

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of IRENE M. CLARK and DEPARTMENT OF THE AIR FORCE,  
OFFUTT AIR FORCE BASE, Nebr.

*Docket No. 96-342; Submitted on the Record;  
Issued March 5, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained a recurrence of disability, causally related to her October 16, 1992 accepted lumbar strain injury.

On November 5, 1992 appellant, then a 62-year-old cook, filed a claim for compensation alleging that on October 16, 1992 she sustained an injury to her back while in the performance of duty.

In a treatment note dated November 19, 1992, Dr. Lonnie R. Mercier, appellant's treating physician who is a Board-certified orthopedic surgeon, stated that appellant's back appeared to be doing well, and that she could return to work on November 23, 1992 with restrictions against mopping and heavy lifting for several weeks.

In a medical report dated December 12, 1992, Dr. Mercier stated that, upon examination and review of x-rays, appellant had sustained degenerative disc disease with possible nerve root irritation, "apparently aggravated by [October 16, 1992] lifting injury."

In a medical report dated December 17, 1992, Dr. Mercier stated that he had examined appellant on November 5, 19 and December 7, 1992, and opined that her back and shoulder pain could have been caused by the incident as appellant described to him as having had occurred on October 16, 1992. He noted that although "the low back showed little physical findings," appellant's x-rays revealed degenerative disc disease which was "not bothering her until the [October 16, 1992] lifting injury."

On December 31, 1992 appellant submitted a claim for compensation (Form CA-7), requesting compensation for wage loss from December 26, 1992.<sup>1</sup>

On January 13, 1993 the Office of Workers' Compensation Programs notified appellant that it had accepted her October 16, 1992 lumbar strain and indicated that she was entitled to receive 45 days of continuation of pay for time lost as a result of her employment-related injury, but would have to file a claim for compensation on account of traumatic injury for any subsequent period of disability.

In a treatment note dated January 25, 1993, Dr. Patrick W. Bowman, appellant's treating physician who is a Board-certified orthopedic surgeon, stated that, upon examination, appellant's chief complaint was mechanical low back pain aggravated by activity. He noted that an October 1992 x-ray revealed degenerative disc disease at L5-S1 and a December 1992 computerized tomography scan which revealed marked degenerative change at L5-S1. He diagnosed appellant with degenerative disc disease, post-traumatic internal disc derangement, situational depression and subacromial bursitis. He also recommended a psychological evaluation.

In a medical report dated February 26, 1993, Dr. Bowman noted that appellant had a preexisting attritional disease in the arm and back which was aggravated by appellant's October 16, 1992 employment-related injury, resulting in her disabling condition.

By decision dated March 10, 1993, the Office rejected appellant's claim, finding that the evidence of record failed to establish a causal relationship between the claimed recurrent disability or medical condition and the work-related injury. In an accompanying memorandum, the Office stated that appellant had failed to provide a detailed and well-rationalized medical report containing a complete history of injury which established a recurrent disability related to the low back injury of October 16, 1992.

In a medical report dated September 3, 1993, Dr. Bowman stated that he had been treating appellant for eight months for a lower spinal condition which began on October 16, 1992. He noted that appellant had a severe degenerative collapse of the L5-S1 and that the injury caused an aggravation of the degenerative process. Dr. Bowman stated that appellant had reached maximum medical improvement.

Appellant requested an oral hearing which was held on May 17, 1994. At the hearing, the hearing representative stated that appellant returned to work as a cook after her October 16, 1992 employment-related injury on November 24, 1992. However, the hearing representative noted that appellant was reassigned the following month to work as a recreational aide as a result of a reduction-in-force conducted by the employing establishment. On December 16, 1992 appellant stopped work, and subsequently filed a claim for total disability. The hearing representative then stated that the issue was whether appellant had a medical condition which disabled her from work on or after December 16, 1992 which was causally related to her employment-related injury of October 16, 1992.

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<sup>1</sup> The employing establishment indicated that appellant had received continuation of pay from October 20 through November 23, 1992, and again from December 15 through 26, 1992.

In a decision dated July 25 and finalized on July 26, 1994, the hearing representative affirmed the Office's March 10, 1993 decision, finding that appellant had failed to establish through medical evidence that she had had a medical condition which disabled her from work on or after December 15, 1992 causally related to her employment-related injury of October 16, 1992.

On January 17, 1995 appellant requested reconsideration before the Office. In support of her petition, appellant submitted an emergency room report, treatment notes from Dr. Meera DeWan,<sup>2</sup> and medical reports dated November 16 and December 28, 1994 from Dr. Mercier. In those reports Dr. Mercier stated essentially that appellant appeared to not have had low back symptoms prior to October 16, 1992, and that the cause of her pain was degenerative disc disease which may be aggravated by a lifting injury.

On March 28, 1995 the Office issued a decision which denied appellant's request for reconsideration, finding that the evidence submitted in support of her petition was insufficient to warrant modification of the March 10, 1993 and May 17, 1994 decisions.

On June 26, 1995 appellant again requested reconsideration before the Office which it denied in a nonmerit order on September 19, 1995.

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability based on her employment-related injury of October 16, 1992.

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 the compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a qualified physician who, on the basis of 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 reasoning.<sup>3</sup>

In this case, appellant sustained lumbar strain on October 16, 1992 while in the performance of duty. Appellant subsequently alleged that she sustained a recurrence of disability on December 14, 1992 which she attributed to her October 16, 1992 employment injury. In support of her claim for recurrence of disability, appellant submitted medical reports from Dr. Lonnie R. Mercier, a Board-certified orthopedic surgeon, who stated that, although appellant's low back pain "could easily have been the result of her work activities," she had degenerative disc disease, a condition which the Office had not accepted. Dr. Bowman, a Board-certified orthopedic surgeon, stated that appellant's employment-related injury caused her attritional condition to become disabling and symptomatic. These reports however do not support appellant's burden to establish a causal relationship between her claimed condition and

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<sup>2</sup> Dr. DeWan, appellant's family physician who is Board-certified in family medicine, diagnosed appellant with degenerative disc disease on November 9, 1992 but did not support that diagnosis with a rationalized medical opinion.

<sup>3</sup> *Lourdes Davila*, 45 ECAB 139 (1993); *Louise G. Malloy*, 45 ECAB 613 (1994).

her employment injury. Although Dr. Mercier opined that appellant's medical condition could have been caused by her work activities, and Dr. Bowman stated that appellant's condition was aggravated by work factors, these reports are not sufficient to meet appellant's burden of proof as no rationalized medical opinion was submitted to support their medical conclusion. The Board has held that an opinion on causal relationship which consists only of a conclusion without supporting rationale is insufficient to establish causal relationship.<sup>4</sup> An award of compensation may not be based on surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment. To be of probative value to appellant's claim, the physician must provide a proper background and must provide medical rationale which explains the medical issue at hand, be that whether the current condition is disabling or whether the current condition is causally related to the accepted employment injury. Where no such rationale is present, the medical opinion is of diminished probative value. In this case, appellant failed to submit such evidence and therefore failed to discharge her burden of proof.<sup>5</sup>

As noted above, medical evidence is of diminished probative value where medical rationale is lacking. Therefore, the medical reports of Drs. Mercier and Bowman are insufficient to support appellant's claim that she sustained a recurrence of disability in December 1992 causally related to her October 16, 1992 employment injury.

The March 28 and September 19, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.  
March 5, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

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<sup>4</sup> See *Michael Stockert*, 39 ECAB 1186 (1998).

<sup>5</sup> *Donald W. Long*, 41 ECAB 142, 146-47 (1989).