

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DELORIS B. JOHNSON and DEPARTMENT OF VETERANS AFFAIRS,
HUDSON VALLEY HEALTH CARE SYSTEM, Montrose, NY

*Docket No. 01-1814; Submitted on the Record;
Issued June 10, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) is whether appellant sustained an injury on March 16, 2000 causally related to factors of her employment; and (2) whether appellant sustained a recurrence of disability on March 30, 2000.

On March 29, 2000 appellant, then a 48-year-old food service worker, filed a traumatic injury claim for a low back condition sustained on March 16,¹ 2000 after she pushed 6 food carts weighing more than 400 pounds.

A radiology report dated October 7, 1998 indicated that a magnetic resonance imaging (MRI) scan of the lumbar spine revealed a bulging disc associated with facet arthrosis and degenerative disc disease at L4-5.

In a disability certificate dated March 21, 2000, Dr. Michael D. Sparago stated that appellant was unable to work on that date due to degenerative disc disease. He indicated that she should not push lunch carts or perform any other type of work that would exacerbate her condition.

In a form report dated May 30, 2000, Dr. Saran S. Rosner, a neurosurgeon, indicated that appellant had been examined on April 10, 2000 with a history of a back injury on March 16, 2000 when she pushed 6 food carts weighing over 400 pounds.

In a report dated April 10, 2000, Dr. Rosner stated that appellant had low back pain, right leg pain with numbness, neck pain and left arm weakness. He related that she had a back injury in 1989 at work and had experienced intermittent episodes of back pain since that time. Dr. Rosner stated that on March 16, 2000 she was moving a tray weighing several hundred pounds and developed low back pain and right leg pain and numbness. He provided the results

¹ Appellant initially gave the date of injury as March 15, 2000 but later corrected the date to March 16, 2000.

of a neurological examination and diagnosed degenerative lumbar disc disease and cervical spondylosis.

By decision dated June 22, 2000, the Office of Workers' Compensation Programs denied appellant's claim for an injury on March 16, 2000 on the grounds that the medical evidence of record failed to establish that she sustained an injury on that date causally related to factors of her employment.

By letter dated February 19, 2001, appellant requested reconsideration and submitted additional evidence.

In a disability certificate dated May 17, 2000, Dr. Sparago indicated that appellant had been unable to work between March 30 and April 22, 2000 due to a lumbosacral strain.

In a report dated October 13, 2000, Dr. Rosner stated that an August 2000 MRI scan revealed multiple levels of disc herniation. He indicated that appellant had a history of back pain dating to 1989 injury that was exacerbated by the March 16, 2000 work incident. Dr. Rosner noted that there had been a progression of her pathology with development of a broad-based disc protrusion at L4-5 on the right. He stated that appellant had also developed cervical complaints subsequent to the March 16, 2000 incident and was found to have cervical pathology at multiple levels.

In a report dated November 9, 2000, Dr. Allan L. Rothman, stated that appellant injured her back at work in 1989, sustained another back injury on March 16, 2000 and had been unable to work since March 30, 2000. He indicated that an August 3, 2000 MRI scan revealed herniated discs at multiple cervical levels and a July 10, 2000 MRI scan revealed disc dessication and right lateral disc protrusion at L4-5. Dr. Rothman provided findings on examination and diagnosed cervical strain syndrome and radiculopathy, a herniated disc with cord compression and low back syndrome with a small herniated disc.

Appellant also submitted a page of medical notes with a portion of the page between the dates March 6 and 14, 2000 blocked out. The March 14, 2000 entry indicated that appellant was not feeling better and referred to the missing entry. The March 21, 2000 entry noted that appellant had to leave work the day before with back spasms and also referred to the missing entry.

On December 12, 2000 appellant filed a claim for a recurrence of disability on March 30, 2000 that she attributed to the work incident on March 16, 2000.

By decision dated April 19, 2001, the Office denied appellant's claim for a recurrence of disability on March 30, 2000 on the grounds that an employee may only claim a recurrence of disability for an accepted claim and her claim for an injury on March 16, 2000 was denied by the Office's June 22, 2000 decision.

By decision dated May 25, 2001, the Office denied appellant's claim for an injury on March 16, 2000 and modified the June 22, 2000 decision to reflect that the Office no longer accepted that the work incident on March 16, 2000 occurred at the time, place and in the manner alleged.

The Board finds the appellant has failed to meet her burden of proof to establish that she sustained an injury on March 16, 2000 causally related to factors of her employment.

