

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BEVERLY EATON and DEPARTMENT OF JUSTICE,  
U.S. MEDICAL CENTER FOR FEDERAL PRISONERS, MO

*Docket No. 99-2372; Submitted on the Record;  
Issued January 23, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established that she sustained a recurrence of disability on February 16, 1996 causally related to her employment injury of November 19, 1992.

The Office of Workers' Compensation Programs accepted that appellant, then a 42-year-old registered nurse sustained a left shoulder strain on November 19, 1992 after she slipped on a wet floor at work. She stopped work on the date-of-injury, returned on November 24, 1992 and later retired from the employing establishment on May 3, 1994.

On April 19, 1996 appellant filed a recurrence of disability claim alleging that her original injury caused her additional disability. She alleged that the left shoulder injury has caused pain since the employment incident, that the pain had since spread to neck, right shoulder, arm and thumb and that the 1992 injury resulted in herniated discs at C5-6 and C7. The Office received medical reports from April 1993 through March 1996 in support of appellant's recurrence claim. Among the reports submitted were treatment notes from Dr. Paul Olive, a Board-certified orthopedic surgeon, dated from March 1 through July 22, 1993 who initially saw appellant for pain in her left shoulder and thoracic spine. In the March 1, 1993 treatment note, he reported that appellant fell on a wet floor while working and complained of a burning tingling pain in her left posterior scapula that had been present since her injury. Dr. Olive indicated that appellant's x-rays revealed that her cervical spine was significant for mild degenerative changes but that the x-ray of the shoulder was unremarkable. He diagnosed appellant with left posterior shoulder strain. In a note dated April 30, 1993, Dr. Olive reported that appellant's bone scan revealed degenerative changes in appellant's spine. Other treatment notes dated April and July 15, 1993 evidence treatment of appellant's pain in her thoracic spine. The Office also received a medical report dated February 16, 1996 in which Dr. Olive stated that appellant had severe pain just medial to the tip of her scapula on the left side and that her pain had not improved since her last evaluation. He indicated that appellant probably had chronic scapular bursitis. In a report dated March 15, 1996, Dr. Olive reported that appellant's shoulder had improved with an injection and that she complained at that time of paresthesias down her

right upper extremity into her thumb. He noted that appellant reportedly had suffered with this pain since her work-related injury. A magnetic resonance imaging (MRI) scan submitted to the Office dated April 18, 1996 revealed an apparent right lateral disc herniation at C5-6 and a broad based central annular bulge at C6-7 of appellant's cervical spine. Dr. John Ritter, a Board-certified radiologist who conducted the MRI scan, reported appellant's clinical history and stated, "[appellant] fell two years prior and now had right arm pain." In a report dated May 1, 1996, Dr. John Esther, a Board-certified anesthesiologist who treated appellant for right arm pain, also related the history of her work injury on November 19, 1992. During her examination with Dr. Esther, appellant reported that she had some right arm tingling shortly after her 1992 accident, which had improved, but that recently her pain and tingling had increased. He diagnosed appellant with chronic arm pain in the C6 distribution, which he reported corresponded with her previous MRI scan. In a report dated May 16, 1996, Dr. Olive reported that appellant was seen at that time with complaints of radicular pain down the right upper extremity and into her thumb, however, very little neck pain and no left upper extremity symptoms.

By letter dated May 12, 1997, the Office requested additional medical evidence from appellant, including reports noting treatment for her left shoulder strain condition since March 25, 1993. She submitted among others, a report dated April 27, 1993 from Dr. Edward Gotti, a Board-certified internist, which evidenced a bone imaging evaluation for left rib pain. He found no evidence of a "recent" rib fracture but found evidence of some arthritis or bursitis in the shoulders and noted some peripheral arthritic changes. Appellant also submitted a treatment note dated July 27, 1993 from Dr. Olive and 1996 reports already of record. She further submitted a report dated December 17, 1996 from Dr. Olive in which he stated that appellant continued to have neck and interscapular and bilateral upper extremity pain, mostly in the left upper extremity, which radiated into the left thumb and radial aspect of the hand.

