

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN GRANT and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, APPEALS DIVISION, Oakland, CA

*Docket No. 98-596; Submitted on the Record;
Issued December 3, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof in establishing that she developed a back condition or left side paralysis due to her accepted employment injuries; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits on March 10, 1997.

The Board has duly reviewed the case on appeal and finds that appellant failed to meet her burden of proof.

Appellant filed a claim on October 18, 1994 alleging that she slipped in the performance of duty, falling on her hands and knees and injured her back, knees and neck. Appellant returned to work on October 24, 1994. The Office accepted her claim for multiple soft tissue contusions. Appellant filed a second claim on August 1, 1995 alleging on July 20, 1995 she sustained an injury in the performance of duty. Appellant stated that she was sitting at her desk turned to retrieve documents from a drawer and that her left side from the hip to the foot "completely locked" and that she experienced excruciating left knee pain. The Office accepted appellant's claim for left patellar subluxation. Appellant filed a claim for recurrence of disability on October 10, 1996 alleging on July 20, 1995 she sustained a recurrence of disability. By decision dated December 31, 1996, the Office denied appellant's claim finding that she had not established that she developed paralysis or a back condition due to her October 1994 employment injury. The Office denied compensation from September 4, 1995. Appellant requested reconsideration of both of her claims on January 24, 1997. By decision dated March 10, 1997, the Office denied appellant's request for reconsideration.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability and current conditions and her October 18, 1994 and July 20, 1995 employment injuries.¹ This burden

¹ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

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 the employment injuries and supports that conclusion with sound medical reasoning.²

Appellant stated on July 20, 1995 that she was “sitting at [her] desk, in [her] work area and slightly moved her body to [the] right to retrieve an article [in the] right drawer. Left upper hip to left foot was paralyzed for approximately three and a half hours.” Appellant stated, “I feel it is related because since my fall on a highly polished vinyl-covered cement floor on October 18, 1994, I had severe pain and weakness in [my] neck, lower back, left hip and knee.”

In a report dated August 25, 1995, Dr. Joseph C. Hohl, a Board-certified orthopedic surgeon, noted appellant’s history of injury as a fall in November 1995 and sudden onset of pain in her thigh and knee while sitting in her chair. He diagnosed possible herniated disc. A magnetic resonance imaging (MRI) scan on September 7, 1995 was interpreted as negative with no significant abnormality at L3-4, L2-3 and L1-2. Appellant had mild degenerative changes of the L4-5, L5-S1 levels with no focal disc protrusion. In form reports dated September 26 and October 6, 1995, Dr. Hohl diagnosed left sciatica, stated appellant slipped and fell and indicated with a checkmark “yes” that her condition was related to her employment. In a report dated October 20, 1995, Dr. Hohl stated that appellant’s fall in October “initiated a process which lead to a bulging of the L4-5 disc in her back, which is causing her current symptoms.” He further stated that appellant had a second fall in July 1995.

These reports, are not sufficient to meet appellant’s burden of proof as Dr. Hohl’s reports are based on an inaccurate history of injury. Appellant’s fall took place in October 1994 and she did not sustain another fall in July 1995. Furthermore, the Board has held that an opinion on causal relationship which consists only of a physician checking “yes” to a medical form report question on whether the claimant’s condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.³

In a report dated April 24, 1996, Dr. Brian Kutsunai, a physician Board-certified in physical medicine and rehabilitation, noted that appellant attributed her current condition to her October 18, 1994 employment injury. He noted appellant’s history of injury on October 18, 1994 and July 20, 1995. Dr. Kutsunai’s physical examination revealed tender spastic left trapezius and rhomboids and tender spine in lower lumbar area. Dr. Kutsunai stated, “Assessment: History clarified. Current condition is an aggravation of preexisting back/neck condition, if history is accurate.”

In this report, Dr. Kutsunai did not provide a clear opinion regarding the causal relationship between appellant’s current back condition and her 1994 employment injury. It is unclear whether Dr. Kutsunai formed his own opinion regarding the causal relationship or

² See *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

³ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

whether he was relying on appellant's allegations that her accepted employment injury resulted in her current condition.

On August 2, 1996 Dr. Calvin J. Okey, an osteopath, noted appellant's fall in October 1994 and stated that she experienced transient paralysis for four hours on July 20, 1995. Dr. Okey diagnosed myofascial pain syndrome lumbosacral spine and left lower extremity. Dr. Okey did not provide an opinion regarding the causal relationship between appellant's fall and her transient paralysis.

In a report dated August 6, 1996, Dr. Rodric Bell, a physical medicine and rehabilitation physician, noted appellant's history of injury as a fall on her buttocks on October 18, 1994. He further noted that appellant had sudden onset of left low back pain and left lower extremity paralysis on July 20, 1995. Dr. Bell performed a physical examination and diagnosed left lumbosacral radiculopathy, history of cervical strain and possible degenerative joint disease of the left hip. He did not provide an opinion on causal relationship. Furthermore, appellant's original history of injury was a fall forward to her hands and knees and anterior torso rather than to her buttocks.

As appellant has failed to submit medical evidence establishing a causal relationship between her accepted employment injuries and her diagnosed conditions she has failed to meet her burden of proof.

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits.

Appellant filed a request for reconsideration on January 24, 1997 and submitted additional evidence. By decision dated March 10, 1997, the Office refused to reopen appellant's claim for consideration of the merits.

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁴ Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without review the merits of the claim.⁵

In support of her request for reconsideration, appellant attempted to submit relevant new evidence. She submitted additional form reports regarding her current conditions. While these reports constitute new evidence, as they do not contain an opinion on the causal relationship between appellant's diagnosed condition and her accepted employment injury, they are not relevant to the issue for which the Office denied appellant's claim, the lack of medical opinion evidence establishing a causal relationship between her back condition and transient paralysis

⁴ 20 C.F.R. § 10.138(b)(1).

⁵ 20 C.F.R. § 10.138(b)(2).

and her accepted employment injuries. Therefore, the Office properly refused to reopen appellant's claim for review of the merits as she failed to submit relevant evidence not previously considered by the Office.

The decisions of the Office of Workers' Compensation Programs dated March 10, 1997 and December 31, 1996 are hereby affirmed.

Dated, Washington, D.C.
December 3, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member