

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROSZELL R. SMITH and DEPARTMENT OF THE NAVY, NAVAL  
COMPUTER TELECOMMUNICATIONS COMMAND, Silverdale, WA

*Docket No. 98-2167; Submitted on the Record;  
Issued February 14, 2000*

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DECISION and ORDER

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

The issue is whether appellant met his burden of proof in establishing that he sustained a recurrence of disability due to the August 13, 1996 employment injury.

The Board has duly reviewed the case record and finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability.

The Office of Workers' Compensation Programs accepted appellant's claim for a cervical and lumbar strain resulting from an August 13, 1996 employment injury.

A magnetic resonance imaging (MRI) scan dated October 15, 1996 showed mild disc bulges at L3-4 and L5-S1.

In a report dated October 21, 1996, appellant's treating physician, Dr. Christo W. Koullisis, an orthopedic surgeon, stated upon physical examination that appellant was neuromuscularly intact in all groups and had full range of motion of the lumbar spine with just a slight degree of paralumbar spasm. He noted that the MRI scan was unremarkable. Dr. Koullisis returned appellant to work without restriction.

On October 3, 1997 appellant filed a claim for a recurrence of disability, Form CA-2a. He did not indicate the date of the recurrence of disability nor refer to the August 13, 1996 employment injury. After Dr. Koullisis released him to fully-duty work, appellant went to work for the Boeing Company. Appellant stated that, following the original injury, he performed light duty and his condition was not fixed and stable. He stated that he still had pain in his upper and lower back and hip and his right hip gave way. Appellant stated that he had not completely recovered from the original problem.

In a progress note dated April 28, 1997, Dr. Koullisis stated that appellant could continue to work full time. A handwritten note dated May 15, 1997 stated that appellant phoned in today

to let them know that he reinjured his back while at work at Boeing on April 24, 1997 when he was turning a heavy part and had increased back pain.

In a progress note dated June 9, 1997, Dr. Koullisis stated that appellant came in for a new problem which was that his upper back, left shoulder and interscapular region were painful as a result of a work-related injury on the “[April 24, 1997]” when turning a part. He stated that appellant had mild “5 and 6” radiculopathy in the left upper extremity and marked winging of the scapula. Dr. Koullisis also stated that there was a moderate degree of left paracentral spasm. He stated that he would obtain an MRI scan.

On July 10, 1997 Dr. Koullisis noted that appellant missed two days of work, was having a marked degree of left paracervical spasm and “mild 5 and 6 radiculopathy of the left upper extremity and marked winging of the scapula. He returned appellant to light duty. In a progress note dated July 28, 1997, Dr. Koullisis stated that appellant remained symptomatic in terms of his neck and arm and that appellant persisted with left paracervical spasm and winging of his scapula. He stated that the MRI scan revealed left paracentral C6-7 protrusion extending of the left neural foramina with impingement of the left seventh root. Dr. Koullisis continued appellant on light duty.

In a progress note dated August 4, 1997, Dr. Koullisis stated that appellant’s back was still slightly troublesome but he was having no leg pain. He stated that appellant was neuromuscularly intact in the lower extremities, with full range of motion of the lumbar spine without significant spasm.

In his report dated October 19, 1997, Dr. Mark L. Gunn, a Board-certified anesthesiologist with a specialty in general surgery, performed an epidural injection on appellant and noted that appellant had a neck injury in approximately September 1996 with a reinjury in April 1997 which resulted in pain in the left side of his neck and somewhat on the right side of his neck. He stated that appellant worked at Boeing and his job required him to work with a flexed-neck position which resulted in upper spine pain and pain beneath his left shoulder blade.

By letter dated October 28, 1997, the Office requested that appellant submit additional information including a physician’s statement relating his current condition to his August 13, 1996 employment injury.

In a report dated December 18, 1997, a physical therapist noted that appellant was injured at work on April 24, 1997 while trying to turn a wing with five other workers and the piece fell forward causing him to jerk forward and stressing his neck.

By decision dated March 23, 1998, the Office denied the claim, stating that the evidence of record established that appellant’s current condition was not causally related to the August 13, 1996 employment injury.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which he seeks compensation was causally

related to his employment injury.<sup>1</sup> This burden includes the necessity of 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 employment factors and supports that conclusion with sound medical reasoning.<sup>2</sup>

In the present case, none of the medical evidence appellant submitted related his current condition of neck and back pain to the August 13, 1996 employment injury. On October 21, 1996 Dr. Koullisis stated that appellant was neuromuscularly intact in all groups and had full range of motion of the lumbar spine with just a slight degree of paralumbar spasm. He returned appellant to full-time work. Appellant subsequently went to work for the Boeing Company and the handwritten note dated May 15, 1997 stated that appellant phoned in to Dr. Koullisis that he reinjured his back while at work at Boeing on April 24, 1997 when he was turning a heavy part and had increased back pain. Medical evidence subsequent to that date including Dr. Koullisis' June 9, 1997 progress note, Dr. Gunn's October 7, 1997 report and the physical therapist's notes dated December 18, 1997 refer to the April 24, 1997 incident and appellant's increased complaints of neck and back pain. A recurrence of disability is defined as a spontaneous material change in the employment-related-condition without an intervening injury.<sup>3</sup> Dr. Koullisis' progress notes commencing May 15, 1997 and Dr. Gunn's October 17, 1997 report address appellant's increased neck and back pain due to a turning incident at Boeing on April 24, 1997 which constitutes a noncompensable intervening injury as it did not occur during appellant's federal employment. Since none of the medical evidence of record contains a medical rationale establishing a causal connection between appellant's current condition of neck and back pain and the August 13, 1996 employment injury, appellant has failed to establish his claim.<sup>4</sup> The Office advised appellant of the evidence that he was required to submit to establish his claim, but appellant did not submit the requisite evidence.

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<sup>1</sup> *Dominic M. DeScala*, 37 ECAB 369 (1986).

<sup>2</sup> *Louise G. Malloy*, 45 ECAB 613, 617 (1994).

<sup>3</sup> Federal (Federal Employees' Compensation Act) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(1) (January 1995).

<sup>4</sup> *See Mary G. Allen*, 50 ECAB \_\_\_\_\_ (Docket No. 96-2021, issued October 7, 1998).

The decision of the Office of Workers' Compensation Programs dated March 23, 1998 is hereby affirmed.

Dated, Washington, D.C.  
February 14, 2000

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member