

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BOBBIE JO CAMPBELL and DEPARTMENT OF DEFENSE,
MARINE CORPS LOGISTICS BASE, Barstow, CA

*Docket No. 99-1560; Submitted on the Record;
Issued December 5, 2000*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on September 18, 1997 causally related to her November 13, 1987 employment injury.

On November 13, 1987 appellant, then a 32-year-old warehouse worker, sustained a low back strain and spinal subluxation when she bent to place a small carton on a pallet. She also sustained a consequential adjustment disorder with mixed emotional features. Appellant stopped work on November 16, 1987 and returned to work as a property disposal clerk on March 5, 1990.¹

On September 18, 1997 appellant filed a recurrence of disability claim (Form CA-2a) alleging that on September 16, 1997 she sustained a recurrence of her November 13, 1987 employment injury. She asserted that she was standing at her kitchen sink when she turned and felt "the same paralyzing pain like the first day of injury." Appellant also alleged that she experienced worsening back pain since her November 13, 1987 employment injury and that on October 4, 1996 she sustained severe back pain at work when she opened a file drawer and it fell to the floor. She stopped work on September 16, 1997.

¹ The record shows that an overpayment of compensation in the amount of \$3,091.22 was created when appellant continued to receive wage-loss compensation after her March 5, 1990 return to work. Following a hearing held on September 12, 1990, an Office of Workers' Compensation Programs' hearing representative, in a decision dated November 23, 1990, finalized November 28, 1990, found that appellant was at fault in the creation of the overpayment and, therefore, not entitled to waiver. By letter dated May 21, 1993, the Office proposed to terminate appellant's chiropractic treatments based on the opinion of Dr. Joseph A. Bailey, II, a Board-certified orthopedic surgeon, who provided a second opinion evaluation for the Office. In his reports, Dr. Bailey opined that the primary source of appellant's complaints arose from an anxiety/depression-type somatoform disorder and, therefore, she did not have pathologically damaging orthopedic limitations. Dr. Bailey did not recommend further chiropractic treatment. The record also contains an April 8, 1999 decision in which the Office approved an attorney's fee in the amount of \$3,957.25. As that decision was issued after appellant's appeal to the Board, postmarked March 30, 1999, it is not before the Board in this appeal.

By letter dated October 2, 1997, the Office advised appellant of the type of factual and medical evidence necessary to support her recurrence of disability claim and allowed her 30 days within which to respond.

To support her claim, appellant submitted a September 26, 1997 magnetic resonance imaging (MRI) report from Dr. Naidu J. Reddy, a Board-certified diagnostic radiologist, diagnosing degenerative arthritic changes of the lumbar spine with mild diffuse L4-5, L5-S1 bulging, minimal bilateral foramen encroachment slightly worse at the right L5-S1 region and no definitive evidence of free disc fragment or additional significant abnormality. In his October 29, 1997 report, Dr. Reddy diagnosed degenerative arthritic changes of the lumbar spine and lumbar region facet joints, bulging discs at L5-S1 with foramen encroachment which was worse on the right side and narrowing foraminal sites and stenosis.

Appellant also submitted an October 1, 1997 report in which Dr. Alberta C. Olegario, an internist, provided a history of appellant's November 13, 1987 employment injury and September 19, 1997 alleged recurrence of disability. Dr. Olegario diagnosed "recurrent back pain, probably triggered by the movement she did at home, secondary to degenerative disc and bulging disc L4-5, L5-S1." She recommended that appellant seek a neurosurgical evaluation for her worsening chronic back pain. Dr. Olegario October 27, 1997 report stated that appellant had not completely recovered from her November 13, 1987 employment injury and that it "reoccurred [sic]" when she stood at her kitchen sink. She noted that appellant's "original" computed axial tomography (CAT) scan showed a bulging disc at L4-5 but "work up again for this back pain" revealed original disc bulging at L4-5 and L5-S1.

