

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY ADAMS and DEPARTMENT OF DEFENSE, DEFENSE CONTRACT
MANAGEMENT OPERATIONS, Norfolk, VA

*Docket No. 00-471; Submitted on the Record;
Issued April 17, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained a recurrence of disability on July 21, 1996 causally related to his February 2, 1994 employment injury; and (2) whether appellant was disabled during intermittent periods between January 8, 1997 and June 17, 1998 due to his accepted January 8, 1997 consequential injury.

On February 2, 1994 appellant, then a 45-year-old quality assurance specialist, filed a traumatic injury claim alleging that on that date he bruised his left ankle and experienced a sore neck and back due to a motor vehicle accident.

The Office of Workers' Compensation Programs accepted appellant's claim for cervical, dorsal and lumbar sprains and a contusion of the left ankle. Subsequently, the Office expanded the acceptance of appellant's claim to include a ruptured peroneal tendon of the left foot and authorized a metatarsal fusion.

Appellant accepted the employing establishment's offer for the light-duty position of procurement technician, which became effective November 5, 1995.¹

On January 2, 1997 appellant filed a claim alleging that he sustained a recurrence of disability on July 21, 1996. Appellant stated that he developed severe pain in his lower back and legs.

On April 10, 1997 appellant filed another claim alleging that he sustained a recurrence of disability on January 8, 1997. Appellant stated that on January 8, 1997 his ankle gave out while he was at home, which caused him to fall on his left arm. Appellant stated that he hurt his left elbow, damaged his glasses and cracked a tooth.

¹ By decision dated May 1, 1996, the Office found that the position of procurement technician fairly and reasonably represented appellant's wage-earning capacity. On May 15, 1996 the Office granted appellant a schedule award for a 12 percent permanent impairment of the left lower extremity.

The Office accepted appellant's claim for a consequential fall due to his employment injury, a tooth fracture and a contusion of the left elbow.

By decision dated August 25, 1998, the Office found the medical evidence of record insufficient to establish that appellant sustained a recurrence of disability on July 21, 1996 causally related to his February 2, 1994 employment injury. The Office, however, found the medical evidence of record sufficient to establish that appellant was disabled during intermittent periods between March 5, 1997 and July 28, 1998 due to his January 8, 1997 consequential elbow condition.

In a letter dated September 10, 1998, appellant requested an oral hearing before an Office representative. In a January 26, 1999 letter, appellant requested a review of the written record.

In a February 18, 1999 decision, the hearing representative affirmed the Office's decision. The hearing representative found the medical evidence insufficient to establish that appellant sustained a recurrence of disability on July 21, 1996 causally related to his February 2, 1994 employment injury. The hearing representative also found the medical evidence insufficient to establish that appellant was disabled on certain dates following his accepted January 8, 1997 consequential injury. Specifically, the hearing representative noted that compensation was denied for the following periods: January 8 to 10, 13 and 21 to 23, June 5 and 24 and July 1, 1997; April 6, 9, 16, 22, 23 and 30, May 4 to 7 and 18 to 19 and June 4 and 17, 1998.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to establish that he sustained a recurrence of disability on July 21, 1996 causally related to his February 2, 1994 employment injury.²

An employee returning to light duty or whose medical evidence shows the ability to perform light duty has the burden of proof to establish a recurrence of temporary total disability by the weight of substantial, reliable and probative evidence and to show that he or she cannot perform the light duty.³ As part of his burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.⁴

In this case, appellant has shown no change in the nature and extent of his injury-related condition or of the light-duty requirements. The record shows that, following the February 2, 1994 employment injury, appellant returned to light-duty work as a procurement technician

² The Board notes that, subsequent to the hearing representative's February 18, 1999 decision, the Office received additional evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision. See *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence and legal contentions to the Office. The record does not reveal final decisions by the Office with regard to any overpayment of compensation, denial of exercise equipment or handicap accessibility changes to appellant's home or computation of appellant's pay rate. On return of the record, these issues should be developed by the Office.

³ *Terry R. Hedman*, 38 ECA 222, 227 (1986).

⁴ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

effective November 5, 1995. The record does not establish, nor does appellant allege, that the claimed recurrence of total disability was caused by a change in the nature or extent of his light-duty job requirements.

Appellant has not submitted sufficient medical evidence establishing that the accepted conditions have materially changed or worsened since his return to work in the light-duty position of procurement technician. Appellant submitted several medical reports in support of his claim that his accepted back condition had worsened since his return to light-duty work as a procurement technician.

