

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANI A. BENNETT and DEPARTMENT OF AGRICULTURE,
Wyalusing, PA

*Docket No. 00-934; Submitted on the Record;
Issued March 14, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant had a recurrence of disability on October 16, 1998 causally related to her September 29, 1992 employment injury.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained a recurrence of disability on October 16, 1998 causally related to her September 29, 1992 employment injury.

An individual 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 disability for which compensation is claimed is causally related to the accepted injury.¹ 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 causally related to the employment injury and supports that conclusion with sound medical rationale.² Where no such rationale is present, medical evidence is of diminished probative value.³

On September 29, 1992 appellant, then a 30-year-old food inspector, sustained a cervical strain in the performance of duty. She was totally disabled from September 30 through November 13, 1991 and returned to full duty on November 16, 1992. Appellant missed intermittent periods from work from January 8 through March 5, 1993. She stopped work again

¹ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

² *Mary S. Brock*, 40 ECAB 461, 471 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

³ *Michael Stockert*, 39 ECAB 1186, 1187 (1988).

from March 8 through November 30, 1993, March 9 to 11, 1994 and May 3 to 6, 1994. Appellant was released by her physician to return to full duty on September 26, 1994.⁴

On March 3, 1999 appellant filed a claim for a recurrence of disability on October 16, 1998 which she attributed to her September 29, 1992 employment injury.⁵ In a notice of recurrence of disability dated May 4, 1999, she stated that after being released to regular work following her September 29, 1992 employment injury she chose to take a less physical food inspector job at a smaller plant. Appellant stated that she had neck and back pain but continued to work until the pain became severe at which time she sought treatment. She stated that medical records from her 1992 employment injury showed permanent damage to her spinal discs.⁶

By letter dated March 19, 1999, the Office of Workers' Compensation Programs advised appellant that she needed to submit additional evidence in support of her recurrence claim, including rationalized medical evidence establishing causal relationship between her 1992 employment injury and her October 1998 recurrence of disability.

By decision dated May 20, 1999, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that she sustained an injury in the performance of duty.

By letter dated May 25, 1999, appellant requested an oral hearing and submitted additional evidence.

On November 15, 1999 a hearing was held before an Office hearing representative at which time appellant testified.

By decision dated and finalized on December 15, 1999, the Office hearing representative affirmed the Office's May 20, 1999 decision on the grounds that the medical evidence was insufficient to establish that appellant sustained a recurrence of disability on October 16, 1998 causally related to her September 29, 1992 employment injury.⁷

In support of her claim for a recurrence of disability on October 16, 1998, appellant submitted medical reports dated September 16, 1993 to July 31, 1994. As these reports predate her claim for a recurrence of disability on October 16, 1998, they are of diminished probative

⁴ In a report dated September 21, 1994, Dr. Joseph Cama, appellant's attending family practitioner, diagnosed a cervical neck strain and indicated that appellant could return to regular work on September 26, 1994.

⁵ At the hearing held in this case, appellant stated that in October 1998 she left home to go on a family trip but had to go to the emergency room because she could not move her arm and was in pain.

⁶ January 18 and March 16, 1993 reports of magnetic resonance imaging (MRI) scans of the cervical spine indicated a small disc herniation at C5-6. In reports dated April 26 and October 24, 1994, two Office physicians noted the small disc herniation as shown in the 1993 MRI scans but indicated normal examinations and a resolved disc herniation. The physicians indicated that appellant's employment-related cervical strain had resolved and she should perform work without restrictions. A May 16, 1994 report of a cervical myelogram revealed a normal cervical spine.

⁷ The Board notes that the Office hearing representative stated in the last page of her decision that she was affirming the Office's February 23, 1999 decision. However, the Office's decision was dated May 20, 1999.

value and are insufficient to establish that she sustained a recurrence of disability on that date causally related to her September 29, 1992 employment injury.

In treatment notes dated October 19, 1998 through March 9, 1999, Dr. Kevin Ayers, a chiropractor, stated that an MRI scan revealed a small disc herniation at C5-6.

Under section 8101(2) of the Act, chiropractors are only considered physicians and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.⁸ As Dr. Ayers did not diagnose a subluxation as demonstrated by x-rays, his reports have no probative value on the issue of whether appellant sustained an employment-related recurrence of disability on October 16, 1998.

In a disability certificate dated October 30, 1998, Dr. Cama stated that appellant could see a chiropractor as needed for pain.

In a report dated July 2, 1999, Dr. Cama stated that appellant was under his care for an ongoing neck condition and could perform her current work assignment but should avoid repetitive neck strain.

In a report dated October 21, 1999, Dr. Cama stated that appellant had experienced neck pain on and off since her September 29, 1992 employment-related cervical sprain. He stated:

“[F]rom time to time [appellant] has sought chiropractic medical care to manipulate her neck to relieve muscle spasms. Her muscle spasms can be brought on by sleeping in the wrong direction, lifting or any other activity that involves the use of her neck in a negative way....

“My overall impression is that [appellant’s] original injury, which was a cervical strain, is periodically exacerbated by other activities that involve her neck and shoulders. This is a fairly common problem with whiplash-type injuries. In fact, in my practice many people who have had whiplash-type injuries do not have complete recovery even years later. Often they can function quite well and then some minor trauma to the neck can cause a flare up of pain in the neck. I do not believe that [appellant’s] situation is atypical at all.

“I also feel that [appellant] will have problems with her neck on and off for the rest of her life. I do not think her problems are severe, but they do cause pain and discomfort at least a few times a year. [Appellant] has not lost work recently because of this problem. My feeling is that the occasional chiropractic manipulation is necessary because it gives her excellent relief in her neck pain.”

Although Dr. Cama stated in his October 21, 1999 report that appellant’s neck pain was causally related to her September 29, 1992 employment-related cervical strain, he provided insufficient medical rationale explaining how her neck problems in October 1998 were causally related to her 1992 employment injury. Such rationale is particularly important in light of the

⁸ 5 U.S.C. § 8107(2); *see Jack B. Wood*, 40 ECAB 95, 109 (1988).

fact that Dr. Cama returned appellant to full duty in September 1994 and in light of the lack of medical reports between September 1994 and the claimed recurrence in October 1998.⁹

Although appellant contended that her 1992 employment injury caused permanent damage to her spinal discs, the Office has not accepted a disc problem as causally related to her 1992 employment injury. Furthermore, the record reflects that her mild herniation of her disc at C5-6 had resolved in 1994.¹⁰

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.¹¹ Appellant failed to submit rationalized medical evidence establishing that her claimed recurrence of disability on October 16, 1998 was causally related to the accepted employment injury and, therefore, the Office properly denied her claim.

The decision of the Office of Workers' Compensation Programs dated May 20, 1999 is affirmed and the Office decision dated December 15, 1999 is affirmed, as modified.

Dated, Washington, DC
March 14, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

⁹ For the importance of bridging information in establishing a claim for a recurrence of disability, see *Leslie S. Pope*, 37 ECAB 798, 802 (1986).

¹⁰ See *supra* note 6.

¹¹ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).