

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KEVIN Y. SPRINGHART and DEPARTMENT OF DEFENSE,
DEFENSE ELECTRONICS SUPPLY CENTER, Dayton, OH

*Docket No. 98-2046; Submitted on the Record;
Issued February 24, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant's disability in October 1990 was causally related to his January 3, 1984 employment injury.

On the prior appeal of this case,¹ the Board found that the medical evidence was insufficient to discharge appellant's burden of proof. The Board found that appellant's attending chiropractor, Dr. Don T. Shaffer, was not competent to render an opinion on flare-ups of acute lumbar strain/sprain syndrome complicated by lumbar discopathy or traumatogenic structural weakening of the lumbar spine with associated ligamentous instability. The Board also found that the opinion of the orthopedic consultant, Dr. Homayoun Mesghali, was of little probative value because it lacked a complete and accurate history and sound medical reasoning.

Appellant requested reconsideration and submitted additional evidence. In a report dated May 25, 1994, Dr. Richard M. Donnini related that appellant fell in a parking lot at work on January 3, 1984. Dr. Donnini diagnosed lumbar disc displacement and lumbar sprain/strain and concluded as follows:

“With medical certainty, the diagnoses listed above are directly related to the accident that occurred on January 3, 1994. I feel that [appellant] is permanently and totally disabled based on a combination of problems that relate to his January 3, 1984 injury. This would include aggravation of spinal arthrosis, chronic lumbar sprain/strain and lumbar radiculopathy.”

In a decision dated March 21, 1995, the Office of Workers' Compensation Programs reviewed the merits of appellant's claim and denied modification of its prior decision. The Office found that, in light of the fact there was a six-year interval between the initial injury and the claimed recurrent disability, medical evidence must be presented based on an accurate factual

¹ Docket No. 93-1051 (issued June 13, 1994).

background, addressing the preexisting condition identified as lumbar discopathy and demonstrating that the condition arose, which, arose in 1990 was due to the actual work injury as opposed to the ongoing progression of the preexisting condition.

Appellant again requested reconsideration and submitted a supplemental report from Dr. Donnini. In his April 7, 1995 report, Dr. Donnini stated as follows:

“[Appellant] has asked me to make further clarification of his condition dating back to 1984. There seems to be some question as to the duration of symptomatology. The history that we obtained indicates that he has had problems since 1984 with no prior history of any problems before 1984. He was able to return to work in February of 1984. He did, however, have problems that he said he reported to his supervisors during 1984 and 1985. He said he frequently missed days and used sick days to cover those days. The pain persisted unabated and increas[ed] with different levels of activity. In October of 1990 he started treat[ments] with [Dr. Shaffer] because something additional had to be done.

“This description of an injury in the lower back, which begins at a set period in time and persists actually slowly steadily progresses or just gets to a point of intensity where disability occurs is a very common almost normal pattern for a chronic low back condition. He made what appears to be a sincere effort to continue working in spite of pain and discomfort, not with the lack of pain and discomfort.

“My exam[ination] indicates that there are nonorganic etiologies to his pain. My findings are consistent with his diagnosis. Subsequent surgical intervention is just another progression of that condition. The pattern as explained to me, though, not directly verified by anything other than information given to me by [appellant], clearly goes along with the progression of a low back injury that unfortunately so frequently occurs.”

In a decision dated June 21, 1995, the Office reviewed the merits of appellant’s claim and denied modification of its prior decision. The Office found that the history reported by Dr. Donnini inaccurately stated that, appellant fell, when in fact he twisted his back preventing himself from doing so. The Office also found that there was no evidence to support that appellant reported injury-related back problems to his supervisors after the term of the original injury. The Office noted the following deficiencies in the medical evidence: (1) the lack of contemporaneous, probative medical evidence in the case record clinically correlating any other work-related condition than the accepted subluxation at L3; (2) the reference to possibly preexisting back problems, which has not been adequately addressed; (3) the fact that appellant completely recovered from his work-related subluxation at L3 and was not only returned to regular duties in February 1984 but was released from medical treatment effective March 2, 1984, coupled with the fact that he received no medical treatment for a back condition until he saw Dr. Shaffer again more than six years later in October 1990; (4) the employing establishment stated that after returning from his original injury, appellant did not attribute any leave request to back problems; (5) The record indicates a possible intervening injury; and (6) no medical report provides a clear and accurate history of the January 3, 1984 work injury, along

with reasoned medical opinion sufficient to document a spontaneous worsening of the injury-related condition in mid-1990 severe enough to warrant the claimed recurrent period of disability.

Appellant appealed to the Board, but when the Director of the Office failed to transmit the record to the Board in a timely manner, the Board remanded the case for reconstruction and proper assemblage of the case record. The Board also ordered that an appropriate decision be issued to protect fully appellant's appeal rights.²

On June 1, 1998 the Office reissued its June 21, 1995 decision. Appellant again seeks review by the Board.

The Board finds that the medical evidence is insufficient to establish that appellant's disability in October 1990 was causally related to his January 3, 1984 employment injury.

As the Board noted in its June 13, 1994 decision, an individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.³

After the Board's June 13, 1994 decision, appellant submitted narrative medical reports from Dr. Donnini. These reports are of diminished probative value, however, because Dr. Donnini related that appellant fell in a parking lot at work. The record establishes that appellant slipped but did not fall in the parking lot. Medical conclusions based on inaccurate or incomplete histories are of little probative value.⁴ But as the Office explained in its June 1, 1998 decision, this is not the only deficiency in the medical evidence.

Appellant's treating chiropractor reported that appellant's acute lumbar sprain on January 3, 1984 appeared to be superimposed upon a preexisting lumbar discopathy: Radiographs taken at that time exhibited decreased interosseous spacing, leading Dr. Shaffer to the opinion that, appellant, at the time of his January 3, 1984 injury, had already sustained some degree of degenerative disc disease prior to that time, though appellant had not been previously symptomatic. Appellant slipped in the parking lot on January 3, 1984, twisting his back, but returned to regular duty on February 27, 1984 and was discharged from medical treatment on March 2, 1984. When appellant next obtained medical treatment in October 1990, six and a half years after being discharged, he implicated a twisting incident that occurred approximately one week earlier. He explained that he had experienced previous bouts of pain precipitated by such

² Docket No. 95-2724 (issued January 28, 1997).

³ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

⁴ See *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete); see generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

incidents as starting a lawnmower or weed trimmer, lifting his daughter and lifting or moving equipment.

Because Dr. Donnini did not take these facts into consideration, his opinion relating appellant's condition and disability on or after October 1990 to the incident that occurred on January 3, 1984 is not well reasoned and is of little probative value.⁵ Although he attempted to bridge the gap in appellant's medical treatment by noting that appellant had reported continuing problems to his supervisors in 1984 and 1985 and had used sick leave to cover frequently missed days, appellant's supervisor denied that appellant attributed any leave request to back problems, once again calling into question the history upon which Dr. Donnini relied. Without a well-reasoned medical opinion showing how appellant's slip on January 3, 1984 caused or contributed to his diagnosed condition and disability on or after October 1990 -- an opinion that adequately accounts for an apparent preexisting degenerative disc disease, appellant's discharge from medical treatment, the apparent lack of medical treatment for six and a half years and the intervention of numerous incidents implicated by appellant -- the evidence is insufficient to meet appellant's burden of proof.

The June 1, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
February 24, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁵ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).