A July 29, 1996 report of Dr. P.S. Apostoles, an orthopedist, provided a history of appellant's employment injury and medical treatment and noted an October 1995 automobile accident. Dr. Apostoles indicated that his findings on physical examination and diagnosed chronic low back pain with right lower extremity radicular symptoms. Dr. Apostoles stated that appellant's low back pain started prior to his October 1995 accident and after his ankle fusion in January 1995. He opined that "it is quite possible that his low back pain is associated with his ankle fusion." Dr. Apostoles' opinion regarding the cause of appellant's back pain is speculative. The Board has held that medical opinions, which are speculative, are of limited probative value.⁵

Dr. Apostoles' July 31, 1996 note revealed that he saw appellant on July 29, 1996 for a follow-up examination regarding his back pain. Dr. Apostoles did not make a definitive diagnosis for appellant's back pain and he did not address whether appellant's back pain was caused by his February 2, 1994 employment injury.

An August 23, 1996 report of Dr. Lisa B. Barr, a Board-certified physiatrist, reviewed a history of appellant's February 2, 1994 employment injury, a motor vehicle accident in November 1995, medical treatment and family and social background. She noted a review of medical records and her findings on physical examination. Dr. Barr opined that appellant had clinical findings suggestive of left sacroiliac joint dysfunction and mild mechanical low back pain. She, however, failed discuss whether appellant's back condition was caused by his accepted employment injuries.

The October 22, 1996 report of Dr. Robert S. Adelaar, a Board-certified orthopedic surgeon, revealed that appellant experienced back pain due to a gait disorder secondary to his subtalar arthrodesis of his foot and that he missed work July 23 through 29, August 19 through 30 and September 3 through 6, 1996 due to this disorder. Dr. Adelaar failed to provide a definitive diagnosis for appellant's back pain and any medical rationale explaining how or why appellant's back condition was caused by his February 2, 1994 employment injury.

Similarly, in a February 6, 1998 report, Dr. Harold E. Cloud, a Board-certified family practitioner, failed to provide a definitive diagnosis for appellant's back pain and any medical rationale explaining how or why appellant's back condition was caused by his February 2, 1994 employment injury. In his report, Dr. Cloud provided a history of appellant's medical treatment including his own treatment of appellant. Dr. Cloud stated that, subsequent to appellant's

⁵ See *Jennifer Beville*, 33 ECAB 1970 (1982); *Leonard J. O'Keefe*, 14 ECAB 42 (1962).

January 31, 1995 foot surgery, appellant developed a severe limp, which caused his ankle to swell and tenderness, swelling and pain in his lower back, hip and left and right sacroiliac joint. He did not explain the causal relationship between appellant's back pain and his accepted employment injury.

The record contains several disability certificates from Dr. Cloud indicating that appellant was disabled for work due to his accepted back conditions during various periods subsequent to his alleged recurrence of disability. However, they failed to discuss whether or how appellant's disability was caused by his February 2, 1994 employment-related injury.⁶

As appellant has failed to submit rationalized medical evidence establishing that he sustained a recurrence of disability on July 21, 1996 causally related to his accepted employment injury, he has not met his burden of proof.

The Board further finds that appellant has failed to establish that he was disabled during intermittent periods between January 8, 1997 and June 17, 1998 due to his accepted January 8, 1997 consequential injury.

It is an accepted principle of workers' compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent, intervening cause attributable to the employee's own intentional conduct.⁷

The Office accepted that appellant's consequential fall on January 8, 1997, tooth fracture and contusion of the left elbow were causally related to his February 2, 1994 employment injury. The question in this case is whether appellant sustained any disability from work on the dates in question due to his accepted consequential injury.

The record contains hospital records and treatment notes indicating that appellant received medical treatment for his left elbow on the dates in question. However, this evidence failed to address whether appellant had any disability due to his accepted January 8, 1997 consequential injury. A June 5, 1997 disability certificate of Dr. Anthony T. Carter, which is an alleged date of disability, indicated that appellant could return to light-duty work with restrictions.

The only medical evidence of record that addressed whether appellant was disabled during the period in question is a May 6, 1998 disability certificate of Dr. Cloud revealing that appellant was disabled from work from April 30 through May 7, 1998 due to swelling and bruising of the hands and low back and left elbow pain. Dr. Cloud, however, did not provide any medical rationale explaining how or why appellant was disabled during this period due to his January 8, 1997 consequential injury.

⁶ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

⁷ *John R. Knox*, 42 ECAB 193 (1990).

Appellant has failed to submit sufficient rationalized medical evidence establishing that he had any disability from work on the dates in question due to his accepted January 8, 1997 consequential injury. Thus, he has failed to satisfy his burden of proof.

The February 18, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 17, 2002

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member