

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHARON E. YOUNG and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Cleveland, Ohio

*Docket No. 96-1460; Submitted on the Record;
Issued July 7, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on January 2, 1994 causally related to her September 21, 1993 employment injury.

On September 21, 1993 appellant, then a 46-year-old medical clerk, sustained a lumbosacral strain, contusions and strains of the left knee and right elbow, a right shoulder strain, and a left cheek contusion in the performance of duty when her chair overturned. She returned to work in a light-duty capacity on November 3, 1993.

In a claim form dated March 21, 1994, appellant alleged that she sustained a recurrence of total disability commencing on January 2, 1994 which she attributed to her September 21, 1993 employment injury.

In a claim form dated January 26, 1994, which appellant filed with the city transit authority, she indicated that on January 11, 1994 she was exiting a bus and fell because the bus steps were snow-covered and slippery. She indicated that she sustained injuries to her back, left knee, right arm and buttocks.

In a form report dated February 28, 1994, Dr. Peter Dillard, a Board-certified specialist in preventive medicine, diagnosed multiple strains and contusions of the neck, head, left knee, low back, left elbow and left hip. In answer to the question as to whether appellant's medical conditions were causally related to her September 21, 1993 employment injury, he wrote, "Some, not all. Doubt knee or low back pain are caused by work-related injury." He indicated that appellant was totally disabled from September 23 to October 4, 1993 but was able to perform light work as of October 5, 1993.

In a report dated May 21, 1994, Dr. Matthew D. Kay, a Board-certified orthopedic surgeon, stated that his review of appellant's medical chart indicated that her main problem was

preexisting degenerative arthritis of the left knee. He stated that appellant may have had an exacerbation of her arthritic pain due to the 1993 employment-related fall.

In a form report dated June 7, 1994, Dr. Kay indicated that appellant was totally disabled from May 25 to June 3, 1994 which he attributed to an aggravation of appellant's degenerative joint disease caused by the September 1993 employment injury.

In a form report dated September 21, 1994, Dr. Daniel J. Brustein, a Board-certified internist, diagnosed contusions of the head, left knee, left elbow and low back sustained on September 21, 1993 and indicated that appellant was totally disabled from February 3 through September 5, 1994.

In a form report dated October 26, 1994, Dr. Dillard diagnosed possible ankylosing spondylitis and checked the block marked "yes" indicating the condition was caused or aggravated by the September 21, 1993 employment injury. Dr. Dillard wrote "[Patient] may have underlying arthritis, aggravated by her injury at work, this would explain her prolonged course of recovery."

In a form report dated January 3, 1995, Dr. Chinyoung Park, a Board-certified internist specializing in rheumatology, diagnosed mechanical back pain, trochanteric bursitis, left knee degenerative joint disease and lateral femoral condyle osteochondral necrosis and indicated by checking the block marked "yes" that the condition was caused or aggravated by the September 21, 1993 employment injury.

By decision dated March 17, 1995, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to establish that she sustained a recurrence of total disability causally related to her September 21, 1993 employment injury.

By letter dated March 27, 1995, submitted through her representative, appellant requested an oral hearing before an Office hearing representative.

In a report dated August 9, 1995, Dr. John G. Nemunaitis, a Board-certified internist and physiatrist, related that appellant had a lumbosacral back injury on September 21, 1993 and that since that time she had continued to have back pain. Dr. Nemunaitis stated that appellant could not lift anything over 15 pounds at work.

In notes dated August 23, 1995, Dr. Nemunaitis related that appellant continued to be disabled from work intermittently due to the September 1993 employment injury. He stated that the September 1993 work incident caused a herniated nucleus pulposus. Dr. Nemunaitis indicated that appellant's most recent period of disability had commenced on June 1, 1995.

On November 30, 1995 a hearing before an Office hearing representative was held at which time appellant testified.

By decision dated March 15, 1996, the Office hearing representative affirmed the Office's March 7, 1995 decision.

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a recurrence of total disability on January 2, 1994 causally related to her September 21, 1993 employment injury.

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 either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.¹ In the instant case, appellant has failed to establish either a change in the nature or extent of her light-duty requirements or a change in her accepted injury-related conditions.

