

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of AVIS L. MILLER and DEPARTMENT OF DEFENSE,  
McCHORD COMMISSARY, MCCHORD AIR FORCE BASE, WA

*Docket No. 98-2212; Submitted on the Record;  
Issued August 25, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant has established a recurrence of disability on January 6, 1998 causally related to the accepted October 23, 1996 employment injury.

On October 24, 1996<sup>1</sup> appellant filed a traumatic injury claim alleging that she injured her back on October 23, 1996 while she was stapling booklets with her uninjured left arm.<sup>2</sup> Appellant stopped work on October 24, 1996. The Office of Workers' Compensation Programs accepted the claim for upper back strain and paid compensation for loss wages during the period November 13, 1996 through April 26, 1997.<sup>3</sup> Appellant returned to light-duty work on June 1, 1997.<sup>4</sup>

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<sup>1</sup> On February 13, 1996 appellant filed a traumatic injury claim alleging that the spasm of the thorax was due to her pulling a 20-pound bag of dog food over a scanner. The Office assigned claim No. A14-312309 and accepted the claim for thoracic and cervical strains. Appellant stopped work on February 14, 1996 and returned to light-duty work February 20, 1996.

<sup>2</sup> This was assigned claim number A14-322280.

<sup>3</sup> By letter decision dated May 20, 1997, the Office found that appellant was not entitled to continuation of pay due to her injury on October 23, 1996 as she had not filed her written notice of injury within 30 days of the incident.

<sup>4</sup> The Board notes that appellant had stopped working on October 14, 1997 due to her claims of stress and a hostile work environment. Appellant was in a motor vehicle accident on November 4, 1997 which Dr. John J. Jiganti, an attending Board-certified orthopedic surgeon, indicated "seemed to have reactivated the shoulder" in a November 18, 1997 treatment note.

On February 9, 1998 appellant filed a claim for compensation (Form CA-7) for the period January 6 through 13, 1998.<sup>5</sup>

By decision dated April 6, 1998, the Office denied appellant's claim finding that the evidence did not demonstrate that the recurrence of disability beginning January 6, 1998 was causally related to the October 23, 1996 employment injury. The Office indicated that the medical evidence was insufficient to establish the claim.<sup>6</sup>

Appellant requested reconsideration and submitted reports from Dr. Jiganti in support of her claim which the Office denied in a merit decision dated June 17, 1998. In its decision, the Office found the opinions of Dr. Jiganti were unrationalized and, thus, insufficient to meet appellant's burden of establishing that her disability on and after January 6, 1998 was causally related to her accepted October 23, 1996 employment injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant has not established a recurrence of disability on January 6, 1998 causally related to the accepted October 23, 1996 employment injury.

When an employee who is disabled from the job he or she held when injured because of employment-related residuals returns to a light-duty position, or the medical evidence of record establishes that he or she can perform the light-duty job, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability that prevents him or her from performing such light duty.<sup>7</sup>

As part of this burden, the employee must show a material change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.<sup>8</sup> Thus, the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition<sup>9</sup> and supports that conclusion with sound medical reasoning.<sup>10</sup>

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<sup>5</sup> The Office decided to develop this as a recurrence claim even though appellant had not submitted a recurrence claim form.

<sup>6</sup> The Board notes that appellant had submitted a letter dated August 18, 1998 alleging harassment at work. Dr. William Alexander Kistler, appellant's former treating Board-certified family practice physician, in a September 12, 1997 letter, diagnosed situational stress reaction and indicated that appellant had filed a claim for stress on September 12, 1997. The only reference to an Office decision is in the April 6, 1998 decision, denying her January 6, 1998 recurrence claim. Inasmuch as there is no final Office decision before the Board regarding her stress claim, the Board does not have jurisdiction to review the denial of her stress claim. 20 C.F.R. § 501.2(c).

<sup>7</sup> *Richard E. Konnen*, 47 ECAB 388 (1996).

<sup>8</sup> *Mary A. Howard*, 45 ECAB 646, 651 (1994), quoting *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>9</sup> *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

<sup>10</sup> *Lourdes Davila*, 45 ECAB 139, 142 (1993).

In the present case, the Office accepted that appellant sustained an upper back strain on October 23, 1996. Appellant returned to work in a light-duty position on June 1, 1997 and then claimed a recurrence of disability on and after January 6, 1998 due to her October 23, 1996 employment injury. Appellant has not submitted sufficient medical evidence to establish that she sustained a disability on or after January 6, 1998 due to her October 23, 1996 employment injury.

Appellant submitted several reports, treatment notes and a disability slip from Dr. Jiganti. In the disability certificate, he indicated that she was totally disabled from January 6, 1998. Dr. Jiganti, in an April 30, 1998 letter, noted that appellant had been involved in a motor vehicle accident on November 4, 1997 and that her shoulder injury was directly related to her work and unrelated to the motor vehicle accident. In response to an Office request for additional information, he submitted treatment notes dated March 17 and May 26, 1998. In his May 26, 1998 letter, Dr. Jiganti stated that it was appellant's perception "that she always had the shoulder pain, however, it was somewhat masked as upper back pain which was more severe initially. She feels the diagnosis was never made regarding her shoulder, which is why it never showed up on previous records." He diagnosed appellant with rotator cuff impingement with chronic periscapular muscle strain and recommended surgery. In the treatment notes dated March 17 and May 26, 1998, Dr. Jiganti diagnosed rotator cuff impingement with periscapular muscle in her right shoulder. The physician indicated he had discussed arthroscopic examination and acromioplasty with appellant. None of Dr. Jiganti's treatment notes, dated March 17 and May 26, 1998, are relevant to the issue of establishing a recurrence of disability as they diagnose rotator cuff impingement in her right shoulder, but do not state how appellant is disabled, how such disability is causally related to the accepted injury nor what effect the November 4, 1996 motor vehicle accident may have had on appellant's condition. The disability certificate signed by Dr. Jiganti indicates that appellant is totally disabled for work, but gives no rationale or reason for the disability and is thus insufficient to meet appellant's burden of establishing a recurrence of disability. Dr. Jiganti's letters dated April 30 and May 26, 1998 letter, are also insufficient to establish appellant's burden as the opinion is not rationalized as neither letter contains any supporting medical rationale relating appellant's disability to her employment injury. An award of compensation may not be based on surmise, conjecture or speculation.<sup>11</sup> Therefore, the issue is whether the medical evidence establishes that appellant had a recurrence of disability on or after January 6, 1998.

As noted above, it is appellant's burden to establish a claim for a recurrence of disability. Appellant has not established a recurrence of disability commencing January 6, 1998 that is causally related to her October 23, 1996 employment injury. Therefore, the Office properly denied her claim.

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<sup>11</sup> See *Daniel D. Morehead*, 31 ECAB 188, 194-95 (1986).

The decisions of the Office of Workers' Compensation Programs dated June 17 and April 6, 1998 are hereby affirmed.

Dated, Washington, D.C.  
August 25, 1999

George E. Rivers  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member