

**United States Department of Labor  
Employees' Compensation Appeals Board**

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MARTHA R. McQUEEN, Appellant )

and )

DEPARTMENT OF THE NAVY, WEAPONS )  
DIVISION, Point Mugu, CA, Employer )

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**Docket No. 04-1502  
Issued: October 14, 2004**

*Appearances:*  
*Martha R. McQueen, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On May 20, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 2, 2004, denying her claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on or after August 13, 2002 due to her August 8, 1994 employment injury.

**FACTUAL HISTORY**

On December 1, 1994 appellant, then a 29-year-old clerk, filed a traumatic injury claim alleging that she sustained a back injury when she fell at work on August 8, 1994. The Office accepted that she sustained a lumbar strain. Appellant did not stop working in her regular job at

the time of her fall.<sup>1</sup> Beginning in December 1994, she received treatment from Dr. William P. Rajala, an attending Board-certified internist. The findings of x-ray testing from March 1995 showed minimal scoliosis with maintained disc spaces and no fracture or significant osteophyte formation.

On February 2, 1996 appellant filed a claim alleging that she sustained a recurrence of disability due to her August 8, 1994 employment injury. She asserted that she sustained neck and shoulder injuries on August 8, 1994 in addition to her back injury.

By decision dated March 21, 1996, the Office denied appellant's claim. It found that she did not establish that she sustained neck and shoulder injuries on August 8, 1994 and effectively terminated her compensation on March 21, 1996 by determining that she had no residuals of her August 8, 1994 employment injury after that date. By decision dated July 25, 1996, the Office denied appellant's request for merit review of its March 21, 1996 decision. She appealed her claim to the Board. In a September 21, 1998 decision, the Board affirmed the Office's March 21, 1996 decision with respect to whether she sustained neck and shoulder injuries on August 8, 1994 and reversed the decision with respect to the termination of her compensation<sup>2</sup> for her accepted lumbar strain.

On October 7, 2002 appellant filed a claim alleging that she sustained a recurrence of disability on August 13, 2002 due to her August 8, 1994 employment injury. She indicated that she continuously experienced back pain since August 8, 1994.<sup>3</sup> The Office provided appellant an opportunity to present evidence in support of her recurrence of disability claim. By decision dated January 14, 2003, it denied her claim on the grounds that she did not submit sufficient medical evidence in support of her claim.<sup>4</sup>

Appellant submitted numerous medical notes, disability slips, prescription forms and diagnostic testing reports which were dated between 1995 and 2000. The majority of these documents were produced by Dr. Rajala. On April 3, 2000 Dr. Rajala noted that appellant reported experiencing left sided back and buttock pain while exercising on April 1, 2000. She also submitted two reports of Dr. Rajala from 2002. On September 9, 2002 he noted that appellant reported injuring her back at work in 1994 and diagnosed a chronic lumbosacral strain/sprain. On December 18, 2002 Dr. Rajala diagnosed chronic low back pain "with a recent exacerbation over the last couple of months" but he did not identify the cause of the exacerbation. The findings of x-ray testing obtained on December 24, 2002 showed mild convex scoliosis on the left.

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<sup>1</sup> It appears that appellant received compensation for intermittent days of work stoppage or medical treatment.

<sup>2</sup> Docket No. 97-55 (issued September 21, 1998).

<sup>3</sup> Appellant did not stop work on August 13, 2002. At the time she filed her recurrence of disability claim, it appeared that no new medical evidence concerning the treatment of her back problems was added to the record since mid 1999.

<sup>4</sup> Appellant did not submit any medical evidence prior to the Office's January 14, 2003 decision.

By decision dated February 20, 2003, the Office affirmed the January 14, 2003 decision. Appellant then submitted the findings of magnetic resonance imaging (MRI) scan testing obtained on January 17, 2003 which showed that she had degenerative changes at L4-5 and L5-S1. By decision dated March 2, 2004, the Office affirmed its February 20, 2003 decision.

### **LEGAL PRECEDENT**

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.<sup>5</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 causally related to the employment injury and supports that conclusion with sound medical rationale.<sup>6</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>7</sup>

### **ANALYSIS**

In the present case, appellant alleged that she sustained a recurrence of disability on August 13, 2002 due to her August 8, 1994 employment injury, a lumbar strain. In support of her claim, she submitted numerous medical notes, disability slips, prescription forms and diagnostic testing reports dated between 1995 and 2000. However, these documents do not bear any relevance to the main issue of the present case because they do not concern the period of appellant's claim for recurrence of disability, *i.e.*, the period beginning August 13, 2002.

Appellant submitted a September 9, 2002 report in which Dr. Rajala diagnosed chronic lumbosacral strain/sprain. This report, however, is of diminished probative value on the relevant issue of the present case in that it does not contain an opinion on causal relationship.<sup>8</sup> Although Dr. Rajala noted that appellant reported injuring her back at work in 1994, he did not provide any indication that the diagnosed condition was related to the August 8, 1994 employment injury. In a report dated December 18, 2002, he diagnosed chronic low back pain "with a recent exacerbation over the last couple of months," but he did not identify the cause of the exacerbation. A report detailing the findings of MRI scan testing obtained on January 17, 2003 which showed degenerative changes at L4-5 and L5-S1, but the report did not provide any indication that these findings were related to the August 8, 1994 employment injury.

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

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<sup>5</sup> *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

<sup>6</sup> *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

<sup>7</sup> *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

<sup>8</sup> See *Charles H. Tomaszewski*, *supra* note 5 (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

employment, nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.<sup>9</sup> Appellant failed to submit rationalized medical evidence establishing that her claimed recurrence of disability was causally related to the accepted employment injury and, therefore, the Office properly denied her claim for compensation.

**CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability on or after August 13, 2002 due to her August 8, 1994 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 2, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 14, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>9</sup> See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).