

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLEOLA F. EDWARDS and DEPARTMENT OF DEFENSE,
DEFENSE LOGISTICS AGENCY, Richmond, VA

*Docket No. 98-212; Submitted on the Record;
Issued August 2, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish that she sustained a recurrence of disability on March 3, 1995 causally related to her September 18, 1986 employment injury.

On September 25, 1986 appellant, then a 53-year-old cash clerk, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on September 18, 1986 she injured her back when she lifted a six- to eight-pound box of mail. The Office of Workers' Compensation Programs accepted appellant's claim for back strain. Appellant returned to her regular employment on October 20, 1986.

On September 26, 1989 appellant filed a notice of recurrence of disability beginning August 31, 1989 due to her September 18, 1986 employment injury. By decision dated March 30, 1990, the Office denied appellant's claim for a recurrence of disability.

On May 3, 1995 appellant filed a claim for a recurrence of disability commencing March 3, 1995 causally related to her accepted 1986 employment injury. By decision dated August 26, 1995, the Office denied appellant's claim, and, by decision dated April 17, 1996, the Office's Branch of Hearings and Review denied her request for a hearing as untimely. In a decision dated September 13, 1997, the Office denied modification of its prior decision.¹

The Board has duly reviewed the case record on appeal and finds that appellant has not established that she sustained a recurrence of disability on March 3, 1995 causally related to her September 18, 1986 employment injury.

¹ The record contains a November 11, 1997 decision denying appellant's request for a hearing issued after she filed her October 15, 1997 appeal with the Board. Since this decision involved the same issues before the Board while the Board had jurisdiction over the case, it is null and void. *Douglas E. Billings*, 41 ECAB 880 (1990).

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he or she claims compensation is causally related to the accepted injury.² This burden includes the necessity of furnishing evidenced from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.³

In support of her claim for a recurrence of disability, appellant submitted emergency room notes which indicated that she obtained treatment for back pain on March 5, 1995. Appellant further submitted office visit notes dated 1995 and 1996 from Dr. Brian K. Blackwell, an internist, and Dr. William Fleming, which establish that she received treatment for, *inter alia*, low back pain. However, as the emergency room notes and office visit notes are devoid of an opinion on the causal relationship between appellant's condition and her employment injury, they are of little probative value.

In a report dated July 19, 1995, Dr. Blackwell discussed appellant's September 18, 1986 injury, "lifting folders at work." He found that she was totally disabled since March 5, 1995 and noted, "Contrary to earlier thoughts it was discovered that she does not have spondylolisthesis but degenerative changes in her back." Dr. Blackwell concluded, "It is my belief that the origin of her low back pain goes back to her injury in 1986 and her job aggravated and accelerated her disability." He, however, failed to provide the necessary rationale in finding that appellant's back pain was due to her employment injury. Dr. Blackwell did not provide a well-reasoned description explaining in medical terms why and how appellant's back strain in 1986 would subside and then result in disability years later. Without supportive medical rationale, Dr. Blackwell's opinion on causal relation is not sufficient to meet appellant's burden of proof.⁴

In a report dated December 18, 1996, Dr. Blackwell stated that he was treating appellant for "lumbosacral radiculopathy as a result of an injury at work several years ago." He, however, does not specifically address appellant's September 18, 1986 employment injury or provide any rationale for his conclusions. The opinion of a physician supporting causal relationship must be supported by affirmative evidence, address the specific factual and medical evidence of record and be explained by medical rationale.⁵

In an office visit note dated March 13, 1997, Dr. Richard A. Jackson stated that appellant "was evaluated in our office for back pain which initially began after a work[-]related accident." Dr. Jackson did not render a diagnosis, discuss appellant's employment injury, or relate any disability to her accepted injury and thus his opinion is of little probative value.

² *Robert H. St. Onge*, 43 ECAB 1169 (1992).

³ *Id.*

⁴ *Jean Culliton*, 47 ECAB 728 (1996).

⁵ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

Moreover, the record contains evidence that supports a finding that appellant's current back condition is not the result of her employment injury. In a report dated May 22, 1996, Dr. Robert W. Bedinger, Jr., a Board-certified internist, discussed his treatment of appellant beginning on September 24, 1986. Dr. Bedinger noted that x-rays obtained at the time of her September 18, 1986 employment injury were normal, and stated:

“Her back was tender compatible with a back strain. It was not clear at that time whether she simply had a strain or a possible ruptured disc. At that time obesity was felt to be a major contributing factor to her process and to the prospect of healing.”

Dr. Bedinger further related that a computerized tomography (CT) scan obtained on November 24, 1986 was normal except for arthritic changes due to age and obesity. He indicated that he did not treat appellant again for back pain until 1989 and noted that in May 1990 she presented with symptoms of a cerebral vascular accident but had on examination “no neurological abnormalities whatsoever including those that would pertain to a back problem.” Dr. Bedinger concluded:

“I think it is a very difficult case perceptually, and I think based on this it would be very hard to prove that any of her ongoing problems were related to the injury at that date given the fact that she has underlying problems that could be aggravated at any time by bending, stooping, lifting especially with her marked obesity.”

In a report dated March 18, 1995, Dr. L.W. Garnett, a Board-certified orthopedic surgeon, stated that he examined appellant upon referral by Dr. Blackwell. Dr. Garnett related appellant's back pain to degenerative changes of the back and obesity.

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between her claimed condition and her employment.⁶ To establish causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination of appellant and her medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to discharge her burden of proof.

⁶ *Donald W. Long*, 41 ECAB 142 (1989).

The decision of the Office of Workers' Compensation Programs dated September 13, 1997 is hereby affirmed.

Dated, Washington, D.C.
August 2, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member