

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE G. BAKER and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Tuskegee, AL

*Docket No. 03-586; Oral Argument Held September 11, 2003;
Issued October 28, 2003*

Appearances: *Diane G. Baker, pro se; Silvia J. Dominguez, Esq.,
for the Director, Office of Workers' Compensation Programs.*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained left shoulder and stomach injuries on June 29, 1999; and (2) whether appellant established entitlement to compensation from February 7 to June 14, 2000.

This is appellant's second appeal before the Board. In the prior appeal, the Board affirmed the Office of Workers' Compensation Programs' November 16, 1999 decision which found that appellant failed to establish that she sustained an injury in the performance of duty on June 29, 1999.¹ The law and the facts as set forth in the previous Board decision and order are hereby incorporated by reference.

On May 1, 2001 appellant requested reconsideration² and submitted a report dated October 13, 2000, in which Dr. John Dorchak, a Board-certified orthopedic surgeon, stated that appellant sustained a work-related injury on June 29, 1999 and, as a result, developed instability and advanced degeneration of the L5-S1 disc space. He advised that, on June 15, 2000, appellant had undergone an L5-S1 anterior interbody infusion with fusion cages and bone graft. Dr. Dorchak also noted that an L5-S1 discography performed prior to the June 15, 2000 surgery revealed multiple annular tears.

By decision dated July 12, 2001, the Office accepted appellant's claim for a June 29, 1999 herniated disc at L5-S1 and spinal annular tears and authorized the previous June 15, 2000 surgery.

¹ Docket No. 00-1227 (issued March 14, 2001).

² Appellant retired on disability retirement effective February 13, 2000.

On October 23, 2001 appellant filed a claim for wage loss based on her June 29, 1999 work-related injury. Appellant noted wage loss only for night differential; no time frame was specified. By letter dated November 8, 2001, the Office advised appellant that the information she had submitted was insufficient to establish that she was entitled to wage loss for her June 29, 1999 accepted injury. The Office requested that her doctor submit a medical report that explained how her injury caused her to become totally disabled for work. Appellant then submitted a claim for wage loss from February 7, 2000 to October 2001. She also submitted a January 25, 2002 attending physician's report from Dr. Dorchak who stated that appellant had a work-related degenerative disc disease at L5-S1 and was incapable of gainful employment from June 15, 2000 as a result of her June 29, 1999 work-related injury.

By decision dated March 26, 2002, the Office found that appellant was not entitled to compensation from February 7 to June 14, 2000 and that she failed to establish that her stomach and left shoulder conditions were causally related to her June 29, 1999 work-related injury. Appellant then requested an oral hearing and submitted additional evidence. A hearing was held on September 23, 2002 and, in a decision dated December 12, 2002, an Office hearing representative affirmed the Office's March 26, 2002 decision denying benefits.

The Board finds that appellant failed to establish that her left shoulder condition and stomach condition were caused by the June 29, 1999 work incident.

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁵ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the

³ 5 U.S.C. §§ 8101-8193.

⁴ *Gary J. Watling*, 52 ECAB 278 (2001).

⁵ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁷

With respect to her left shoulder claim, appellant submitted multiple reports from Dr. William D. Terrell, a Board-certified orthopedic surgeon. In a May 29, 2001 report, Dr. Terrell read a magnetic resonance imaging (MRI) scan as revealing left shoulder partial thickness rotator cuff tear. He related appellant's history of injury that, on June 29, 1999, while moving a patient, she felt a tear in her back and abdomen. Dr. Terrell's remaining reports include a December 17, 2001 surgical report noting an arthroscopy and rotator cuff repair and multiple updates from May 2001 to June 28, 2002. The Board finds that none of Dr. Terrell's reports offer a rationalized medical opinion establishing a causal relationship between appellant's left shoulder condition and her June 29, 1999 work-related injury which he indicated hurt her back and abdomen. A medical opinion not fortified by medical rationale is of little probative value.⁸ Dr. Terrell's reports are therefore insufficient to meet appellant's burden.

