

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN HARPER and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Laguna Niguel, CA

*Docket No. 00-726; Submitted on the Record;
Issued May 10, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant sustained a recurrence of disability beginning October 1, 1997 causally related to her December 17, 1984 employment injury; and (2) whether the Office of Workers' Compensation Programs, in its decision dated March 16, 1999, abused its discretion in refusing to reopen appellant's claim for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128.

On December 19, 1984 appellant, then a 37-year-old revenue officer, filed a notice of traumatic injury and claim for continuation of pay/compensation, alleging that on December 17, 1984 she accidentally slipped off the step at the bottom of the stairs and sustained injuries to the left side of her body and in particular, to her left back and leg. She stopped work immediately. The claim was accepted for left sacroiliac strain and herniated disc L5-S1.

By decision dated May 31, 1995, appellant's wage-loss benefits were terminated effective June 24, 1995, as the Office found that appellant's disability resulting from her December 17, 1984 injury had ceased by that date.

On December 10, 1997 appellant filed a notice of recurrence of disability and claim for continuation of pay/compensation, alleging that she developed a recurrence of the December 17, 1984 injury on October 1, 1997. She noted that her job, both before the injury and after her return to work on October 1, 1986, was sedentary and it became increasingly difficult to sit, as she suffered from excruciating pain in both buttocks and legs and severe back pain.

Appellant submitted an October 20, 1997 unsigned medical report by Dr. John E. Dodd, Jr., a Board-certified anesthesiologist and pain management specialist with Mississippi Baptist Medical Center, wherein he indicated that appellant was suffering from chronic low back and bilateral lower extremity pain, bilateral S1 lateralizing disc bulges and hypertension. She also submitted an October 31, 1997 signed medical report by Dr. Dodd in which he stated that appellant was under his care for low back and left lower extremity pain and that he advised her to remain off work until a series of lumbar epidural steroid injections was complete. He noted that

appellant should be able to return to work on January 5, 1998. In a November 17, 1997 medical report, Dr. Dodd noted that appellant reported some overall improvement following her first injection. In his December 15, 1997 report, Dr. Dodd noted that appellant continued to experience some low-grade low back pain.

In a decision dated May 29, 1998, the Office found that the evidence submitted by appellant was insufficient to establish that her recurrence of disability was causally related to the approved injury because there was no opinion from a physician relating appellant's continuing problems or diagnosed conditions to the original injury of December 17, 1984. The Office also noted that the medical evidence failed to contain a history of the original employment injury.

By letter dated June 10, 1998, appellant requested review of the written record.

Appellant submitted a report of surgery by Dr. W. Michael Vise, a Board-certified neurosurgeon, indicating that on June 1, 1998 he performed an omnipaque lumbar myelogram on appellant. In a June 4, 1998 medical report, Dr. Vise further stated that appellant's lumbar disc herniation with extradural defects and chronic intractable pain could be causally related to the injury she sustained in December 1984. He found that appellant was a candidate for surgery, but that the lengthy history of her symptoms and known disc herniation diminished the likelihood of a good to excellent outcome with the operative procedure.

In a decision dated October 14, 1998, an Office hearing representative affirmed the May 29, 1998 decision.

By letter dated November 19, 1998, appellant requested reconsideration of the hearing representative's decision and submitted medical reports from Dr. Vise. In a November 13, 1998 medical report, Dr. Vise stated:

"It has been concluded in a letter for the [Office] that the physician's statement by myself, Dr. Michael Vise, do not provide a medical basis supporting the claim for causal relationship to the original accident. This is certainly an erroneous interpretation of the previous letter that I submitted. Because of the presence of defects radiographically and the symptoms which appeared following [appellant's] accident and the fact that she had been previously considered for surgery due these injuries in 1984, there is a clear causal relationship between the present pathology and the onset of her symptoms and the document of the symptoms at that time.

"Therefore, this letter is dictated as an additional statement correlating [appellant's] signs, symptoms and medical evidence to an accident she received in December 1984 and that this accident does indeed appear to be causally related to her present continuing pathology and her need for surgery."

In a decision dated December 7, 1998, the Office denied modification of its prior decision.

By letter dated January 4, 1999, appellant again requested reconsideration and submitted a December 14, 1998 medical report by Dr. Vise wherein he recited a history of appellant's

medical care. Dr. Vise noted that appellant had been unable to work since October 1, 1997, that she returned to Dr. Britton and had a series of epidural steroid blocks, that her pain was unabated by these procedures and that Dr. Britton tried a dermal patch for delivery of medication which did not improve her symptoms. Dr. Vise noted that appellant was referred to him for evaluation in May 1998 and he performed a computerized tomography/myelogram, which demonstrated a chronic disc herniation at L5/S1 on the left and that appellant had been offered surgery because of this defect.

In a decision dated March 16, 1999, the Office denied appellant's request for reconsideration on the merits, as it found that appellant did not present any new and pertinent evidence or legal argument.

The Board finds that this case is not in posture for decision.

When an employee claims a recurrence of disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed recurrence of disability is causally related to the accepted injury. As part of this burden, appellant must furnish 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 employment factors and supports that conclusion with sound medical reasoning.¹ An award of compensation may not be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causation.² However, proceedings under the Federal Employees' Compensation Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.³

In the instant case, the Office reviewed appellant's case on the merits on December 7, 1998 and found that the evidence submitted was not sufficient to warrant modification of its previous decision denying benefits because appellant had not established that her recurrence was causally related to the injury of December 17, 1984. However, the Board notes that in his November 13, 1998 medical report, Dr. Vise indicated that it appeared that the accident in December 1984 was "causally related to her present continuing pathology and her need for surgery." He opined that a "clear causal relationship between the present pathology and the onset of her symptoms" was evidenced because of presence of radiographic defects and symptoms which appeared following her accident and the fact that she had previously considered for surgery due to these symptoms. Although this report is not sufficiently rationalized to discharge appellant's burden of proof that her recurrence of disability beginning October 1, 1997 was causally related to her December 17, 1984 employment injury, it raises an uncontroverted

¹ *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996).

² *Id.*

³ *Willaim J. Cantrell*, 34 ECAB 1223 (1983).

inference of causal relationship sufficient to require further development of the record by the Office.⁴ The Board notes that the record in this case contains no contrary medical opinion.

Upon remand, the Office should further develop the medical evidence as necessary. After such further development of the case record as the Office deems necessary, a *de novo* decision shall be issued.⁵

The decisions of the Office of Workers' Compensation Programs dated March 16, 1999 and December 7, 1998 are hereby set aside and the case is remanded for further development in accordance with this decision.

Dated, Washington, DC
May 10, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

⁴ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁵ Due to the disposition of this issue, the Board finds that it is not necessary to consider the issue of whether the Office abused its discretion in refusing to reopen appellant's claim for review of the merits.