

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHERI B. BARNES and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, UPTOWN DIVISION,  
Augusta, GA

*Docket No. 00-1589; Submitted on the Record;  
Issued April 6, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a low back injury or herniated lumbar disc in an accepted June 12, 1999 incident in which she sustained a bruised right arm and leg.

Following a thorough review of the case record and the legal issues involved, the Board finds that appellant has not established that she sustained a low back injury or herniated lumbar disc in an accepted June 12, 1999 incident in which she sustained a bruised right arm and leg.

On June 12, 1999 appellant, then a 43-year-old food service worker, filed a notice of traumatic injury alleging that she sustained low back, right arm and right leg injuries that day when she slipped on a dirty, sticky dishroom floor while pushing a cart.<sup>1</sup> She stopped work that day. Appellant requested leave without pay from June 13 to July 25, 1999. On the reverse of the form, Sheila Hunt, appellant's supervisor, noted that appellant had returned to work on February 16, 1999 "from prolonged absence due to" a November 10, 1994 injury (Claim No. 060-613475) and had periodic work absences since that time.<sup>2</sup>

The Office of Workers' Compensation Programs initially denied appellant's claim in an August 31, 1999 decision which accepted that the June 12, 1999 incident occurred at the time,

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<sup>1</sup> In the witness portion of the claim form, Bobby D. Evans, one of appellant's co-workers, stated that he saw appellant "pushing the cart back towards the wall and she slipped and ... face forward...." In a June 15, 1999 authorization for medical treatment, Tim R. Martin, an employing establishment official, noted that appellant had tripped "and held on" while pushing a food rack, pulling her right shoulder, right leg and "middle lower back." In a July 29, 1999 letter, appellant stated that on June 12, 1999 she "was finishing the scraping of dishes and went to push the cart back to its area and tripped on floor while holding on the rack and slipped and fell." Appellant noted that she had two previous cervical spinal surgeries with screw and plate fixation "after being hurt on job."

<sup>2</sup> In a July 15, 1999 letter, the Office advised appellant of the additional medical and factual evidence needed to establish her claim, including a detailed description of the circumstances of the injury, a history of any similar injuries or conditions, and a statement from her treating physician explaining how and why the June 12, 1999 incident would cause the claimed injuries.

place and in the manner alleged, but finding that appellant had submitted insufficient medical evidence to establish that she sustained any injury as a result of the accepted incident. Following appellant's September 30, 1999 request for reconsideration, by decision dated December 17, 1999, the Office accepted that appellant sustained a "right bruised arm and leg" in the June 12, 1999 incident, with intermittent disability for work from June 12 to July 27, 1999. The Office further found that appellant had submitted insufficient rationalized medical evidence to establish that she sustained a low back injury, herniated lumbar disc or aggravation of a preexisting lumbar condition due to the June 12, 1999 accident.

Pursuant to appellant's September 30, 1999 request for reconsideration and on appeal, appellant contends that she sustained a herniated lumbar disc in the accepted June 12, 1999 incident.

When an employee claims a new injury or condition causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the newly alleged condition, and any related period of disability, are causally related to the accepted injury. It is not sufficient merely to establish the presence of a condition. In order to establish his or her claim, appellant must also submit rationalized medical evidence, based on a complete and accurate factual and medical background, showing a causal relationship between the employment injury and the claimed conditions.<sup>3</sup>

As applied to this case, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed lumbar injuries and the June 12, 1999 accident.<sup>4</sup> Causal relationship is a medical issue.<sup>5</sup> The medical evidence required to establish a causal relationship, generally, is medical opinion evidence,<sup>6</sup> of reasonable medical certainty,<sup>7</sup> supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>8</sup> An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's belief of causal relation unsupported by the medical record.<sup>9</sup>

Appellant submitted medical evidence indicating a preexisting low back condition. A March 29, 1999 electromyographic (EMG) and nerve conduction velocity study showed right cervical radiculopathy and right L5 radiculopathy. The report notes that appellant described a

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<sup>3</sup> See *Armando Colon*, 41 ECAB 563 (1990).

<sup>4</sup> *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

<sup>5</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>6</sup> See *Naomi Lilly*, 10 ECAB 560, 572-73 (1959).

<sup>7</sup> See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>8</sup> See *William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>9</sup> *Ausberto Guzman*, 25 ECAB 362 (1974).

