

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NED E. HAHN and DEPARTMENT OF TRANSPORTATION,
FEDERAL RAILROAD ADMINISTRATION, Anchorage, AK

*Docket No. 00-1972; Submitted on the Record;
Issued May 9, 2001*

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 causally related to his August 24, 1972 employment injury.

This case is before the Board for the second time. In a decision dated October 22, 1999, the Board set aside the Office of Workers' Compensation Programs' August 14, 1997 decision denying appellant's request for reconsideration under 5 U.S.C. § 8128 and remanded the case for a *de novo* review of the merits of the claim.¹ The findings of fact and conclusions of law are hereby incorporated by reference.

By decision dated February 15, 2000, the Office denied modification of its September 16, 1996 decision.

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

When appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.² This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.³

¹ Docket No. 98-30.

² *Robert H. St. Onge*, 43 ECAB 1169 (1992).

³ *Id.*

In this case, appellant sustained a cerebral concussion and a mild cervical strain on August 24, 1972 in the performance of duty.⁴ On April 25, 1995 he filed a notice of recurrence of disability (Form CA-2a) causally related to his August 24, 1972 employment injury.⁵

Appellant submitted an office visit note dated March 31, 1995 from Dr. Declan R. Nolan, a Board-certified orthopedic surgeon, who noted that appellant sustained a “serious injury to his neck in 1972.” Dr. Nolan diagnosed post-traumatic degenerative disc disease at C4-5 without radiculopathy.

In a report dated May 13, 1996, Dr. J. Michael James, a Board-certified physiatrist and appellant’s attending physician, related:

“[Appellant] states that he was well until approximately 1972 when, while working for the [employing establishment] a creosoted railroad tie fell over and struck him on top of his head while he was wearing a hard hat. This apparently crushed the center of the hard hat. [Appellant] was not unconscious but did have neck pain referred to the left shoulder at that time. (The tie weighs approximately 150 pounds).

“[Appellant] was treated at the Fairbanks clinic for approximately two weeks and then released. He did not know exactly how long it took for his symptoms to abate. However, following that he did well until 1982 when he had the insidious onset of neck pain. The neck pain waxed and waned for several years and then gradually abated. He did not seek medical attention at that time, but he did convey it to his former employer.”

Dr. James found that x-ray reports revealed degenerative disc disease at C4-5 more than C5-6 but no changes at other levels of the cervical spine. He diagnosed “[d]egenerative disc disease of the cervical spine at C4-5 and more modestly at C5-6 which has increased during the past year.” Dr. James found that appellant’s history of symptoms was consistent with that of an individual injured in the third decade of life. He stated: “I believe that one can make a clear causal relationship between the injury in which the railroad tie fell directly on [appellant’s] head, denting his aluminum hard hat, and this presentation today 20 years later. I believe this is the result of the normal aging process.”

⁴ The employing establishment terminated appellant on October 28, 1972 following completion of his work assignment.

⁵ Appellant also submitted an undated Form CA-2a in which he indicated that his recurrence of disability began January 17, 1973.

In a report dated December 18, 1996, Dr. James clarified that he had made a typographical error in his September 16, 1996 report and that he did not believe that appellant's condition was due to aging. Dr. James stated:

"I still believe that there is [a] causal relationship between [appellant's] isolated degenerative disc disease at C4-5 and C5-6 and I still believe it is the consequence of his initial severe neck injury in 1972.

"The reasoning behind the above statement is that individuals who have severe injuries in their 20s or 30s usually have intrinsic injury to the disc itself which causes 'discogenic neck pain' with resultant neck pain as well as impaired range of motion. The normal history is that this lasts anywhere from 12 to 24 months and gradually abates. They usually remain asymptomatic for up to 20 years, and then some time in their late 40s or early 50s will present with the nontraumatic onset of neck pain. X-rays at that time will reveal isolated degenerative disc disease at one or two levels. Because of their age one cannot assume that this is the result of the normal aging process, particularly because the other discs are not involved."

In a report dated December 20, 1999, Dr. James noted that appellant had no history of neck trauma between 1972 and 1996 and concluded that there "is a high degree of medical probability that his 1972 injury is the precipitating event in his degenerative disc disease of the cervical spine for which he sought treatment in 1993 and 1996. I do not believe that this is a consequence of the normal aging process as is the government's contention."

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.⁶

Although none of the reports from Dr. James contain sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that he sustained a recurrence of disability on January 17, 1973, the reports constitute sufficient evidence in support of his claim to require further development of the record by the Office.⁷ The Board notes that there is no medical evidence of record refuting a causal relationship between appellant's current condition and his employment injury.

On remand, the Office should refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist for an evaluation and a rationalized medical opinion on the issue of whether appellant sustained a recurrence of disability causally related to his accepted employment injury. After such development of her case record as the Office deems necessary, a *de novo* decision shall be issued.

⁶ *William J. Cantrell*, 34 ECAB 1223 (1983).

⁷ *John J. Carlone*, 41 ECAB 354 (1989).

The decision of the Office of Workers' Compensation Programs dated February 15, 2000 is set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
May 9, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member