In this case, the record shows that, on September 21, 1993 appellant sustained a lumbosacral strain, contusions and strains of the left knee and right elbow, a right shoulder strain, and a left cheek contusion in the performance of duty when her chair overturned. She returned to work in a light-duty capacity on November 3, 1993. In a claim form dated March 21, 1994, appellant alleged that she sustained a recurrence of total disability commencing on January 2, 1994 which she attributed to her September 21, 1993 employment injury. Appellant does not allege, nor does the evidence support, a change in the nature or extent of her light-duty requirements such that she became totally disabled for work. Neither does the evidence of record establish that appellant's employment-related medical conditions changed in their nature or extent such that she was not able to perform her light-duty position.

In a form report dated February 28, 1994, Dr. Dillard, a Board-certified specialist in preventive medicine, diagnosed multiple strains and contusions of the neck, head, left knee, low back, left elbow and left hip. In answer to the question as to whether appellant's medical conditions were causally related to her September 21, 1993 employment injury, he wrote, "Some, not all. Doubt knee or low back pain are caused by work-related injury." He indicated that appellant was totally disabled from September 23 to October 4, 1993. As he did not indicate that appellant became totally disabled commencing in January 1994, his report does not discharge appellant's burden of proof.

In a report dated May 21, 1994, Dr. Kay, a Board-certified orthopedic surgeon, stated that his review of appellant's medical chart indicated that her main problem was degenerative arthritis of the left knee. He stated that appellant may have had an exacerbation of her arthritic pain due to the 1993 employment-related fall but that the fall on September 21, 1993 was not directly responsible for the arthritis forming. Dr. Kay did not indicate that appellant was disabled for work and therefore this report does not support appellant's recurrence claim.

In a form report dated June 7, 1994, Dr. Kay indicated that appellant was totally disabled from May 25 to June 3, 1994 which he attributed to an aggravation of appellant's degenerative joint disease caused by the September 1993 employment injury. However, he did not explain

¹ See *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Stuart K. Stanton*, 40 ECAB 859, 864 (1989).

how there was a change in the nature of appellant's accepted work-related conditions such that she could not perform even her light-duty position. Furthermore, this report is not based upon a complete and accurate factual background as Dr. Kay did not seem to be aware that appellant had sustained a nonwork-related fall on January 11, 1994. Therefore, this report is not sufficient to establish that appellant sustained a work-related recurrence of total disability.

In a form report dated September 21, 1994, Dr. Brustein, a Board-certified internist, diagnosed contusions of the head, left knee, left elbow and low back sustained on September 21, 1993 and indicated that appellant was totally disabled from February 3 through September 5, 1994. However, this report is not based upon a complete and accurate factual background as he did not include in his history of appellant's condition the nonwork-related fall from a bus on January 11, 1994. Additionally, Dr. Brustein provided no medical rationale explaining how the disability was causally related to the September 1993 employment injury. This report is therefore not sufficient to discharge appellant's burden of proof.

In a form report dated October 26, 1994, Dr. Dillard diagnosed possible ankylosing spondylitis and checked the block marked "yes" indicating the condition was caused or aggravated by the September 21, 1993 employment injury. However, he did not indicate any periods of disability and therefore this report does not support appellant's claim of a recurrence of total disability.

In a form report dated January 3, 1995, Dr. Park, a Board-certified internist specialist in rheumatology, diagnosed mechanical back pain, trochanteric bursitis, left knee degenerative joint disease and lateral femoral condyle osteochondral necrosis and indicated by checking the block marked "yes" that the condition was caused or aggravated by the September 21, 1993 employment injury. However, he indicated no periods of disability and therefore his report does not support appellant's recurrence claim.

In a report dated August 9, 1995, Dr. Nemunaitis, a Board-certified internist and physiatrist, related that appellant had a lumbosacral back injury on September 21, 1993 and that since that time she had continued to have back pain. He did not opine that appellant was not able to perform her light-duty position due to a change in the nature or extent of her accepted medical conditions and therefore this report does not suffice to discharge appellant's burden of proof.

In notes dated August 23, 1995, Dr. Nemunaitis related that appellant continued to be disabled from work intermittently due to the September 1993 employment injury. He stated that the September 1993 work incident caused a herniated disc. Dr. Nemunaitis indicated that appellant's most recent period of disability had commenced on June 1, 1995. However, a herniated disc has not been accepted by the Office as being related to the September 1993 employment injury and Dr. Nemunaitis has not provided medical rationale explaining how this condition was causally related to the employment injury. Therefore this report does not support appellant's recurrence claim.

The March 15, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.

July 7, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member