

In this case, appellant's attending physician, Dr. Turner, diagnosed subluxations of the thoracic and lumbar spine due to factors of appellant's federal employment. The Office referral physician, Dr. Dorsey, found that appellant's condition of lumbar strain/sprain had resolved and that appellant had no medical condition causally related to his federal employment. Section 8123(a) of the Federal Employees' Compensation Act² provides, "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." On remand the Office should refer appellant, test results, medical records and a statement of accepted facts to an appropriate Board-certified physician to determine whether appellant currently experiences a condition causally related to either his employment injury or factors of his federal employment. After this and such other development as the Office's deems necessary, the Office should issue an appropriate decision.

¹ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

² 5 U.S.C. §§ 8101-8193, 8123(a).

The decisions of the Office of Workers' Compensation Programs dated April 10, 1998 and January 30, 1998 are hereby set aside and remanded for further development consistent with this opinion.

Dated, Washington, D.C.
February 11, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member