

**United States Department of Labor
Employees' Compensation Appeals Board**

RICHARD A. GUNNUFSON, Appellant)

and)

**DEPARTMENT OF THE ARMY,
DIRECTORATE OF ENGINEERING
& HOUSING, Ford Ord, CA, Employer**)

**Docket No. 04-1457
Issued: November 8, 2004**

Appearances:

*Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On May 10, 2004 appellant, through counsel, filed an appeal of an Office of Workers' Compensation Programs' decision dated February 24, 2004, which denied his recurrence of disability claim beginning October 21, 1997 due to his accepted August 27, 1992 employment injuries. The Board has jurisdiction over the merits of this case.¹

¹ See 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether appellant has established that he sustained a recurrence of disability beginning October 21, 1997 due to his accepted August 27, 1992 employment injury.² On appeal, appellant's representative contends that the Office erred in failing to consider the recurrence claim appellant filed for the period August 16 to September 5, 1995. He also contends that the Office should expand the injuries caused by the August 27, 1992 employment injury.

FACTUAL HISTORY

This case is before the Board for the second time. In a decision dated August 8, 2003, the Board affirmed the August 19, 2001 decision of an Office hearing representative, which affirmed the denial of appellant's claim for a recurrence of disability beginning July 20, 1995.³ The Board also affirmed the October 19, 2001 decision which denied modification. The Board found the weight of the evidence rested with the opinion of Dr. Robert G. Aptekar, a second opinion Board-certified orthopedic surgeon, who noted that appellant had no disability due to his accepted August 27, 1992 employment injury of head laceration, concussion and subluxation at C1, 2, 3, 7 and L2, 3 and 4. Dr. Aptekar opined that appellant's subjective complaints were related to the nonemployment cervical spondylosis condition. Moreover, the record indicates that Dr. Vincent J. Bozzo, a treating chiropractor, released appellant from his care as appellant had returned to his preinjury status on February 3, 1993. Dr. Bozzo stated no further treatment was anticipated. The findings of fact and conclusions of law from the prior decision are hereby incorporated by reference.

While appellant's claim was on appeal to the Board, he filed two recurrence claims on October 8, 2002. The claims were for a recurrence of disability for the period August 16 to September 5, 1995 and a claim for a recurrence of disability beginning October 21, 1997.

In support of his recurrence claim, appellant submitted a report dated November 11, 2002 by Dr. Dale A. Helman, a treating Board-certified neurologist. Dr. Helman diagnosed cervical radiculopathy. He noted that appellant "had neck complaints for the entire duration of my treatment," which was supported by objective evidence such as magnetic resonance imaging (MRI) scans, which showed "herniated disc syndrome with nerve root impingement, which

² The Board notes that the Office did not adjudicate appellant's recurrence claim for the period August 16 to September 5, 1995. As noted below, appellant filed two recurrence claims on October 8, 2002. One was for a recurrence beginning October 21, 1997, which the Office adjudicated and is the subject of the current appeal. The second claim for a recurrence was for the period August 16 to September 5, 1995. The record before the Board does not indicate that the Office issued a final decision regarding this claim and the Board's jurisdiction is limited to consider and decide appeals from final decisions of the Office issued within one year prior to the filing of the appeal. 20 C.F.R. §§ 501.2(c) and 501.3(d)(2); *William N. Downer*, 52 ECAB 217 (2001).

³ Docket No. 03-1114 (issued August 8, 2003).

occurs at the C6, C7 and C8 levels.” He attributed appellant’s condition to his August 27, 1992 employment injury. In support of his opinion, Dr. Helman stated:

“The reason that I implicate the incident of [August] 27[,] [19]92 is because the patient is very clear based on discussions that he did not have any of these symptoms prior to this incident and that they have occurred only since this incident, which to me is quite compelling evidence. I believe that his medical treatment on [July] 20[,] [19]95 was definitely required as a result of the injuries and conditions causally related to the federal employment incident of [August] 27[,] [19]92, again because of the association with the degree of neck pain.”

With regards to the recurrence of disability beginning October 21, 1997, Dr. Helman opined that appellant “was only capable of performing light limited duty as a result of the injuries and conditions related to the federal employment injury of [August] 27[,] [19]92, again for the same reasons mentioned above, specifically deterioration of his condition. In concluding, Dr. Helman opined that appellant was incapable of performing his date-of-injury duties as a maintenance mechanic due to his August 27, 1992 employment injury.

By decision dated December 27, 2002, the Office denied appellant’s claim.

