

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIA E. JONES and DEPARTMENT OF VETERANS AFFAIRS,
CENTRAL ARKANSAS HOSPITAL CENTER, Little Rock, AR

*Docket No. 03-1803; Submitted on the Record;
Issued October 7, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained a herniated disc at C6-7 on March 26, 2002 in the performance of duty.

Appellant, a 41-year-old nursing assistant, filed a notice of traumatic injury on July 23, 2002 alleging that on March 26, 2002 she injured the left side of her neck, both arms and upper back in the performance of duty. Appellant attributed her injury to assisting patients in and out of bed and into and out of wheelchairs, as well as, turning patients in their beds, and making both occupied and unoccupied beds.

The Office of Workers' Compensation Programs requested additional factual and medical evidence by letter dated July 30, 2002. By decision dated September 3, 2002, the Office denied appellant's claim finding that she failed to establish a causal relationship between her diagnosed condition and her employment. Appellant, through her attorney, requested an oral hearing on September 9, 2002. Appellant testified at her oral hearing on January 31, 2003. By decision dated April 7, 2003, the hearing representative affirmed the Office's September 3, 2002 decision finding that appellant had not submitted sufficient rationalized medical opinion evidence to establish a causal relationship between her diagnosed condition and her employment.

The Board finds that appellant has not met her burden of proof in establishing that she sustained a herniated disc at C6-7 on March 26, 2002 in the performance of duty.

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.¹ The second

¹ Elaine Pendleton, 40 ECAB 1143 (1989).

component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.² Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.³

In this case, the Office accepted appellant's alleged employment incident of moving patients on March 26, 2002. Following the Office's September 3, 2002 decision, the employing establishment disputed appellant's description of her employment activities on March 26, 2002 noting that the accepted procedure involved assisted patient transfers with either help from a coworker or utilization of lifting devices. The hearing representative concluded that appellant had established her employment activities of moving patients and making beds occurred on March 26, 2002 as alleged. However, the Office hearing representative found that appellant had not submitted sufficient medical evidence to establish a causal relationship between her employment activities on March 26, 2002 and her diagnosed condition of herniated disc C6-7.

In support of her claim, appellant submitted several reports from Dr. Scott Schlesinger, a Board-certified neurosurgeon, diagnosing herniated nucleus pulposus at C6-7, supporting appellant's total disability due to this condition and describing her operative procedure. Dr. Schlesinger provided his findings on physical examination and provided a diagnosis and treatment. However, Dr. Schlesinger did not provide any history of injury and did not attribute appellant's diagnosed condition to her employment. Without the necessary opinion on the causal relationship between appellant's diagnosed condition and her employment, his reports are not sufficient to meet appellant's burden of proof.

Dr. Archie Hearne, a Board-certified family practitioner, completed a report on January 28, 2003 noting that he was appellant's family physician. Dr. Hearne stated that he first examined appellant for cervical pain on March 27, 2002 and that she complained of pain extending from her neck to her left shoulder. He stated, "[Appellant] had no prior history of neck problems until she presented on about March 27[, 2002]. I can state with some degree of medical certainty that this patient, in fact, did acquire this injury as a result of working at the [employing establishment]." Dr. Hearne provided a diagnosis and an opinion that appellant's diagnosed condition was due to her employment. However, Dr. Hearne failed to provide a history of injury describing the employment activities that appellant engaged in on March 26, 2002 and failed to explain why and how he believed that these activities resulted in her

² See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

³ *James Mack*, 43 ECAB 321 (1991).

diagnosed condition. Without the necessary history of injury and medical rationale supporting his opinion on causal relationship, Dr. Hearne's report is not sufficient to meet appellant's burden of proof and established a causal relationship between her diagnosed herniated disc and her employment activities.

In a report dated February 19, 2003, Dr. Thomas M. Ward, a physician Board-certified in physical medicine and rehabilitation, provided a detailed description of appellant's employment activities on March 26, 2002. He noted that appellant made beds, helped patients into wheelchairs as well as stretchers and moved patients from one location to another. He reported that she felt pain in her neck when a patient pulled on her neck while moving from a wheelchair to his bed. Dr. Ward reviewed the medical treatment and provided his findings on physical examination. He noted that appellant described cervical and back problems in 1996 and 2002 and that she occasionally had upper neck and upper back problems following an especially hard day at work. Dr. Ward found that appellant had preexisting degenerative arthritis of the cervical spine and the presence of osteophyte formations in the lower cervical spine. He opined that appellant's current conditions in her upper extremity and neck region and associated components of spasms in her upper shoulder, twisting and drawing in her upper hands, cramping in her hands, pain in her left arm and pain in her right arm as well as the onset of headaches were related to the injury that occurred on March 26, 2002. Dr. Ward opined that appellant had preexisting cervical degenerative arthritis and the presence of osteophyte formation at the time of her March 26, 2002 employment incident.

This report is not sufficient to meet appellant's burden of proof in establishing that her diagnosed herniated disc condition was due to her employment activities on March 26, 2002. Dr. Ward provided a detailed history of injury and noted appellant's previous diagnosis of herniated disc; however, he did not provide an opinion on the causal relationship between this condition and her employment activities on March 26, 2002. Instead Dr. Ward noted that appellant's degenerative arthritis and osteophyte formations of the cervical spine preexisted March 26, 2002 and found that these conditions were not a persistent and daily cause of pain prior to that date. He attributed appellant's current difficulties of spasm in her upper shoulders, twisting and drawing in her upper hands, cramping in her hands, and pain in her left and right arms as well as headaches to the March 26, 2002 injury without any medical reasoning for this opinion. Dr. Ward did not explain how or why appellant's March 26, 2002 employment duties would result in these symptoms and did not clearly explain whether he believed that these symptoms were a result of her degenerative arthritis, of her disc surgery or due to some other pathology caused by the March 26, 2002 employment injury. Without a clear diagnosis of appellant's current conditions and medical reasoning explaining the relationship between these conditions and appellant's employment activities on March 26, 2002, Dr. Ward's report is not sufficient to establish appellant's claim.

The April 7, 2003 and September 3, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
October 7, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member