By decision dated July 28, 1997, the Office denied appellant's recurrence of disability claim on the grounds that no medical evidence had been submitted that supported a causal relationship between the original work injury and the claimed recurrent conditions.

In a letter received by the Office on August 18, 1997, appellant requested an oral hearing. Prior to the hearing, the Office received another medical report from Dr. Olive dated August 22, 1997 regarding appellant's denied compensation claim. He related the history of appellant's injury on November 19, 1992 and stated that he believed that the pain behind her left shoulder was work related. Dr. Olive also indicated that appellant complained of right upper extremity pain on March 15, 1996 and that she related that she had experienced the pain since the November 19, 1992 incident. He further stated:

"I informed [appellant] that it would be difficult to prove that the right upper extremity symptoms were from the work-related injury. It is possible, however, that the right upper extremity symptoms are related to the original work[-]related injury that occurred in November 1992."

A hearing was held on June 2, 1998 before an Office hearing representative. Appellant testified that prior to the November 19, 1992 injury, she had no previous problems with her shoulder, neck or back. She submitted a medical report dated December 26, 1996 from

Dr. William Brian, a Board-certified anesthesiologist and further testified that she had herniated C5-6 and C7 cervical discs and that C7 was herniated bilaterally, which caused her pain on both sides. Appellant stated that Dr. Brian explained to her that by herniating C5-6 or C7, such an injury would cause an onset of specific pain; namely pain in the left subscapular region and arm, and pain down the right arm radiating into the side. She also testified that the medical evidence indicated that her herniated discs were caused by the November 1992 injury, however, she later testified that she had filed a previous compensation claim in 1985 when she hurt her back and stated that she did not know if the discs could have been herniated at that time.

With regard to the right upper extremity pain, appellant first testified that she had right arm problems “all along” but that she “kind of blew it off.” She later testified that she did not feel the right arm pain right away but that it was a gradual process of discomfort. Appellant then testified that she first recalled having pain in her right upper extremity immediately after the fall but that she did not recall severe pain “until later.” She also stated that it was not until much later, when she had a MRI scan that she knew there was a problem with her neck.

By decision dated August 3, 1998, the Office hearing representative affirmed the July 28, 1997 decision on the grounds that appellant had failed to provide medical evidence sufficient to prove that her recurrence beginning February 16, 1996 was causally related to her November 19, 1992 work injury. The Office hearing representative found that Dr. Olive was the only physician of record to address causal relationship, when he stated in his August 18, 1997 report that it would be difficult to prove that the right upper extremity symptoms appellant experienced were caused from the November 1992 work-related injury, although it was possible that the symptoms were related. The hearing representative found, however, that his statement did not constitute the type of medical opinion necessary to prove appellant’s claim.

In a letter received by the Office on November 9, 1998, appellant, through her counsel requested reconsideration again and submitted additional evidence. She submitted medical reports from Drs. Olive, Brian and Esther previously of record, along with the previously submitted MRI scan from Dr. Ritter dated April 18, 1996. Appellant also submitted various other reports related to conditions not relevant to the recurrence claim.<sup>1</sup>

By decision dated January 5, 1999, the Office denied appellant’s request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of its prior decision. The Office found that the treatment notes from Dr. Olive dated from March 1 through July 22, 1993 failed to provide rationalized medical opinion evidence supporting the claimed recurrence or to explain how appellant developed a cervical right arm condition medically related to the original work injury.

In a letter received by the Office dated March 15, 1999, appellant through her counsel requested reconsideration a third time, based on a new medical report from Dr. Olive dated

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<sup>1</sup> The Board notes that appellant also filed a recurrence of disability claim on October 8, 1998 alleging that her original November 19, 1992 injury caused her additional disability. Appellant alleged that she developed fibromyalgia, as a result of her skeletal injury; and herniation at C5-6 and C7. The Office informed appellant that no action would be taken on her recurrence claim dated October 8, 1998 as her claim for herniated discs at C5-6 and C7 had been previously denied.

February 19, 1999. Dr. Olive stated in his report that appellant developed pain in her right shoulder, neck and thoracic spine after the November 1992 incident and further stated:

“[I]t is my professional opinion that the bilateral upper extremity condition is work related and again this was made on the basis of the history and physical examination. Certainly the injury that [appellant] sustained could cause her symptoms. I feel certain that the fall did not cause the degenerative changes on the x-ray. However, I do feel that the fall caused her symptoms.”

