

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of IRMA J. MORRISON and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, Pensacola, FL

*Docket No. 02-632; Submitted on the Record;
Issued September 3, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
WILLIE T.C. THOMAS

The issue is whether appellant has established that she sustained recurrences of disability on November 22, 1993 and July 11, 1994 causally related to her September 4, 1990 employment injury.

On September 5, 1990 appellant, then a 43-year-old motor vehicle operator, filed a claim for a traumatic injury to her back occurring on September 4, 1990. The Office of Workers' Compensation Programs accepted appellant's claim for lumbar strain and an aggravation of a herniated nucleus pulposus at L4-5. Appellant stopped work on September 5, 1990 and returned to work on September 20, 1990.

On August 10, 1994 appellant, filed a notice of recurrence of disability on November 23, 1993 and July 9, 1994, causally related to her September 4, 1990 employment injury. Appellant stopped work on November 24, 1993 returned to work on January 6, 1994 and stopped work on July 11, 1994. On the claim form, appellant indicated that she had been in a motor vehicle accident on September 3, 1993.

By letter dated January 19, 1995, the Office requested additional factual and medical information from appellant, including a more detailed account of her September 1993 motor vehicle accident. In a response received by the Office on March 21, 1995 appellant related that she worked light-duty for two weeks following her September 4, 1990 employment injury. Appellant stated that she had not sustained any additional injuries since that time but continued to have pain in her lower back and legs. Appellant described her motor vehicle accident as a rear-end collision and indicated that she did not receive treatment at a hospital.

By decision dated May 25, 1995, the Office denied appellant's claim on the grounds that the evidence did not establish that she sustained recurrences of disability causally related to her accepted employment injury. In a decision dated November 25, 1996, a hearing representative set aside the Office's May 25, 1995 decision. The hearing representative found that the reports

of Dr. David A. Alanis, a Board-certified physiatrist and appellant's attending physician, were sufficient to require further development and instructed the Office to refer appellant for a second opinion evaluation. The hearing representative further instructed the Office to obtain copies of appellant's October 24, 1990 and September 14, 1993 magnetic resonance imaging (MRI) scan studies.

By decision dated March 7, 1997, the Office denied appellant's claim based on her failure to submit the requested MRI scan reports. In a decision dated April 15, 1997, the Office vacated its March 7, 1997 decision and referred appellant for a second opinion evaluation with Dr. Wendell James Newcomb, a Board-certified orthopedic surgeon.

On July 17, 1997 the Office informed appellant that it had accepted that she sustained an employment-related aggravation of a herniated disc based on the opinion of Dr. Newcomb.

In a decision dated October 29, 1998, the Office denied appellant's claim for wage loss from November 29, 1993 through January 17, 1994 and July 11, 1994 through June 5, 1995, on the grounds that the weight of the medical evidence, as represented by the report of Dr. Newcomb, established that she was not disabled during these periods due to her September 4, 1990 employment injury. In a decision dated November 19, 1999, a hearing representative affirmed the Office's October 29, 1998 decision.

By letter dated July 11, 2000, appellant requested reconsideration of her claim. Appellant stated that on November 24, 1993 she "aggravated [her] back by pulling a long ([two inch]) fuel hose and rewinding it manual[ly]." Appellant further related that on July 9, 1994 she was working overtime to clean up after a tropical storm. Appellant stated that she reinjured her muscles on July 9, 1994, when she "was sweeping[,] picking up and clearing the street of limbs [and] branches pulling from under the hood of the vacuum that would [not] pull through the vacuum tube or the sweeper could [not] pick up."

In a decision dated October 1, 2001, the Office denied modification of its November 19, 1999 decision denying appellant's claim for recurrences of disability. The Office noted that appellant had described new employment injuries and that she could file traumatic injury claims.

The Board finds that appellant has not established that she sustained recurrences of disability on November 22, 1993 and July 11, 1994 causally related to her September 4, 1990 employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which she claims compensation is causally related to the accepted injury.¹ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes

¹ *Robert H. St. Onge*, 43 ECAB 1169 (1992).

that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

Section 10.5 of the regulations define a recurrence of disability as an “inability to work after an employee has returned to work, caused by a *spontaneous* change in a medical condition which had resulted from a previous injury *without an intervening injury* or new exposure to the work environment that caused the illness.”³ (Emphasis added.) The regulations further provide that a recurrence should be reported on Form CA-2a if it causes the employee to lose time from work and incur a wage loss.⁴ However, a notice of recurrence should not be filed when a new injury, new occupational disease, or new event contributing to an already existing occupational disease has occurred.⁵ In these instances, the employee should file Form CA-1 or CA-2.

In her request for reconsideration, appellant identified two new work incidents, which she alleged aggravated her back condition. Appellant described an injury to her back on November 24, 1993 while manually rewinding a fuel hose. Appellant also stated that she reinjured her back on July 9, 1994 clearing limbs and branches off a street following a tropical storm. These new incidents represent intervening factors, which might support a new traumatic injury claim rather than a claim for a recurrence of disability causally related to the September 4, 1990 employment injury. As appellant’s claims for recurrences of disability are premised on new events that purportedly contributed to or exacerbated her employment-related back condition, the Office properly denied her claim for a recurrence of disability.

² *Id.*

³ 20 C.F.R. § 10.5(x). A recurrence of disability also includes an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee’s physical limitations due to his or her work-related injury or illness is withdrawn, except when such withdrawal occurs for reasons of misconduct, nonperformance of work duties or a reduction-in-force. *Id.*

⁴ 20 C.F.R. § 10.104(a).

⁵ *Id.*

The October 1, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 3, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member