With respect to her stomach condition, the record includes a September 28, 1999 report from Dr. Wesley H. Barry, Jr., a Board-certified surgeon, who read an MRI scan as revealing "no lesion, hernia, mass, etc., seen on the left side, where patient has her symptomology." Dr. Barry stated that he had cancelled surgery as a result of the MRI scan findings, noting that there was no indication for surgery except for appellant's lower left quadrant pain for which there was no known etiology. He noted that, if appellant did have some type of occult abdominal wall defect, it could appear over time. Given Dr. Barry's opinion that there was no objective basis for appellant's abdominal pain, his report does not support a work-related injury.

Appellant also submitted several reports from Dr. Rita Harvey, Board-certified in physical medicine and rehabilitation. In a report dated December 27, 1999, Dr. Harvey related appellant's history of injury, stating that she was doing well after a hysterectomy and left ovary removal in November 1998 when, on June 29, 1999, she "felt a turning sensation and a hard pull in her abdomen" as she was helping to lift a paralyzed veteran. In a treatment note dated February 3, 2000, Dr. Harvey diagnosed "ongoing abdominal pain that appears to be secondary to muscle strain." Medical opinions which are speculative or equivocal in character are of little probative value.⁹ The remaining reports from Dr. Harvey from January 6 to April 7, 2000 are in the nature of treatment notes, none of which include an opinion on causal relationship. Dr. Harvey's reports are therefore insufficient to establish that appellant's abdominal condition is causally related to employment.

On October 30, 2000 Dr. Joseph Desautels, a Board-certified obstetrician and gynecologist, stated that appellant had persistent lower left quadrant pain. In an attached treatment note, Dr. Desautels noted appellant's subjective complaints of soreness in her stomach which dated back to the June 1999 work incident of "? Etiology." In a report dated December 11, 2000, Dr. Desautels stated that appellant reported that persistent left lower

⁷ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁸ *Albert C. Brown*, 52 ECAB 152 (2000).

⁹ *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

quadrant pain had occurred since her attempt to move a morbidly obese patient on June 29, 1999. He noted that he had performed exploratory laparoscopy with lysis of adhesions and right salpingo-oophorectomy on March 29, 2000 but that this did not help her pain. The Board finds that these reports also fail to provide a rationalized medical opinion establishing a causal relationship between appellant's abdominal pain and her work-related injury because they do not contain a firm diagnosis and do not explain the nature of the relationship between the pain and the established incident or factor of employment.¹⁰ Appellant therefore failed to meet her burden of proof to establish that her left shoulder pain or her stomach condition were causally related to her work-related injury.

The Board further finds that appellant has not established entitlement to wage-loss compensation from February 7 to June 14, 2000 due to her accepted injuries.

It is a well-settled principle of workers' compensation law that, if the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, the employee is entitled to compensation for any loss of wage-earning capacity resulting from the employment injury.¹¹

To establish a causal relationship between appellant's accepted herniated disc at L5-S1 and spinal annular tears and any related period of disability, she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.¹² Under the Act, the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Act.¹³ Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.¹⁴

The Office, by letter dated November 8, 2001, advised appellant regarding the type of evidence she needed to support her claim for wage loss and provided 30 days to submit such evidence. Appellant failed to submit medical evidence to support her claim that she was disabled from her light-duty position as a result of her herniated disc and annular tears from February 7 to

¹⁰ *Leslie C. Moore, supra* note 6.

¹¹ *Merle J. Marceau*, 53 ECAB ____ (Docket No. 00-1995, issued November 1, 2001).

¹² *Leslie C. Moore, supra* note 6.

¹³ *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

¹⁴ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

June 14, 2000.¹⁵ Thus appellant has failed to establish that she was entitled to compensation for wage loss from February 7 to June 14, 2000.

The decisions of the Office of Workers' Compensation Programs dated December 12 and March 26, 2002 are affirmed.

Dated, Washington, DC
October 28, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁵ Dr. Dorchak noted that appellant was totally disabled from June 15 to September 14, 2000. It is further noted that appellant underwent surgery for a nonemployment-related condition in March 2000. *See discussion infra.*