By decision dated June 21, 1999, the Office found that the evidence submitted was insufficient to warrant modification of its prior decisions. The Office found that Dr. Olive’s February 19, 1999 report did not support that appellant sustained a recurrence of her left shoulder condition or that her cervical condition resulted from the November 19, 1992 injury. The Office further found that although Dr. Olive opined that appellant’s pain and symptoms were related to the November 19, 1992 injury, he indicated in his report that there was no objective data that would support that her shoulder, neck or thoracic conditions were related to the injury. The Office concluded therefore that Dr. Olive offered no unequivocal opinion that supported a relationship between appellant’s conditions and the November 19, 1992 injury.

The Board finds that appellant has not established that she sustained a recurrence of disability on February 16, 1996 causally related to her employment injury of November 19, 1992.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability commencing on or about February 16, 1996 and her November 19, 1992 accepted injury.<sup>2</sup> This burden 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 casually related to employment factors and supports that conclusion with sound medical reasoning.<sup>3</sup>

In this case, appellant has failed to submit rationalized medical evidence establishing that she sustained a recurrence of disability on February 16, 1996 due to her November 19, 1992 employment injury. The only physician of record who addressed the issue of disability is Dr. Olive, a Board-certified orthopedic surgeon. In his August 22, 1997 report, Dr. Olive indicated that he believed appellant’s pain behind her left shoulder was work related and noted that, with regard to the bilateral upper extremity pain, appellant indicated that she had experienced the pain since the work injury. He further noted that while it would be difficult to prove that the right upper extremity symptoms were related to the original work injury that occurred on November 19, 1992, he indicated that it was possible. Dr. Olive’s findings, however, are speculative and inconclusive in nature and thus of diminished probative value.<sup>4</sup> He did not explain the medical process through which appellant would have sustained a recurrence

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<sup>2</sup> *Dominic M. DeScala*, 37 ECAB 795 (1986).

<sup>3</sup> *Nicolea Brusco*, 33 ECAB 1138 (1982).

<sup>4</sup> *Connie Johns*, 44 ECAB 560 (1993).

of disability of her left shoulder more than three years after the initial injury of November 19, 1992. Moreover, Dr. Olive did not explain how appellant's right upper extremity pain which he related appellant experienced on March 15, 1996, could be attributed to the November 19, 1992 injury. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, neither can such an opinion be speculative or equivocal. The opinion should be one of reasonable medical certainty.<sup>5</sup> A year and a half later, Dr. Olive stated in his report dated February 19, 1999, that appellant's bilateral shoulder condition is work related and that the injury could have caused her symptoms, based on history and reports. The Board notes, however, that in the same report, Dr. Olive stated that there was no objective data to link the right shoulder condition to the work injury. He did not provide an adequate medical rationale in support of his conclusion on causal relationship.<sup>6</sup>

Appellant had to establish by the weight of the reliable, probative and substantial evidence that she sustained a recurrence of disability due to her employment injury of November 19, 1992. The mere fact that a disabling condition develops concurrently with a period of employment raises no inference that the condition was caused or aggravated by the employment; causal relationship must be established by proof.<sup>7</sup> The evidence fails to establish that appellant's work caused or aggravated her claimed conditions. In addition, in order to be entitled to compensation an employee must establish a loss of wage-earning capacity; pain alone is an insufficient basis for compensation entitlement.<sup>8</sup> Appellant has therefore failed to establish that she actually sustained a recurrence of disability causally related to her employment injury of November 19, 1992.

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<sup>5</sup> *Norman E. Underwood*, 43 ECAB 719 (1992).

<sup>6</sup> *See Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

<sup>7</sup> *See Mayousie B. Lincoln*, 9 ECAB 37 (1956).

<sup>8</sup> *Id.*

The decisions of the Office of Workers' Compensation Programs dated June 21 and January 5, 1999 and August 3, 1998 are affirmed.

Dated, Washington, DC  
January 23, 2001

Michael J. Walsh  
Chairman

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member