Appellant further submitted an attending physician's report (Form CA-20) and an attending physician's supplemental report (Form CA-20a) dated November 10, 1997 from Dr. Wilbur C. Sanford, a Board-certified neurosurgeon, who noted the history of appellant's November 13, 1987 employment injury and her preexisting six millimeter herniated nucleus pulposus at L5-S1. Dr. Sanford diagnosed L5-S1 lateral stenosis and herniated nucleus pulposus. He noted that he first examined appellant on October 27, 1997 and that she was totally disabled from November 10 to December 10, 1997. Dr. Sanford estimated that appellant would be able to resume regular work on December 10, 1997 and noted that he did not know whether her present condition was due to the injury for which compensation was claimed. He recommended that she undergo lumbar surgery and noted that her conservation prognosis was poor.

Additionally, appellant submitted a narrative statement dated October 20, 1997 in which she noted her duties upon returning to work following her November 13, 1987 employment injury and her medical treatment. He alleged that, since her November 13, 1987 employment injury, she experienced continued pain and "paralyzing pain" on several occasions. Appellant further alleged that she sustained work-related back pain on October 6, 1996 when she opened a heavy filing cabinet drawer and it fell to the floor.

By decision dated January 6, 1998, the Office denied appellant's recurrence claim on the grounds that the medical evidence of record failed to show that she sustained a recurrence of disability due to her November 13, 1987 employment injury on or after September 16, 1997. The Office found that, because Dr. Joseph A. Bailey, who provided a second opinion evaluation for the Office, did not find disc damage attributable to appellant's November 13, 1987 employment injury, it could not accept that her original injury caused her present degenerative

disc condition.² The Office also found that current medical reports did not state the presence of a soft-tissue injury or spinal subluxation thereby indicating the resolution of appellant's accepted conditions. Finally, the Office noted that, because the event which caused the return of appellant's low-back symptoms was not work related, her condition was neither a natural progression of an earlier work-related injury nor a new work-related injury.

Appellant submitted an attending physician's report from Dr. Sanford dated December 16, 1997 in which he indicated by check mark that her present condition was due to the injury for which compensation was claimed and that she was totally disabled for regular work for more than 90 days. He noted that he most recently examined appellant on December 10, 1997 and that she needed surgery. Dr. Sanford diagnosed herniated nucleus pulposus at L4-5 and L5-S1.

Appellant also submitted a duty status report (Form CA-17) from Dr. Sanford dated December 16, 1997 in which he noted appellant's activity restrictions, indicated by check mark that she was unable to perform regular or light-duty work, and stated that she could resume work four to six months after undergoing surgery. Dr. Sanford diagnosed herniated discs at L4-5 and L5-S1 and stated that appellant had been disabled since November 10, 1997.

By letter dated December 31, 1998, appellant, through her attorney, requested reconsideration of the Office's January 6, 1998 decision denying her recurrence of disability claim. Appellant argued that there was a conflict between the opinions of Dr. Bailey and Dr. Jacob E. Tauber, a Board-certified orthopedic surgeon and, therefore, a referee physician should review her medical record.

To support her reconsideration request appellant submitted reports from Dr. Jerrold H. Mink, a Board-certified diagnostic radiologist. In his November 13, 1998 lumbar spine MRI report, Dr. Mink diagnosed intervertebral disc degeneration at L3-4 in the posterior and posterolateral aspects of the annulus and very severe degenerative disc disease at L4-5 with narrowed intervertebral disc space. There was no evidence of disc protrusion. In his lumbar spine discogram report of the same date, he noted that appellant experienced L4-5 1+ concordant pain.

Appellant also submitted a November 18, 1998 report in which Dr. Tauber described her November 13, 1987 employment injury and subsequent medical treatment. He noted his physical examination findings and diagnosed L4-5 and L5-S1 discogenic pain secondary to degenerative disc disease. Dr. Tauber stated:

"With respect to the role of [appellant's] work injuries in having caused her problem, it is well recognized that there are many individuals with degenerative disc disease who live with this condition and have no problem until an injury occurs. This is what was the case with [appellant]. She clearly was asymptomatic until her work injuries occurred, and now has substantial residual symptoms as a result of the work injuries. Effectively, this patient has had a permanent aggravation of her underlying degenerative disc disease as a result of her work injury in the employment of [the employment establishment] and she is in need of extensive further care."

