

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARAMINTA C. MOORE and DEPARTMENT OF THE AIR FORCE,
ROBINS AIR FORCE BASE, Ga.

*Docket No. 97-644; Submitted on the Record;
Issued December 9, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of total disability causally related to her accepted employment injury of May 5, 1995.

On May 8, 1995 appellant, then a 43-year-old electronic mechanic, filed a notice of traumatic injury and claim for continuation of pay alleging that on May 5, 1995 she was injured when the chair in which she was sitting at work rolled out from under her and she fell to a sitting position on the floor. The Office of Workers' Compensation Programs accepted appellant's claim for lumbar strain. Appellant missed one day of work as a result of her injury.

In support of her claim, appellant submitted intermittent physician and nurse treatment notes from the employing establishment health unit. Appellant was treated on numerous occasions by Dr. James W. Burnham, a family practitioner, from the period May 8 through August 23, 1995. In his treatment notes, the doctor noted that appellant was injured on May 5, 1995, and that she complained of pain in her lower back and buttocks.

In a July 5, 1995 letter, Dr. Burnham referred appellant to Dr. William S. Barnes, a Board-certified orthopedist, for an evaluation on July 17, 1995. Dr. Burnham advised Dr. Barnes that appellant was first seen on May 8, 1995 complaining of soreness in the buttocks and pain radiating up to into the mid back which had started the day after appellant fell at work on May 5, 1995. He stated that his "examination showed a tender contusion of the right upper buttock along with tenderness in the lumbosacral area." Dr. Burnham indicated that appellant was treated with motrin and physical therapy, and that she could maintain her regular duties since her job did not require strenuous work or heavy lifting.

In a report dated July 17, 1995, Dr. Barnes noted that appellant "fell at work and started having some pain in her buttock and lower back." He diagnosed "lumbosacral spine strain, secondary to fall at work and irritation of the same, SI arthritis and aggravation secondary to fall." Dr. Barnes indicated that appellant could return to regular duty with anti-inflammatory medication and that he would see her in four weeks if she was not better.

On March 5, 1996 appellant filed a notice of a recurrence of disability beginning March 1, 1996. Appellant indicated that since her May 5, 1995 she continued to work but has suffered chronic back pain and has continued her treatment of motrin and rovocflex prescriptions. She also stated that she has had no further injury to her back. On the reverse side of the CA-2a form, appellant's supervisor indicated that appellant had not stopped work and that she continued to perform her regular duties after the original injury.

In support of her claim for recurrence of disability, appellant submitted intermittent physician and nurse treatment records from the employing establishment health unit dated between October 3, 1995 and May 1, 1996. In a treatment note dated October 3, 1995, Dr. John R. Arnall, a Board-certified family practitioner, noted May 5, 1995 as the date of occupational injury.¹ He treated appellant for continuing pain in lower back and buttocks. Dr. Arnall diagnosed S1 arthritis and lumbar strain. In a treatment note dated November 1, 1995, Dr. Arnall noted lower back pain and arthritis related to the May 5, 1995 injury. The doctor reported a good range of motion in appellant's back accompanied by some discomfort. Dr. Arnall prescribed medication and home exercise.

In a March 1, 1996 treatment note, which indicated that the treatment was for the May 5, 1995 injury, Dr. Burnham treated appellant for lower back pain and left leg pain, for which he prescribed motrin. The doctor noted findings, including tenderness at L4 and pain on leaning back but negative straight leg raising while seated. He diagnosed recurrent low back and left leg pain. The nurse who took appellant's history for Dr. Burnham recorded appellant's complaints of weekly low back pain, including a February 23, 1996 incident in which appellant noted having incapacitating pain after turning around.

On May 8, 1996 the Office advised appellant that a detailed medical narrative from her attending physician including a rationalized opinion relating her alleged recurrence of disability to her May 5, 1995 injury was needed to support her claim.

By letter dated May 15, 1996, appellant responded that she had "not seen any other physician, or received treatment other than that which has been sent to you already."

In an August 13, 1996 decision, the Office denied appellant's claim for recurrence of disability because she provided no medical opinion to establish that her claimed medical condition or disability was causally related to the May 5, 1995 work-related injury.²

The Board finds that appellant has not sustained a recurrence of disability beginning March 1, 1996 causally related to her May 5, 1995 accepted employment injury.

¹ There are notations by the attending nurse that appellant complained of difficulty sitting and standing for long periods of time due to lower back pain. The nurse noted Dr. Barnes' July 17, 1995 report wherein the doctor prescribed motrin for two months.

² A progress report was date stamped as received by the Office on August 15, 1996 after the issuance of the Office's final decision. The Board has no jurisdiction to review this document for the first time on appeal; *see* 20 C.F.R. § 501.2(c).

As used in the Federal Employees' Compensation Act,³ the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁴ 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.⁵ 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 reasoning.⁶ An award of compensation may not be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causal relationship.⁷

In the instant case, as appellant's claim form indicates that she did not stop work or lose pay as a result of the claimed recurrence of disability, there is no basis for the payment of monetary compensation for wage loss.

Appellant provided no medical evidence identifying or supporting any causal relationship between her condition on and after March 1, 1996 and her accepted employment injury for lumbar strain. Appellant missed one day of work following the May 5, 1995 employment injury, and the record indicates that she has continued to perform her regular duties since that time. While appellant received treatment from October 3, 1995 through May 1, 1996, she has not submitted, as requested by the Office, a detailed medical report supported by medical reasoning from her physician which explains the causal relationship between her claimed recurrence of disability and her accepted employment injury. This is necessary as the treatment notes indicate that appellant was diagnosed with S1 arthritis, and there is no medical opinion of how her fall on May 5, 1995 contributed to her arthritic condition. Although Dr. Burnham's March 1, 1996 treatment generally indicates that appellant's condition is employment related, the doctor did not provide a medically reasoned opinion explaining why appellant's continuing condition is causally related to the May 5, 1995 injury or to other specific employment factors.

As noted above, part of appellant's burden to establish a claim for recurrence of disability is to submit a reasoned medical opinion supporting that she has a continuing condition or disability causally related to her May 5, 1995 employment injury. Despite the Office's request that appellant submit a rationalized medical opinion addressing causal relationship, appellant failed to submit any additional medical evidence. Because the record is devoid of medical

³ 5 U.S.C. §§ 8101-8193.

⁴ *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Eldon H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.57(17). Disability is not synonymous with physical impairment. An employee who has a physical impairment, even a severe one, but who has the capacity to earn the wages he was receiving at the time of the injury, has no disability as that term is used in the Act and is not entitled to disability compensation; see *Gary L. Loser*, 38 ECAB 673 (1987); *Cf.* 5 U.S.C. § 8107 (entitlement to schedule compensation for loss or permanent impairment of specified members of the body).

⁵ *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

⁶ See *Nicolea Bruso*, 33 ECAB 1138 (1982).

⁷ *Ausberto Guzman*, 25 ECAB 362 (1974).

evidence relevant to the causal relationship between appellant's May 5, 1995 employment injury and her condition after March 1, 1996, the Office properly denied appellant's claim for recurrence of disability.

The decision of the Office of Workers' Compensation Programs dated August 13, 1996 is affirmed.

Dated, Washington, D.C.
December 9, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member