

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBRA A. LEES and DEPARTMENT OF DEFENSE,
TAEGU AMERICAN SCHOOL, Taegu, South Korea

*Docket No. 96-2247; Submitted on the Record;
Issued August 3, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant's recurrence of disability on and after September 12, 1994 is causally related to her October 2, 1986 employment injury.

On October 2, 1986 appellant, then a 33-year-old secretary, was walking to her desk when she tripped over the telephone cord and computer wires. She developed pain in her lower right back and in her right leg. She stopped working on October 6, 1986. In an October 11, 1986 report Dr. Miguel Pelegrina, a Board-certified orthopedic surgeon, indicated that appellant had positive straight leg raising test on the right at 30 degrees but a negative straight leg raising test on the left. He diagnosed right S1 radiculopathy and a possible L5-S1 herniated nucleus pulposus. The Office of Workers' Compensation Programs accepted appellant's claim for S1 radiculopathy. On November 21, 1990 appellant filed a claim for recurrence of disability beginning November 2, 1990 alleging that on that date she woke up at home with an aching back. She returned to light-duty work on December 3, 1990. In a November 14, 1990 report Dr. Clayton R. Gabbert, a Board-certified orthopedic surgeon, stated that a CT (computerized tomography) scan showed a disc herniation at L5-S1 on the left side. He indicated that appellant complained of pain in the buttocks and leg on the left, extending down to the left ankle. In a February 3, 1992 letter, the Office indicated that it had accepted appellant's condition for S1 radiculopathy and recurrent herniated nucleus pulposus and had authorized compensation through November 30, 1990.

On December 2, 1994 appellant filed a notice of recurrence of disability alleging that she was disabled beginning September 12, 1994 due to back pain. An MRI (magnetic resonance imaging) scan showed a large disc herniation at L4-L5 with an extruded component on the left, a small disc herniation on L5-S1 causing minimal impression on the S1 nerve root sleeve on the left, and a small central disc bulge or herniated at L3-L4. In a November 16, 1994 report Dr. James S. Heiden, a Board-certified neurosurgeon, reviewed appellant's medical history and noted that appellant had positive straight leg raising at 45 degrees on the left but no symptoms on right. He diagnosed radiculopathy on the left secondary to the herniated discs showed on the

MRI scan. In a March 1, 1995 report Dr. Heiden repeated the history and diagnosis of his earlier report, noted findings that were similar to the findings in his earlier report and recommenced surgery.

In a March 29, 1995 decision the Office rejected appellant's claim on the grounds that the evidence of record failed to demonstrate a causal relationship between the employment injury and her claimed recurrence of disability beginning March 29, 1995.

On October 3, 1995 appellant underwent surgery for a hemilaminectomies at L4 and L5 and partial facetectomies and discectomies at L4-L5 and L5-S1. In an October 19, 1995 letter appellant's attorney requested reconsideration of the March 29, 1995 decision. In a November 13, 1995 decision the Office rejected appellant's request for reconsideration on the grounds that she had not submitted new, relevant evidence nor substantive legal arguments in support of her request for reconsideration.

In a December 8, 1995 letter, appellant's attorney again requested reconsideration. The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. William M. Keener, a Board-certified orthopedic surgeon, for an examination and second opinion on whether the claimed recurrence of disability was causally related to the original employment injury and whether the October 3, 1995 surgery was necessary and needed due to the accepted injury. In an April 22, 1996 report Dr. Keener stated that the recurrence of symptoms was not related to the October 2, 1986 employment injury. He indicated that the medical records from the original injury showed that appellant's symptoms at the time of that injury were in the low back and right leg. He noted that the diagnosis at that time was a possible disc herniation at L5-S1 and right radiculopathy. He pointed out that appellant's first complaint of left leg pain came in 1990 and was subsequently shown to be a large disc herniation on the left at L4-L5 and a small disc herniation on the left at L5-S1. He concluded that, because of the time interval involved, the different side of the body affected and the different disc space noted, the symptoms of the recurrence of disability were not casually related to the October 2, 1986 employment injury. He commented that the surgery performed on October 3, 1995 was necessary to treat appellant's condition but was not related to appellant's accepted employment-related injuries.

In a May 3, 1996 merit decision the Office rejected appellant's request for modification of the March 29, 1995 decision.

The Board finds that appellant has not met her burden of proof in establishing that her recurrence of disability after September 12, 1994 was causally related to the October 2, 1986 employment injury.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which she seeks compensation was causally related to her employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.¹ Appellant has not submitted such medical

¹ *Dominic M. DeScala*, 37 ECAB 369 (1986).

evidence. The reports of Dr. Heiden noted appellant's history of the original employment injury and the 1990 recurrence of disability and gave a diagnosis of appellant's condition based on the MRI scan. However, he did not discuss whether appellant's current diagnosed condition was causally related to the original employment injury nor did he explain how an injury sustained eight years previously would cause a recurrence of disability.

On the other hand, Dr. Keener pointed out that appellant's symptoms in 1994 were on the left side and arose primarily in the L4-L5 disc space while her symptoms from the original injury affected the right leg and were believed to have arisen from the L5-S1 disc space. Dr. Keener therefore concluded that appellant's disability after September 12, 1994 was not related to the original October 2, 1986 employment injury. Appellant has not submitted any medical evidence to establish that her disability after September 12, 1994 was causally related to the October 2, 1986 employment injury, particularly in light of Dr. Keener's report which showed that the original injury caused symptoms in the right leg but appellant's complaints on her latest claim for recurrence of disability affected the left leg. Appellant therefore has not met her burden of proof in establishing that her recurrence of disability after September 12, 1994 was causally related to the original employment injury.

The decisions of the Office of Workers' Compensation Programs, dated May 3, 1996 and November 13, 1995, are hereby affirmed.

Dated, Washington, D.C.
August 3, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member