² *Supra* note 1.

Dr. Tauber further stated that he disagreed with Dr. Bailey's January 26, 1993 report finding that appellant's complaints were largely related to an anxiety/depression-type somatoform disorder. He opined that appellant had substantial pain and if she had a somatoform disorder she would have responded to the L3-4 discogram injection.

By merit decision dated January 14, 1999, the Office denied appellant's reconsideration request on the grounds that the weight of the medical evidence did not show that her present condition was causally related to her November 13, 1987 employment injury. The Office found that Dr. Tauber's November 18, 1998 report lacked medical rationale explaining how appellant's symptoms related to her November 13, 1987 employment injury.

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability on September 16, 1997 causally related to her November 13, 1987 employment injury.

An employee who claims benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of her claim.⁴ When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden the employee must show a 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.⁵ The claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.⁶

In this case, the medical evidence of record fails to explain how and why appellant's current condition is causally related to her November 13, 1987 employment injury or a change in the nature and extent of her light-duty job requirements. In his January 26 and February 7, 1993 reports, Dr. Bailey unequivocally found that appellant's condition related to an anxiety/depression-type somatoform disorder. Dr. Bailey's report was well rationalized and based on a complete factual and medical history. The record contains no other medical evidence that connects appellant's November 13, 1987 employment injury to 1997, the year of her alleged recurrence of disability.

Dr. Reddy diagnosed degenerative arthritic changes of the lumbar spine with L4-5 and L5-S1 disc bulging and minimal bilateral foramen encroachment but he did not provide a rationalized opinion on the issue of causal relationship. Similarly, Dr. Olegario diagnosed recurrent back pain and concluded that appellant's November 13, 1987 employment injury had "reoccurred, [sic]" but she did not specifically explain how her condition related to that injury.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Ruthie M. Evans*, 41 ECAB 416, 423-24 (1990); *Donald R. Vanlehn*, 40 ECAB 1237, 1238 (1989).

⁵ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁶ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

In his November 10, 1997 report, Dr. Sanford specifically noted that he did not know whether appellant's condition was due to her employment-related injury. While Dr. Sanford indicated by check mark in his December 17, 1997 report that appellant's condition was due to her November 13, 1987 employment injury, the Board has held that such a report has little probative value where there is no explanation or rationale supporting the opinion on causal relationship between the diagnosed condition or disability and working conditions.⁷

Dr. Mink's MRI reports diagnosed severe degenerative disc disease but he did not relate the diagnosis to her November 13, 1987 employment injury.

In his November 18, 1998 report, Dr. Tauber diagnosed L4-5 and L5-S1 discogenic pain secondary to degenerative disc disease and concluded that appellant sustained a permanent aggravation of her underlying degenerative disc disease resulting from her work-related injury. He, however, merely stated that appellant "clearly was asymptomatic until her work injuries occurred, and now has substantial residual symptoms as a result of the work injuries." The Board has held that a medical opinion that a condition is causally related to an employment injury because the employee was asymptomatic before an injury but symptomatic after it is insufficient, without supporting rationale, to establish causal relation.⁸

Because appellant has not submitted medical evidence explaining how and why her condition was related to her November 13, 1987 employment injury or a change in the nature and extent of her light-duty job requirements, she has not met her burden of proof to establish her recurrence of disability claim.

The decision of the Office of Workers' Compensation Programs dated January 14, 1999 is hereby affirmed.

Dated, Washington, DC
December 5, 2000

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

⁷ See *Lee R. Haywood*, 48 ECAB 145 (1996).

⁸ *Cleopatra McDougal Saddler*, 47 ECAB 480 (1996).