

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BERTA J. DUBOIS and DEPARTMENT OF ENERGY,
OPERATIONS OFFICE. Albuquerque, NM

*Docket No. 98-101; Submitted on the Record;
Issued September 1, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant established that her recurrence of disability was causally related to the accepted lumbar strain she sustained in 1988.

The Board has carefully reviewed the record evidence and finds that appellant has failed to meet her burden of proof in establishing her entitlement to disability compensation.

Under the Federal Employees' Compensation Act,¹ an employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.² As part of this burden the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition,³ and supports that conclusion with sound medical reasoning.⁴

Section 10.121(b) provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a medical report covering the dates of examination and treatment, the history given by the employee, the clinical findings, the results of x-ray and laboratory tests, the diagnosis, the course of treatment, the physician's opinion with medical reasons regarding the causal relationship between the

¹ 5 U.S.C. §§ 8101-8193.

² *Dennis J. Lasanen*, 43 ECAB 549, 550 (1992).

³ *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

⁴ *Lourdes Davila*, 45 ECAB 139, 142 (1993).

employee's condition and the original injury, any work limitations or restrictions, and the prognosis.⁵

Thus, the medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁶ In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.⁷ Further, neither the fact that appellant's condition became apparent during a period of employment nor appellant's belief that his condition was caused by his employment is sufficient to establish a causal relationship.⁸

In this case, appellant filed a notice of traumatic injury on October 25, 1988, claiming that she hurt her back while helping another employee push a filing cabinet at work the day before. The Office of Workers' Compensation Programs accepted the claim for a lumbar strain. Appellant returned to work but filed notices of recurrences of disability on June 19, 1990 and March 18, 1996, stating that she had experienced pain from time to time and had difficulty sitting for long periods without medication.

On May 21, 1996 the Office informed appellant that she needed to submit a detailed medical report from her treating physician in support of her claim. On June 26, 1996 the Office denied the claim on the grounds that the medical evidence of record failed to establish a causal relationship between appellant's current back condition and the 1988 work incident.

Appellant requested reconsideration, stating that she had been in continuous pain since the 1988 injury and that she had to take medication daily to enable her to sit at her desk. Appellant requested payment for her medication and further treatment and added that her claim was not a recurrence because the 1988 injury had "never been cured."

On September 9, 1996 the Office denied appellant's request on the grounds that the June 16, 1996 report from Dr. Thomas G. Cohn, Board-certified in physical medicine and rehabilitation, provided no explanation of how appellant's nerve damage was related to the 1988 injury and was therefore insufficient to warrant modification of its prior decision.

Appellant again requested reconsideration, which was denied on November 25, 1996 on the same grounds. The Office noted that appellant's treating physician, Dr. William Abeyta, Board-certified in internal medicine, failed to explain how, absent any objective physical findings, appellant's current complaints of pain were related to an eight-year-old injury. Appellant's third request for reconsideration was denied on March 4, 1997 as insufficient to warrant modification and a fourth request was denied on June 19, 1997 on the grounds that the evidence submitted in support was insufficient to warrant review of the prior decision.

The Board finds that the medical evidence is insufficient to establish that appellant's current back condition is causally related to the 1988 work injury. Dr. Abeyta stated in an

⁵ 20 C.F.R. § 10.121(b).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁷ *Leslie S. Pope*, 37 ECAB 798, 802 (1986); cf. *Richard McBride*, 37 ECAB 748, 753 (1986).

⁸ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

August 2, 1994 report that appellant had been followed for chronic back problems related to a work injury on October 24, 1988. He added that she had been through physical therapy, was on muscle relaxants and anti-inflammatory medications, and continued to have pain. In an April 18, 1994 report, he stated that appellant had a chronic history of back pain dating to 1981. He repeated that history in treatment notes dated April 1, 1993 and April 11, 1990.

Subsequently, Dr. Abeyta clarified that appellant's low back injury on October 24, 1988 resulted in chronic pain, which she did not have previously. In a report dated December 24, 1996, he stated that appellant had experienced intermittent chronic low back pain since October 24, 1988 and, despite multiple therapies and treatments, had not totally recovered. Dr. Abeyta added that he could not say why, absent objective findings, appellant continued to have pain, which was "not uncommon" in back injuries.

Dr. Abeyta stated that appellant's involvement in automobile accidents in 1983, 1987 and 1989 did not appear to be related to the 1988 injury, and indicated that the Office was "looking for any and all reasons to avoid responsibility" for appellant's pain and problems.

While Dr. Abeyta believed that appellant's current back condition resulted from the 1988 lumbar strain, he failed to explain how such an injury could still be causing pain eight years later. He offered no medical rationale for his conclusion and admitted he was unable to pinpoint the cause of appellant's subjective complaints.

Indeed, Dr. Abeyta interpreted appellant's computerized tomography scan dated November 14, 1988 as showing no evidence of herniated disc or other significant abnormalities. Two years later, lumbar x-rays were also interpreted as normal. Inasmuch as Dr. Abeyta's conclusion is unsupported by any clinical findings or rationale, the Board finds that his report is insufficient to meet appellant's burden of proof.⁹

The June 16, 1996 report from Dr. Cohn and the results of the electro-diagnostic testing done on July 18, 1995 are similarly insufficient. He diagnosed radiculopathy with ongoing denervation at L5, based on the abnormal electromyogram results, but offered no opinion on whether this condition was related to the 1988 work injury. While Dr. Cohn related appellant's history of ongoing difficulties and treatment, he provided no discussion linking appellant's

⁹ See *Judith J. Montage*, 48 ECAB ____ (Docket No. 95-51, issued February 27, 1995) (finding that medical reports not containing rationale on causal relationship are generally insufficient to meet appellant's burden of proof).

diagnosis to the 1988 injury. Therefore, his opinion is insufficient to meet appellant's burden of proof.¹⁰

Appellant argued that she did not have a recurrence because she never completely recovered from the 1988 injury and had continuous back pain since then. However, the record indicates that appellant returned to regular duty on November 7, 1988 and did not miss any work due to the effects of the 1988 lumbar strain.

While Dr. Abeyta continued to see appellant infrequently in 1989 to 1994 and appellant underwent physical therapy and massage treatment, an October 1994 evaluation by Dr. Emmet Thorpe, a Board-certified orthopedic surgeon, concluded that appellant had no residual impairment in her lower extremities resulting from sciatica and that her radiculopathy symptoms were "unconfirmed by objective abnormality."

The Office twice authorized treatment and diagnostic testing, but such procedures do not constitute acceptance of a claim for a recurrence of disability.¹¹ Further, subjective complaints of pain without objective findings to support disability for work are not compensable under the Act.¹²

The June 19 and March 4, 1997 and the November 25, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
September 1, 1999

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ See *Jean Culliton*, 47 ECAB 728, 735 (1996) (finding that a physician's opinion on causal relationship is not dispositive simply because it is rendered by a physician).

¹¹ See *Carolyn F. Allen*, 47 ECAB 240, 245 (Docket No. 94-828, issued December 7, 1995) (finding that payment of expenses for medical treatment does not constitute acceptance of a claim).

¹² See *Rosie M. Price*, 34 ECAB 292, 294 (1982) (finding that the mere occurrence of an episode of pain during the workday is not proof of an injury having occurred at work; nor does such an occurrence raise an inference of causal relationship).