

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARCELINO VILLARRUE and PANAMA CANAL COMMISSION,
MIRAFLORES LOCKS, Balboa Heights, Republic of Panama

*Docket No. 98-2118; Submitted on the Record;
Issued February 10, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability on November 13, 1995 as a result of his September 27, 1987 employment injury.

On September 27, 1987 appellant, a boatman, sustained a low back injury in the performance of his duties while turning a rowboat into position. The Office of Workers' Compensation Programs accepted his claim for back strain and herniated nucleus pulposus at L4-5 and L5-S1. Appellant received compensation for temporary total disability until he voluntarily retired on November 29, 1987. He continued to receive medical benefits.

On December 1, 1995 appellant filed a claim asserting that he sustained a recurrence of disability on November 13, 1995 as a result of his September 27, 1987 employment injury. Appellant's attending neurosurgeon, Dr. Avelino Gutiérrez, reported that appellant had suffered for the past several years from low back pain radiating to the lower limbs, for which he was treated on several occasions with temporary improvement. During the past four years, Dr. Gutiérrez reported that appellant's painful condition had worsened, causing an impaired gait with pain and cramps in the lower limbs when walking distances of 100 to 200 meters. He reported that a magnetic resonance imaging (MRI) scan revealed degeneration of the L4-5 and L5-S1 discs, associated hypertrophy of the facets and yellow ligaments that had caused stenosis of the lumbar canal. Dr. Gutiérrez reported that appellant underwent surgery on November 13, 1995 because his gait had deteriorated considerably. The surgery consisted of a laminectomy from the lower margin of L3 to the sacrum and a bilateral foraminotomy at L5-S1. Postoperative recovery was satisfactory, and appellant was discharged on November 21, 1995. Dr. Gutiérrez reported that the discharge diagnosis was chronic lumbar discopathy at L4-5 and lumbar spondyloarthrosis with stenosis of the canal.

On February 27, 1996 appellant's orthopedist, Dr. Gonzalo Bernárdez, reported as follows:

“At the request of the interested party, I hereby certify that I have been treating [appellant] since 1993 for lumbar pain radiating to both knees. The initial medical treatment consisted of nonsteroidal anti-inflammatories, muscle relaxants, and analgesics. He was also instructed to have physiotherapy consisting of traction of the lower limbs, whirlpool baths, and ultrasound; his lumbar condition improved, but in 1995 he developed pain in both knees, especially when climbing stairs. A bilateral arthroscopy of the knees revealed degenerative changes in the rotula and femoral condyles plus hypertrophic synovitis. Approximately four months ago, he had a relapse of his lumbar condition associated, at this time, with paresthesia/paresis of both lower limbs. He was referred to neurosurgery and underwent a lumbar laminectomy.”

In a decision dated May 6, 1996, the Office denied appellant's claim of recurrence on the grounds that the evidence of record failed to demonstrate a causal relationship between the injury of September 27, 1987 and the claimed condition or disability. The Office found that the medical evidence did not provide a history or description of the September 27, 1987 injury and contained no opinion that appellant's condition in November 1995 was related to the September 27, 1987 injury.

Appellant requested reconsideration and submitted additional medical evidence. In a report received by the Office on January 23, 1997, Dr. Gutiérrez stated as follows:

“[Appellant] reports that his medical problem began on September 27, 1987, while performing his duties as [a] boatman. At such time he sustained a forced rotation of the trunk, and since then he has persistently suffered from pain at the lumbar level.

“His pain symptoms have progressed, and this, among other reasons, led [appellant] to opt for early retirement.

“[Appellant] was referred to me on October 26, 1995 with symptoms of pain at the lumbar level and deteriorated motor functions in the lower limbs.

“A[n] [MRI] test of the lumbar column was performed which showed a chronic lumbar discopathy at L4-5, in addition to hypertrophy of the facets and yellow ligaments, which causes stenosis of the canal.

“On November 13 he underwent a lumbar laminectomy L4-5 and bilateral foraminotomy. Postoperative evolution is satisfactory, although he complains of functional limitations in the lumbar column.

“We believe that surgery became necessary because of the progressive pain symptoms resulting from the line-of-duty accident of September 27, 1987.

“Diagnosis: Chronic lumbar discopathy due to line-of-duty accident in 1987. Secondary lumbar stenosis.”

