

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDY B. LEEPER and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Asheville, N.C.

*Docket No. 97-2155; Submitted on the Record;
Issued July 2, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant sustained a recurrence of disability on April 15, 1996 causally related to her November 1, 1994 accepted employment injury.

The Board has duly reviewed the case record and concludes that appellant has not established that she sustained a recurrence of disability on April 15, 1996 causally related to her November 1, 1994 accepted employment injury.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a lumbar strain on November 1, 1994 in the course of her federal employment. On April 18, 1996 appellant filed a notice of recurrence of disability alleging that on April 15, 1996 she awoke with back pain and muscles spasms in her low back in the same area as her accepted injury. Appellant indicated that because the problem was in the same area that it was caused by the same injury.

In support of her claim, appellant submitted an April 17, 1996 report from a physician, signing his name illegibly, which indicated that appellant was totally disabled from April 15 through 18, 1996, from lower back pain caused by a herniated nucleus pulposus.

On April 17, 1996 Dr. Donald L. Mullis, a Board-certified orthopedic surgeon, treated appellant for significant back and left leg pain. He opined that appellant had degenerative disc disease at the L3-4 level. On April 24, 1996 he indicated that appellant had improved and that there was no paralumbar muscle spasm.

On May 10, 1996 the Office requested additional information including a detailed medical report with medical rationale addressing the causal relationship between appellant's lower back condition and the original injury of November 1, 1994.

By decision dated September 17, 1996, the Office denied appellant's claim for a recurrence of disability because the evidence failed to demonstrate a causal relationship between

the claimed condition and the November 1, 1994 job injury. In an accompanying memorandum, the Office indicated that appellant failed to submit rationalized medical evidence showing a causal relationship between the disability and the employment injury.

On October 15, 1996 Dr. Robert C. Gunther, a Board-certified anesthesiologist, provided appellant with epidural lumbar therapeutic block therapy. He diagnosed lumbar disc syndrome.

On October 17, 1996 Dr. Nevin Aiken, anesthesiologist, diagnosed radicular lower back pain.

On December 9 and 11, 1996 Dr. Mullis treated appellant for back pain. On December 11, 1996 Dr. Mullis reported, that a magnetic resonance imaging showed a large herniated disc at the L2-3 lumbar spine which was a free fragment which slipped out at the L2-3 level and behind the L3 lumbar vertebra. Dr. Mullis repeated this diagnosis on December 13, 1996 and he performed a lumbar laminectomy discectomy on L2-3.

On December 27, 1996 Dr. Mullis indicated that appellant was unable to work until January 27, 1996. Dr. Mullis also diagnosed a herniated disc with a free fragment at the L2-3 level and indicated that it was possible there could be a relationship between this injury and her accepted employment injury.

On January 7, 1997 Dr. Mullis stated that, "I believe [appellant's] injury in 1994 where she had a protruding disc at L2-3 ultimately resulted in a free fragment at L2-3 in 1996."

On January 15, 1997 appellant requested reconsideration.

By decision dated March 7, 1997, the Office reviewed the case on its merits and denied modification of its prior decision. In an accompanying memorandum, the Office noted that the evidence still failed to establish that appellant's condition was causally related to the November 1, 1994 injury.

Where appellant claims a recurrence of disability to an accepted employment-related injury, she has the burden of establishing by the weight of the reliable probative evidence that the recurrence of the condition, for which she seeks compensation is causally related to the accepted employment injury.¹ As part of this burden, appellant must submit rationalized medical opinion evidence based on a complete and accurate factual and medical background showing a causal relationship between the current condition and the accepted employment-related injury.

In the instant case, Dr. Mullis, appellant's treating physician and a Board-certified orthopedic surgeon, provided the only medical opinion, which related appellant's current back condition to her November 1, 1994 accepted employment injury. On January 7, 1997 Dr. Mullis stated that, "I believe [appellant's] injury in 1994 where she had a protruding disc at L2-3 ultimately resulted in a free fragment at L2-3 in 1996." Dr. Mullis, however, provided no

¹ See *Henry L. Kent*, 34 ECAB 361 (1982); *Dennis E. Twadzik*, 34 ECAB 536 (1983).

explanation for his conclusion and, consequently, his opinion is entitled to little weight.² The Office, therefore, properly found that appellant failed to establish a recurrence of disability.

The decisions of the Office of Workers' Compensation Programs dated March 7, 1997 and September 17, 1996 are affirmed.

Dated, Washington, D.C.
July 2, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

² *Dennis J. Lasanen*, 43 ECAB 549 (1992).