

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EILEEN M. WILLIAMS and DEPARTMENT OF THE NAVY,
NAVAL FACILITIES ENGINEERING COMMAND, Norfolk, VA

*Docket No. 01-1640; Submitted on the Record;
Issued February 15, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant sustained a recurrence of disability beginning May 10, 1999 causally related to her September 15, 1998 employment injury; and (2) whether the Office of Workers' Compensation Programs properly terminated appellant's entitlement to medical treatment for the effects of her September 15, 1998 employment injury.

On September 15, 1998 appellant, then a 41-year-old contract specialist, sustained an injury to her low back, accepted by the Office for a low back strain, when she tripped on a concrete parking curb. She stopped work on September 16, 1998 and returned to work on September 18, 1998.

On May 12, 1999 appellant filed a claim for a recurrence of disability related to her September 15, 1998 employment injury. She indicated that she had begun working only four hours per day on May 10, 1999 and that she believed the recurrence of disability was related to her original injury because she had been in continual pain since the September 15, 1998 injury. Appellant also noted that on April 12, 1999 she pulled her left shoulder blade and had muscle spasm when she reached across her desk to turn on the air conditioner.

By decision dated June 24, 1999, the Office found that "the evidence establishes that the claimed recurrence is in fact a new injury and is not medically connected to the accepted work injury of September 15, 1998." The Office also found that "any claims submitted for treatment or disability after April 12, 1999 is [sic] not payable in this case. You should submit a new Form CA-1 for the new injury if you wish to pursue the matter."

On August 2, 1999 appellant filed a claim for a traumatic injury (Office Form CA-1) for an injury to her left arm, left shoulder, and left lower back sustained on April 12, 1999 by straining to reach for the air conditioner. The Office accepted this claim for a new traumatic injury.

By letter dated October 28, 1999, appellant requested reconsideration of the Office's June 24, 1999 decision, on the basis that her September 15, 1998 injury did not resolve and was the cause of her partial disability beginning May 10, 1999.

By decision dated December 20, 1999, the Office refused to modify its prior decision. The Office found:

"The evidence provided to overcome the decision issued June 24, 1999 that she incurred a recurrence of disability is moot given the fact that her claim is accepted for a new traumatic injury on April 12, 1999. If the claimant wishes to claim compensation for the new injury she must do so under the claim file A25-546560 as such is the accepted injury claim for the injury of April 12, 1999. The injury of April 12, 1999 is not a recurrence of disability but a new injury. Given the fact that the evidence provided in support of a recurrence of disability revolves around a new injury on April 12, 1999, it is found that such evidence is insufficient to support a recurrence occurred on April 12, 1999 due to the injury of September 15, 1998."

The Board finds that appellant has not established that she sustained a recurrence of disability beginning May 10, 1999 causally related to her September 15, 1998 employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which she claims compensation is causally related to the accepted injury.¹ 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.²

Appellant has not submitted medical evidence that establishes that her disability beginning May 10, 1999 is causally related to her September 15, 1998 employment injury. The April 30, 1999 note from her attending osteopath, Dr. Robert M. Spear, that recommends she reduce her work to four hours per day does not attribute the need to work fewer hours to her September 15, 1998 injury, but rather states, "I feel that her condition has plateaued due to counterproductive activity, *i.e.* workload etc." In a September 10, 1999 report, Dr. Spear stated that appellant "did, in fact have a second exacerbating 'injury,' but they are all related to the initial diagnosis of myofascial pain." Neither this report, nor any of the other reports from Dr. Spear or appellant's other attending physician, Dr. Lisa B. Barr, specifically attributes

¹ *John E. Blount*, 30 ECAB 1374 (1974).

² *Frances B. Evans*, 32 ECAB 60 (1980).

appellant's partial disability beginning May 10, 1999 to her September 15, 1998 employment injury. As the medical evidence in the case record³ does not indicate whether the cause of appellant's partial disability beginning May 10, 1999 is related to her September 15, 1998 employment injury or to her April 12, 1999 employment injury, appellant has not met her burden of establishing that this disability is causally related to her September 15, 1998 employment injury.

The Board further finds that the Office did not meet its burden of proof to terminate appellant's entitlement to medical care for her September 15, 1998 employment injury on April 12, 1999.

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁴ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further treatment.⁵

The Office has not established that the residuals of appellant's September 15, 1998 employment injury ended by April 12, 1999. In a report dated April 16, 1999, Dr. Spear noted that appellant "had an acute exacerbation" when she reached across a table to turn on an air conditioner and "noticed a pulling in her left side. The previously treated right-sided complaint is now resolved." While this report supports the proposition that the effects of appellant's September 15, 1998 injury had resolved, Dr. Spear clarified this statement in an August 5, 1999 report:

"On April 16, 1999 in the interim history paragraph, there is 'the previously treated right-sided complaint has now resolved.' In that statement, and that is an accurate statement subjectively reported to me by the patient, she was referring to a singular trigger point. That is not a statement reflecting the general condition known as myofascial pain syndrome. If you further look through my note, there is a treatment that was provided to this area in the form of biomechanical adjustment as opposed to injection. Further treatment has been provided to her for the syndrome of myofascial pain continually from that April date. While the singular point having been identified as being resolved and has not returned, it is only a part of the complete picture.

"[Appellant] did describe, and I am sure has described to you, as well, a second event that occurred at work. I do feel, and I have felt at that time, that she should identify this as a separate event and have encouraged her to do so, but in general terms, the original presenting complaint continues to be treated after the April 16,

³ There is another case record with another claim number for appellant's April 12, 1999 injury, but this case record was not submitted to the Board on this appeal, as there are no decisions being appealed regarding the April 12, 1999 injury.

⁴ *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁵ *Furman G. Peake*, 41 ECAB 361 (1990).

1999 date. All treatment since that time has been medically necessary and appropriate.”

Given this clarification and Dr. Spear’s statement that treatment after April 16, 1999 was for the effects of the September 15, 1998 injury, the statement in Dr. Spear’s April 16, 1999 report is not sufficient to establish that appellant no longer had residuals of her September 15, 1998 injury that required further medical treatment. The Office improperly terminated appellant’s entitlement to medical treatment for the effects of her September 15, 1998 employment injury on April 12, 1999.

The December 20, 1999 decision of the Office of Workers’ Compensation Programs is affirmed insofar as it found that appellant did not establish that she sustained a recurrence of disability beginning May 10, 1999 causally related to her September 15, 1998 employment injury. Insofar as the Office’s decision terminated appellant’s entitlement to medical treatment of her September 15, 1998 injury on April 12, 1999, the Office’s decision is reversed.

Dated, Washington, DC
February 15, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member