In a report dated December 20, 1996, Dr. Gutiérrez stated that appellant was operated on September 13, 1995 for L4-5 and L5-S1 chronic lumbar discopathy and lumbar stenosis with canal stenosis. Noting that appellant had reported an on-the-job injury on September 27, 1987, Dr. Gutiérrez stated: “As shown by the evolution of his clinical history, the present condition of his lumbar column and symptomatology are directly related to the lumbar lesion that occurred on September 27, 1987.”

In a report dated December 5, 1996, Dr. César Pinilla, a neurosurgeon, stated that he treated appellant on December 13, 1996. He noted that appellant sustained an accident on the job on September 27, 1987 and injured his back. Dr. Pinilla evaluated appellant on October 15, 1987, at which time he made a clinical diagnosis of herniated lumbar disc. He did not evaluate appellant again until November 13, 1996. Reporting that another neurosurgeon operated on appellant on November 13, 1995 for a herniated lumbar disc, Dr. Pinilla stated: “We consider that his present condition is directly related to the accident, and his surgery was also the result of his accident in September 1987.”

In a decision dated April 22, 1997, the Office reviewed the merits of appellant’s claim and denied modification of its prior decision. The Office found that, without bridging factual and medical information, Drs. Gutiérrez and Pinilla lacked a complete and accurate medical and factual background upon which to base their opinions. The Office noted that neither physician examined or treated appellant over the several years prior to the surgery. The Office further noted that only the doctor who treated appellant during those years, and possibly the unnamed surgeon who performed the November 13, 1995 surgery, would likely be in a position to give an informed opinion on whether and in what manner appellant’s condition related to the 1987 injury. The Office found that the opinion of Dr. Gutiérrez was not well rationalized in ascribing the 1995 symptoms and surgery to the 1987 accident. Although he invoked progressive pain symptoms and an evolution of the clinical history, these were not documented in the record. Dr. Pinilla, the Office found, gave no rationale for his opinion.

Appellant again requested reconsideration and submitted additional medical evidence. He described his medical care and identified treating physicians and surgeons. In a report dated March 23, 1998, Dr. Bernárdez detailed his treatment of appellant and described appellant’s general medical course. In a report dated March 19, 1998, Dr. Gutiérrez summarized appellant’s medical record since an employment injury in 1985. “After reviewing [appellant’s] medical record as well as his clinical evolution,” Dr. Gutiérrez reported, “we can certainly say that his lumbar pain symptoms are the result or are directly related to the accidents on the job he suffered in 1985 and in 1987.” In a report dated March 31, 1998, Dr. Pinilla related appellant’s history and medical course and stated: “We conclude that this patient’s current neurological condition is directly related to his accident on the job in 1987.”

In a decision dated May 11, 1998, the Office reviewed the merits of appellant’s claim and denied modification of its prior decision. The Office found that a simple assertion of causal relationship without supporting explanation is not considered well rationalized. The Office again noted the lack of a statement describing the progression and development of appellant’s

condition, the lack of medical reports from any dates of treatment since 1992 and the lack of a surgical report.

The Board finds that the medical evidence is insufficient to establish that appellant sustained a recurrence of disability on November 13, 1995 as a result of his September 27, 1987 employment injury.

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.¹

Appellant has submitted medical opinion evidence generally supporting his claim that he sustained a recurrence of disability on November 13, 1995 as a result of his September 27, 1987 employment injury. This evidence relates an accurate history of injury, a description of appellant's medical course and the nature of appellant's condition on November 13, 1995. Dr. Gutiérrez, the neurosurgeon, reviewed appellant's medical record and clinical evolution and provided a postoperative report. However, none of the reports provides a clear explanation of how the injury of September 27, 1987, which the Office accepted for back strain and herniated nucleus pulposus at L4-5 and L5-S1, caused or contributed to the degeneration of those discs and the associated hypertrophy of the facets and stenosis of the lumbar canal, for which surgery was required on November 13, 1995.²

As the medical opinion evidence of record does not adequately explain the relationship between appellant's employment injury of September 27, 1987 and the condition for which he underwent surgery on November 13, 1995, the Board will affirm the Office's May 11, 1998 decision.

¹ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

² The Board has held that medical conclusions unsupported by rationale are of little probative value. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

The May 11, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
February 10, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member