

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KATHY M. O'BRIEN (DURHAM) and DEPARTMENT OF VETERANS  
AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Bay Pines, Fla.

*Docket No. 98-213; Submitted on the Record;  
Issued July 15, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
DAVID S. GERSON

The issue is whether appellant met her burden of proof in establishing that she sustained a recurrence of disability, due to the September 5, 1990 employment injury, beginning August 17, 1996.

The Board has duly reviewed the case record in the present appeal and finds that the Office of Workers' Compensation Programs properly determined that appellant did not meet her burden of proof in establishing that she sustained a recurrence of disability, due to the September 5, 1990 employment injury, beginning August 17, 1996.

The Office accepted appellant's claim for a lumbosacral strain. On September 3, 1996 appellant filed a claim for a recurrence of disability, Form CA-2a, alleging that on August 17, 1996 she had no feeling in the pelvic area, her hips were uneven with one leg shorter than the other, she had muscle spasms in her hips and left leg, felt pain and had headaches from the pain. Appellant stated that when she returned to work after the September 5, 1990 employment injury, she was in constant pain, was unable to sleep at night because of the pain, had limited daily functions and her doctor told her to do no lifting.

Appellant submitted a report from her treating physician, Dr. David H. Baras, a Board-certified physiatrist, dated September 26, 1996 to prove her claim. In his report, Dr. Baras considered appellant's history of injury, performed a physical examination and reviewed an x-ray which showed some mild arthritis of the lumbar spine. He diagnosed myofascial pain syndrome in the lumbosacral area secondary to the September 5, 1990 employment injury. Dr. Baras stated that appellant had a "fairly well localized area of a burning like sensation, with subsequent shortening and loss of range of motion." He concluded that "after reviewing the medical records and [appellant], her medical information was consistent with a work[-]related injury, chronic soft tissue and that of myofascial pain syndrome."

The employing establishment controverted the claim and submitted a report dated October 8, 1996 from one of their physicians, Dr. Thomas Sutton, a Board-certified physiatrist. He stated that he had reviewed all of appellant's medical records and diagnosed acute back strain with no permanent sequelae as evidenced by normal x-ray and a neurological examination. Dr. Sutton stated:

“Dr. Baras gives [appellant] a diagnosis of myofascial pain syndrome related to her injury. Myofascial pain syndrome is not a conventional specific medical diagnosis, but is a constellation of symptoms. In addition, there is no evidence that this ‘syndrome’ can be caused by an acute injury. People who do believe in this syndrome as a legitimate diagnosis, feel that psycho-social factors are the predominant cause. Dr. Baras certainly describes a patient with significant psychiatric difficulties.”

He concluded that there was no medical rationale showing a causal relationship between appellant's disabling symptoms and her September 5, 1990 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.<sup>1</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 employment factors and supports that conclusion with sound medical reasoning.<sup>2</sup> An award of compensation may not be made on the basis of surmise, conjecture or speculation or on an appellant's unsupported belief of causal relation.<sup>3</sup>

In the present case, appellant has not presented sufficient medical evidence to establish that she sustained a recurrence of disability on August 17, 1996 causally related to the September 5, 1990 employment injury. In his September 26, 1996 report, Dr. Baras performed a physical examination which indicated appellant had pain and some restriction of motion in the lumbosacral area, reviewed an x-ray which showed mild arthritis in that area and diagnosed myofascial pain syndrome secondary to the September 5, 1990 employment injury. The Board has held, however, that medical reports not containing a rationale on causal relation are entitled to little probative value.<sup>4</sup> Dr. Baras' report contains no medical rationale explaining how appellant's recurrence of disability is causally related to the September 5, 1990 employment injury. Further, myofascial pain syndrome was not an accepted condition. His report is therefore insufficient to establish the requisite causal connection. Moreover, Dr. Sutton's October 8, 1996 opinion that appellant had an acute back strain with no permanent sequelae based on her normal x-ray and neurological examination supports that appellant sustained no

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<sup>1</sup> *Dominic M. DeScala*, 37 ECAB 369 (1986).

<sup>2</sup> *Louise G. Malloy*, 45 ECAB 613, 617 (1994).

<sup>3</sup> *Ausberto Guzman*, 25 ECAB 362 (1974).

<sup>4</sup> *Carolyn M. Leek*, 47 ECAB 374, 380 (1996); *Carolyn F. Allen*, 47 ECAB 240, 246 (1995);

recurrence of disability. Although the Office advised appellant of the type of medical evidence needed to establish her claim for a recurrence of disability, appellant was not responsive to the request. She therefore has failed to establish her claim.

The decision of the Office of Workers' Compensation Programs dated February 11, 1997 is hereby affirmed.

Dated, Washington, D.C.  
July 15, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

David S. Gerson  
Member