To determine whether a federal employee has sustained a traumatic injury case in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.² Second, the employee must submit sufficient evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.³

In this case, appellant alleged that she sustained a back injury on March 16, 2000 after pushing heavy food carts. She gave this history of injury to her treating physicians. However, the record contains a page of medical notes with a portion of the page between the dates March 6 and March 14, 2000 blocked out. The March 14, 2000 entry indicated that appellant was not feeling better and referred to the missing entry. A March 21, 2000 entry noted that appellant had to leave work the day before with back spasms and also referred to the missing entry. The fact that entries were blocked out near the date when appellant alleged she sustained an injury at work raises the question of whether probative information bearing on appellant’s claim is missing from the evidence of record and also raises the question of why the information was blocked out. This missing medical evidence casts doubt as to whether the March 16, 2000 work incident occurred at the time and place and in the manner alleged.

The medical evidence of record is also insufficient to establish that appellant sustained a work-related injury on March 16, 2000.

In a disability certificate dated March 21, 2000, Dr. Sparago stated that appellant was unable to work on that date due to degenerative disc disease. However, he did not relate this condition to appellant’s March 16, 2000 work incident. Furthermore, a radiology report dated October 7, 1998 indicated that an MRI scan of the lumbar spine revealed a bulging disc and degenerative disc disease at L4-5. This indicates that appellant already had degenerative disc disease at the time of her March 16, 2000 work incident.

In a form report dated May 30, 2000, Dr. Rosner, a neurosurgeon, indicated that appellant had been examined on April 10, 2000 with a history of a back injury on March 16, 2000 when she pushed heavy food carts. However, he did not provide a diagnosis of the injury on March 16, 2000 or a rationalized medical opinion explaining how the injury occurred, the precise mechanism of injury. Therefore, this report does not establish that appellant sustained an injury on March 16, 2000 causally related to factors of her employment.

In a report dated April 10, 2000, Dr. Rosner stated that appellant had pain in her low back pain, right leg and neck. He related that she had a back injury in 1989 at work and had experienced intermittent episodes of back pain since that time. Dr. Rosner stated that on March 16, 2000 she was moving a heavy tray at work and developed low back pain and right leg

² See *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

³ *Id.*

pain and numbness. He provided the results of a neurological examination and diagnosed degenerative lumbar disc disease and cervical spondylosis. However, Dr. Rosner did not provide a rationalized medical opinion explaining how these conditions were caused or aggravated by the March 16, 2000 incident and therefore this report does not discharge appellant's burden of proof.

In a disability certificate dated May 17, 2000, Dr. Sparago indicated that appellant had been unable to work between March 30 and April 22, 2000 due to a lumbosacral strain. However, he did not relate appellant's disability to the March 16, 2000 work incident. Therefore, this disability certificate does not establish that appellant sustained a work-related injury on March 16, 2000.

In a report dated October 13, 2000, Dr. Rosner stated that an August 2000 MRI scan revealed multiple levels of disc herniation. He indicated that appellant had a history of back pain dating to 1989 injury that was exacerbated by the March 16, 2000 work incident. However, Dr. Rosner did not provide medical rationale explaining how appellant's back condition was aggravated by the March 16, 2000 incident and therefore this report does not discharge appellant's burden of proof.

In a report dated November 9, 2000, Dr. Rothman stated that appellant injured her back at work in 1989, sustained another back injury on March 16, 2000 and had been unable to work since March 30, 2000. He indicated that MRI scans revealed herniated discs at multiple cervical levels and disc dessication and right lateral disc protrusion at L4-5 and he diagnosed cervical strain syndrome, a herniated disc and low back syndrome with a small herniated disc. However, Dr. Rothman did not provide an opinion of the cause of these conditions and therefore, this report does not establish that appellant sustained a work-related back injury on March 16, 2000.

The Board further finds that appellant did not sustain a recurrence of disability on March 30, 2000.

When an employee claims a recurrence of disability, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the recurrence claimed is causally related to an accepted employment injury.⁴

In this case, appellant alleged that she sustained a recurrence of disability on March 30, 2000 causally related to a March 16, 2000 injury. However, the Office denied appellant's claim for a March 16, 2000 employment injury by decision dated June 22, 2000. As there was no accepted employment injury in this case, the Office properly denied appellant's claim for a recurrence of disability.

⁴ See also *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

The decisions of the Office of Workers' Compensation Programs dated May 25 and April 19, 2001 are affirmed.

Dated, Washington, DC
June 10, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member