



disability beginning April 30, 1993.<sup>1</sup> In a January 29, 2001 decision, the Board affirmed an Office decision dated April 23, 1999 which found that appellant's application for review was not timely filed and failed to demonstrate clear evidence of error.<sup>2</sup> In an order dated November 4, 2005, the Board remanded the case for completion of the case file.<sup>3</sup> The facts and the circumstances of the case are set forth in the Board's prior decisions and incorporated herein by reference.<sup>4</sup> Evidence relevant to this appeal is set forth.

On November 7, 2003 appellant, through his attorney, filed a request for reconsideration. He asserted that the Office did not send his correspondence to the correct address which caused a delay in his response to the Office and prevented him from timely responding to the Office decisions. Appellant provided a history of his work injuries, noting that he sustained a back injury in 1985, a work-related slip and fall injury on May 2, 1992 which was accepted for a contusion of the right buttock and a work-related injury on April 27, 1993 which was accepted for an exacerbation of preexisting cervical spine injury. He returned to a light-duty position but contended that he was required to work outside of his restrictions which caused an aggravation of his condition.

Appellant submitted various treatment records from the employing establishment commissary dated August 16, 1985 to April 14, 1993 which noted his treatment for neck and back pain. Dr. Charles Ware, a Board-certified orthopedic surgeon, submitted reports dated April 23 to 29, 1993. He treated appellant for L5-S1 bony changes, acute exacerbation of cervical disc disease and possible C6-7 instability. On June 27, 1993 he noted that appellant sought treatment for cervical pain and spasms and was treated conservatively. Dr. Ware advised that diagnostic testing revealed C6 and C7 degenerative changes, osteophytes at C6 and C7 and bulging discs at L4-5 and L5-S1. He noted objective findings of old disc disease of the neck and lumbar spine which predated the 1992 work injury. In a November 18, 1993 report, Dr. Ware stated that appellant had low back and neck pain related to the work injury of May 1992. Appellant's recent symptomology was in the trapezial area with intermittent neck pain and spasms. Dr. Ware advised that appellant routinely sought medical treatment for acute exacerbations of cervical spine pain.

Dr. H. Steinebach, a Board-certified emergency physician, evaluated appellant on April 27, 1993 for an acute exacerbation of the chronic disease. In a May 5, 1993 report, a

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<sup>1</sup> Docket No. 95-2726 (issued September 16, 1997). The Board determined that the medical evidence established that on April 27, 1993 appellant sustained an exacerbation of his preexisting cervical spine disease as a result of lifting and twisting while in the performance of duty.

<sup>2</sup> Docket No. 99-2331 (issued January 29, 2001).

<sup>3</sup> Docket No. 05-595 (issued November 4, 2005).

<sup>4</sup> Appellant filed a separate claim for an injury which occurred on May 2, 1992 which was accepted by the Office for contusion of the right buttock, claim number A25-404968. Appellant appealed the claim to the Board and, in a decision dated July 25, 1997, the Board affirmed Office decisions dated October 6, 1994 and February 24, 1995 which denied appellant's claim for a recurrence of injury. Docket No. 95-1706 (issued July 25, 1997). This claim was consolidated with the current claim before the Board. The record also reveals that appellant began disability retirement on March 23, 1994.

Dr. DeJong,<sup>5</sup> an emergency room physician, noted treating appellant for a stiff neck and back and leg pain. A computerized tomography (CT) of the cervical and lumbar spine dated June 8, 1993 revealed degenerative changes at C6-7, mild disc bulge centrally to the left of the L4-5 and L5-S1 levels without evidence of herniation. In a March 20, 1994 report, Dr. Michael R. Treister, a Board-certified orthopedic surgeon, stated that cervical spine x-rays revealed congenital synostosis between C1 and C2, a congenital anomaly, and minimal degenerative osteoarthritic changes indicative of early degenerative disc disease. He noted that appellant had significant ongoing complaints of pain and discomfort dating back to his May 1992 employment injury.

In a decision dated August 14, 2006, the Office found that appellant did not establish disability causally related to his April 27, 1993 work-related injury.

### **LEGAL PRECEDENT**

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.<sup>6</sup> The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.<sup>7</sup>

### **ANALYSIS**

The Office accepted appellant's claim for exacerbation of previous cervical spine disease. The medical evidence submitted in support of the wage-loss compensation claim for disability for the period beginning April 30, 1993 is insufficient to establish that the claimed period of disability was caused or aggravated by the accepted employment injury.

Appellant submitted various treatment records from the employing establishment commissary dated August 16, 1985 to April 14, 1993 and from Dr. Ware, dated April 23 to April 26, 1993, which noted his treatment for neck and back pain. However, these reports are of no value in establishing his disability beginning April 30, 1993 since they predate the time of the claimed disability. Other reports from Dr. Ware, dated April 29, 1993 and June 27, 1993, noted appellant's findings and treatment for cervical pain and spasms. The physician noted objective findings of old disc disease of the neck and lumbar spine which predated the 1992 work injury. Dr. Ware noted that appellant was still experiencing symptoms pertaining to his cervical condition but did not specifically address whether appellant had any disability beginning April 30, 1993 causally related to his April 27, 1993 employment injury. Similarly, his November 18, 1993 report noted that appellant's work injury of May 1992 caused low back and neck pain for which appellant sought treatment. Dr. Ware did not specifically address whether appellant had any disability beginning April 30, 1993 causally related to his April 27, 1993 work injury. These reports are not sufficient to establish appellant's claim.

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<sup>5</sup> The record does not indicate Dr. DeJong's first name but notes a specialty of emergency medicine.

<sup>6</sup> See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>7</sup> See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

Dr. Treister stated that x-rays of the cervical spine revealed the presence of a congenital synostosis, or failure of segmentation, between C1 and C2, a congenital anomaly. He also found minimal degenerative osteoarthritic changes with anterior osteophyte formation indicative of early degenerative disc disease. Dr. Treister noted that appellant had significant ongoing complaints of pain and discomfort dating back to his May 1992 employment injury. However, he failed to address the issue of whether appellant had any employment-related disability beginning April 30, 1993 causally related to the April 27, 1993 injury. Therefore, Dr. Treister's opinion does not support appellant's claim for disability due to the 1993 work injury.

Dr. DeJong's report and the report of a CT scan of the cervical and lumbar spine dated June 8, 1993 also failed to provide any opinion on causal relationship between the claimed period of disability and the accepted employment injury of April 27, 1993. Consequently, the medical evidence does not establish that the claimed period of disability were due to appellant's employment injury of April 27, 1993.

**CONCLUSION**

The Board finds that appellant has failed to establish that appellant's condition during the claimed period of disability is causally related to the accepted employment injury of April 27, 1993.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 14, 2006 is hereby affirmed.

Issued: May 23, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board