

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DELIA A. HALL and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Martinsburg, WV

*Docket No. 03-1570; Submitted on the Record;  
Issued August 21, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability on or after September 12, 1994 causally related to her February 10, 1994 employment injury.

This case was previously before the Board.<sup>1</sup> By decision dated February 5, 2002, the Board affirmed the Office of Workers' Compensation Programs' decisions which denied appellant's claim for a recurrence of disability. The Board's February 5, 2002 decision is incorporated herein by reference.<sup>2</sup>

On December 20, 2002 appellant requested reconsideration and submitted additional evidence.<sup>3</sup> By decision dated March 3, 2003, the Office denied modification of its prior decision.

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability on or after September 12, 1994 causally related to her February 10, 1994 employment injury.

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.<sup>4</sup> This burden includes the necessity of furnishing medical evidence from a

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<sup>1</sup> Docket No. 01-1509 (issued February 5, 2002).

<sup>2</sup> On February 10, 1994 appellant sustained a lumbosacral strain, when she slipped on ice and fell. She was released for regular duty and returned to work on July 11, 1994. On October 4, 2000 she filed a claim for a recurrence of disability on September 12, 1994. Appellant indicated that on September 11, 1994 she was told that she had been removed from her position and was not allowed on the employing establishment grounds.

<sup>3</sup> Appellant also submitted evidence previously considered by the Office.

<sup>4</sup> *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

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 rationale.<sup>5</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>6</sup>

In a report dated September 3, 2002, Dr. William S. Miller, an attending family practitioner, stated that appellant had been disabled since 1994 as a result of a fall and low back injury. He noted that she had back surgery on November 4, 2000 but continued to have low back pain radiating to her legs. Dr. Miller indicated that appellant had been taking pain medication for six years and was permanently disabled. He treated her on January 14, 1994, (prior to her employment injury on February 10, 1994), September 8, 1994, February 15, May 16 and 23, 1995, July 15, 1996, January 14, 1999 and April 4, July 10, October 14 and 23, 2000. In a functional capacity form report dated September 3, 2002, Dr. Miller diagnosed a lumbar disc rupture and spondylolisthesis. He again indicated that appellant was permanently disabled. However, these reports are insufficient to establish that appellant sustained a recurrence of disability on or after September 12, 1994 causally related to her February 10, 1994 employment-related lumbosacral strain. Although Dr. Miller indicated that appellant had been taking pain medication for six years, he apparently had not treated her since October 2000, almost two years prior to his September 3, 2002 report and appellant's visits to him between 1994 and 2000 were infrequent. She apparently was not seen by him in 1997, 1998 or 2001. Dr. Miller provided insufficient medical rationale to explain how appellant's lumbar disc rupture or spondylolisthesis or her incapacity for work since 1994 was causally related to her February 10, 1994 lumbosacral strain. He did not explain why appellant was disabled since 1994 in light of the fact that she was released to full duty in July 1994 and received infrequent treatment from him for her back condition.

In an undated report received by the Office on November 15, 2002, Dr. Swami Nathan, a neurosurgeon, stated that appellant was diagnosed with spondylolysis in June 1990 and that her February 1994 employment injury aggravated this condition. He opined that appellant was permanently and totally disabled at the time of her discharge from her job in September 1994, due to the aggravation of her preexisting spondylolysis. Dr. Nathan noted that Dr. Miller referred appellant to him in July 2000. However, appellant's claim was accepted only for a lumbosacral strain and Dr. Nathan did not explain the physical process by which the February 10, 1994 fall aggravated her preexisting spondylolisthesis, nor does he explain why appellant was totally disabled in September 1994, due to her February 10, 1994 employment injury, in light of the fact that she was released to return to full duty in July 1994. Such medical rationale is particularly necessary given that Dr. Nathan did not treat appellant until July 2000. Due to these deficiencies, Dr. Nathan's report is insufficient to establish that appellant sustained a recurrence of disability on or after September 12, 1994 causally related to her February 10, 1994 employment injury.<sup>7</sup>

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<sup>5</sup> *Lourdes Davila*, 45 ECAB 139 (1993); *Mary S. Brock*, 40 ECAB 461 (1989).

<sup>6</sup> *Michael Stockert*, 39 ECAB 1186 (1988).

<sup>7</sup> Appellant also submitted several other brief reports of Dr. Nathan, dated in 2000 and 2001, but they were deficient for similar reasons.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.<sup>8</sup>

The March 3, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
August 21, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>8</sup> *Walter D. Morehead*, 31 ECAB 188 (1979).