In a letter dated August 20, 2003, appellant, through his representative, requested reconsideration.

By decision dated February 24, 2004, the Office denied appellant’s claim for a recurrence of disability beginning October 21, 1997. In support of its decision, the Office noted that Dr. Helman attributed appellant’s condition to appellant’s nonindustrial degenerative cervical spine disc disease.

LEGAL PRECEDENT

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he claims compensation is causally related to the accepted injury.⁴ This burden of proof requires that a claimant furnish 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 supports that conclusion with sound medical reasoning.

Causal relationship is a medical issue⁵ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence, which includes a physician’s rationalized medical opinion on the issue of whether

⁴ *Ronald A. Eldridge*, 53 ECAB ____ (Docket No. 01-67, issued November 14, 2001); *Ronald C. Hand*, 49 ECAB 113 (1997); *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

⁵ *Nicolette R. Kelstrom*, 54 ECAB ____ (Docket No. 03-275, issued May 14, 2003).

there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

ANALYSIS

Appellant has the burden of establishing that he sustained a recurrence of disability beginning October 21, 1997 causally related to his August 27, 1992 employment injury. The medical records indicate appellant was released from the care of his treating chiropractor, Dr. Vincent J. Bozzo, on February 3, 1993. At this time Dr. Bozzo concluded that appellant had returned to his preinjury status and stated no further treatment was anticipated.

In support of his claim for a recurrence, beginning October 21, 1997, appellant submitted a November 11, 2002 report by Dr. Helman. He noted that appellant "had neck complaints for the entire duration of my treatment," which was supported by objective evidence such as MRI scans, which showed "herniated disc syndrome with nerve root impingement, which occurs at the C6, C7 and C8 levels." Dr. Helman diagnosed cervical radiculopathy, which he attributed to appellant's August 27, 1992 employment injury. In support of this opinion, Dr. Helman stated that he implicated the August 27, 1992 employment injury as the cause of appellant's disability "because the patient is very clear based on discussions that he did not have any of these symptoms prior to this incident and that they have occurred only since this incident, which to me is quite compelling evidence." With regards to the recurrence of disability beginning October 21, 1997, Dr. Helman opined that appellant "was only capable of performing light limited duty" due to the injuries sustained as a result of the August 27, 1992 employment injury and due to the deterioration of his condition. In concluding, Dr. Helman opined that appellant was incapable of performing his date-of-injury duties as a maintenance mechanic due to his August 27, 1992 employment injury.

Dr. Helman opined that appellant's "herniated disc syndrome with nerve root impingement, which occurs at the C6, C7 and C8 levels" and cervical radiculopathy were due to the August 27, 1992 employment injury, but he provided no explanation as to why this condition was causally related.⁷ Dr. Helman based his opinion regarding causal relationship on the fact that appellant "did not have any of these symptoms prior to" the August 27, 1992 employment injury. The Board has held that the opinion of a physician that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting medical rationale, to establish causal relationship.⁸ Therefore, this reason, by itself, is an insufficient explanation to establish that the herniated disc diagnosed by a

⁶ *Conard Hightower*, 54 ECAB ____ (Docket No. 02-1568, issued September 9, 2003); *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ For the importance of documented evidence of bridging symptoms in establishing a claim for a recurrence of disability, see *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Leslie S. Pope*, 37 ECAB 798 (1986).

⁸ *Jaja K. Asaramo*, 55 ECAB ____ (Docket No. 03-1327, issued January 5, 2004).

November 19, 1995 MRI scan was caused by the 1992 head laceration, concussion and subluxation at C1, 2, 3, 7 and L2, 3 and 4.⁹ The Office has not accepted a herniated disc with nerve root impingement at C6, 7 and 8 or cervical radiculopathy as being related to appellant's August 27, 1992 employment injury and Dr. Helman provided insufficient medical rationale to support his opinion that this condition was caused by the August 27, 1992 employment-related head laceration, concussion and subluxation at C1, 2, 3, 7 and L2, 3 and 4. The medical evidence submitted by appellant is insufficient to constitute the weight of the medical evidence or create a conflict with the second opinion, Dr. Aptekar, whose report continues to constitute the weight of the medical evidence and establishes that appellant had no disability due to his accepted August 27, 1992 employment injury and that appellant's current problems were due to his cervical spondylotic condition, which was not employment related.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability or a medical condition beginning October 21, 1997 causally related to his accepted August 27, 1992 employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 24, 2004 is affirmed.

Issued: November 8, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁹ *Leslie S. Pope, supra* note 7.