“five-year history of low back, neck, arm and leg pain secondary to a work injury [on] November 10, 1994.”<sup>10</sup>

Appellant also submitted several reports prepared contemporaneously to the June 12, 1999 accident. In a June 12, 1999 report, Dr. L. Sharma, an employing establishment physician, noted that appellant fell “on floor while unloading the cart,” observed a bruise on appellant’s right forearm, noted low back pain without bruising or focal tenderness and complaints of right leg paresthesias. Dr. Sharma diagnosed a “bruised right arm and generalized ache secondary to fall” and prescribed medication.<sup>11</sup> While Dr. Sharma notes the presence of back pain, he did not diagnose a specific back injury attributable to the June 12, 1999 fall.

Dr. Jack Hudson, an attending general practitioner who first treated appellant after the accident on June 14, 1999, held appellant off work intermittently through July 26, 1999. In a June 21, 1999 report, Dr. Hudson diagnosed “neck and back strain,” with clinical findings of “muscle spasms and limited motion.”<sup>12</sup> In a November 5, 1999 letter, Dr. Hudson noted that on June 14, 1999, he observed “a bruised right leg and shoulder,” and “tenderness and limited” lumbar motion on examination. While Dr. Hudson opined that appellant’s injuries were “sustained at the time of [her] accident at work,” he did not diagnose a specific lumbar injury or opine that the June 12, 1999 accident had aggravated a previous lumbar condition.

The first mention of a herniated lumbar disc is in the November 1, 1999 report of Dr. Franklin Epstein, an attending Board-certified neurosurgeon, who stated an impression of a large L5-S1 disc herniation with *cauda equina* compression, requiring a “complete disc excision” and interbody fusion. Dr. Epstein noted a history of injury as “sometime in the spring, she slipped and fell on a wet floor at work and hurt her back. Addressing causal relationship, he noted that, although appellant had chronic low back pain, “the fall appears to have exacerbated it substantially, bringing it to a level where it has been increasingly intolerable.”<sup>13</sup>

Thus, Dr. Epstein opined that the June 12, 1999 incident aggravated a preexisting low back condition. However, he phrased this opinion in speculative terms, stating that the accepted incident “appear[ed]” to have exacerbated appellant’s chronic low back pain. The Board has

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<sup>10</sup> Appellant also submitted the results of testing performed following the June 12, 1999 accident, showing multiple spinal pathologies. June 15, 1999 x-rays showed “minimal scoliosis of the thoracolumbar spine with convexity to the right,” “possible minimal disc space narrowing at L3-4 and mild disc space narrowing at L4-5 and at L5-S1,” an “anterior cervical fusion involving corpectomies from C5 to T1 and also stabilized by an anterior fixation plate extending from C4 to T1”, mild narrowing of the neuroforamina from C4-7 and minimal cervical scoliosis. An October 29, 1999 lumbar magnetic resonance imaging (MRI) scan showed central, left and right herniations of the L4-5 disc with spurring, “marked thecal sac effacement,” neuroforaminal narrowing and end plate osteitis. However, these test reports do not contain medical rationale addressing causal relationship.

<sup>11</sup> A June 12, 1999 medical slip indicates that appellant was prescribed medication, “moist heat to right shoulder,” and directed to follow up with her physician if her symptoms continued.

<sup>12</sup> In a June 21, 1999 work absence slip, an employee of Martinez Urgent Care indicated that appellant had been under medical treatment from June 21 to 28, 1999 for “cervical nerve entrapment” and could return to work on June 28, 1999. This form lacking proper identification, cannot be considered as medical evidence in appellant’s case. *Merton J. Sills*, 39 ECAB 572 (1988).

<sup>13</sup> Dr. Epstein also noted that appellant underwent two operations on her cervical spine in 1997 due to a work-related injury, with fusion from C4 to T1.

held that medical opinions of a speculative or equivocal nature are of greatly diminished probative value in establishing causal relationship.<sup>14</sup> Therefore, Dr. Epstein's opinion is of insufficient weight to establish appellant's contention that she sustained a herniated lumbar disc or other low back injury as a result of the June 12, 1999 accident.

Thus, appellant has not established that she sustained a herniated lumbar disc or other low back injury resulting from the accepted June 12, 1999 accident, as she submitted insufficient rationalized medical evidence to establish causal relationship.

The decision of the Office of Workers' Compensation Programs dated December 17, 1999 is hereby affirmed.

Dated, Washington, DC  
April 6, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>14</sup> See *William S. Wright*, 45 ECAB 498 (1994) (a physician's statement that appellant's medication "could very well have been" the cause of his condition was equivocal and speculative); see *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).