

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LYNNE SOEFFKER-BENSON and SOCIAL SECURITY
ADMINISTRATION, Milwaukee, WI

*Docket No. 97-2538; Submitted on the Record;
Issued August 25, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that she sustained a back injury in the performance of duty causally related to factors of her employment.

On November 15, 1996 appellant, then a 44-year-old claims representative, filed a traumatic injury claim alleging that on that day she sustained a back injury in the performance of duty when she lifted a box of printer paper onto a chair.

In a report dated November 15, 1996, Dr. Gwen A. Johnson, a Board-certified family practitioner, related that appellant bent over to pull a box of computer paper from under her desk and noticed a sudden onset of pain in her low back that radiated down her left leg. She noted that appellant had a history of problems with her back and had undergone a laminectomy at L4-5. Dr. Johnson provided findings on examination and diagnosed "probably another acute disc herniation."

In a report dated November 18, 1996, Dr. James G. Hackett, a Board-certified orthopedic surgeon, related that on November 15, 1996 appellant was attempting to lift a box of computer paper from a desk and had a sudden onset of low back pain with radiation down both legs. He noted that appellant had two prior surgeries on her back including an L4-5 decompressive laminectomy and that she also had chronic left sciatica as well as numbness and weakness in her legs since her surgeries. He provided findings on examination and stated:

"[Appellant's] general physical exam[ination] does not appear to have changed a whole lot from previous evaluations and most likely she has had a recurrent herniation with some mild radiculopathy."

By decision dated June 9, 1997, the Office of Workers' Compensation Programs denied appellant's claim for compensation benefits on the grounds that the medical evidence of record

failed to establish that she sustained an injury causally related to the incident on November 15, 1996.

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a back injury in the performance of duty causally related to factors of her employment.

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.¹ Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that she sustained an injury in the performance of duty and that her disability was caused or aggravated by her employment.² As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.³ The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁴ Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated her condition is sufficient to establish causal relationship.⁵

In this case, appellant alleged that she sustained an injury on November 15, 1996 when she lifted a box of paper at work. She submitted medical evidence in support of her claim.

In a report dated November 15, 1996, Dr. Johnson, a Board-certified family practitioner, related that appellant bent over to pull a box of computer paper from under her desk and noticed a sudden onset of pain in her low back and down her left leg. She noted that appellant had a history of problems with her back and had undergone a laminectomy at L4-5. Dr. Johnson provided findings on examination and diagnosed "probably another acute disc herniation." This report is not sufficient to establish that appellant sustained an injury in the performance of duty. Dr. Johnson did not provide any objective findings, such as an x-ray, to support her diagnosis of a disc herniation. Additionally, her diagnosis was speculative as she stated that appellant "probably" had a disc herniation. Furthermore, she did not provide sufficient medical rationale explaining how appellant's possible disc herniation was causally related to the lifting incident on November 15, 1996.

In a report dated November 18, 1996, Dr. Hackett, a Board-certified orthopedic surgeon, related that appellant attempted to lift a box of paper at work on November 15, 1996 and had severe low back pain with radiation down both legs. He noted that appellant had two prior surgeries on her back including an L4-5 decompressive laminectomy. Dr. Hackett provided findings on examination and stated that appellant's condition did not appear to have changed very much from previous evaluations. He indicated that she "most likely" had a recurrent

¹ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

² *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

³ *Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

⁴ *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

⁵ *Joseph T. Gulla*, *supra* note 3.

herniation. However, Dr. Hackett provided no objective findings or test results to support the diagnosis of a disc herniation and this diagnosis is speculative as he noted that she “most likely” had a herniation. Furthermore, Dr. Hackett did not explain how the lifting incident on November 15, 1996 caused the herniation. Due to these deficiencies, this report does not discharge appellant’s burden of proof.

The June 9, 1997 decision of the Office of Workers’ Compensation Programs is affirmed.

Dated, Washington, D.C.
August 25, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member