

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHLEEN HOWARD and DEPARTMENT OF THE ARMY,
TOOELE ARMY DEPOT, Tooele, Utah.

*Docket No. 96-1402; Submitted on the Record;
Issued April 10, 1998*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability causally related to her December 15, 1992 employment injury.

The Board has duly reviewed the record in the present appeal and finds that appellant failed to meet her burden of proof in establishing a recurrence of disability.

Appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence a causal relationship between her recurrence of disability and her December 15, 1992 employment injury.¹ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.²

In this case, the Office of Workers' Compensation Programs accepted that appellant sustained a contusion to the right elbow, lumbar strain and cervical strain based on her December 15, 1992 employment injury.

In a January 4, 1993 treatment note, Dr. C. Scott Needham, the employing establishment's clinical doctor, noted that appellant had full range of motion of the neck although it was noted that she was considered to have not offered a "best effort."

In a March 19, 1993 medical report, Dr. Jonathan H. Horne, appellant's treating physician and a Board-certified orthopedic surgeon, stated that appellant's reflexes were equal

¹ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melon*, 33 ECAB 1305, 1308-09 (1982).

² *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

and active with good grip strength; he noted good range of motion but also noted a marked trapezius myositis. X-rays revealed some old narrowing of the L5-S1 disc and minimal curvature of the cervical spine. He diagnosed contusion, sprain cervical and lumbosacral spine.

On January 5, 1994 appellant notified the Office that she had had epidural blocks to treat two herniated discs in her neck and requested payment for the medical bills.

In a medical report dated March 2, 1994, Dr. Horne stated that appellant required steroid epidural blocks to treat known herniated discs in the cervical spine as revealed through magnetic resonance imaging (MRI) scans. He noted that the herniated discs at C5-6 and C6-7 were a consequence of appellant's fall while on duty on December 15, 1992.

The Office, on March 4, 1994, advised appellant regarding the additional information she would need to submit in order for the Office to determine whether her current medical condition was a recurrence of disability based on her initial injury of December 15, 1992.

On March 17, 1994 appellant filed a claim for recurrence of disability stating that her original injury caused an ongoing condition which resulted in her left arm becoming numb. In support of her claim for recurrence of disability, appellant submitted a statement indicating that an MRI scan revealed herniated discs in her neck for which she received three epidural blocks in the course of treatment. She noted that the epidural injections were helpful but that she remained symptomatic with pain. Appellant stated that she was "on compensation now for my hands and neck and back pain. I cannot work."

On March 20, 1995 the Office denied appellant's claim on the grounds that she failed to submit medical evidence that would support her claim that her medical condition was causally related to her employment injury.

On April 4, 1995 appellant notified the Office in a note entitled "Reconsideration" that she did not claim a recurrence of disability but rather had an ongoing condition as a result of her December 15, 1992 employment injury. She noted that she had a medical retirement "from this condition on my arms." Appellant stated that she was submitting additional medical information on her neck and arms, and submitted an August 19, 1993 MRI scan which revealed right posterolateral disc herniation at C5-6 and an ulnar bulge at C6-7.

The Office referred appellant, a copy of her medical records and a statement of accepted facts to Dr. Arthur Creig MacArthur, a Board-certified orthopedic surgeon, for a second opinion regarding whether appellant's current medical condition was causally related to her employment

injury.³ The Office submitted questions for resolution including: whether appellant had a medical condition causally related to her December 15, 1992 employment-related injury, whether the medical evidence supported a diagnosis of herniated discs, and, if so, whether they were causally related to her employment-related injury.

In a medical report dated September 8, 1995, Dr. MacArthur stated that he had examined appellant and noted a familiarity with appellant's medical history. He stated that she had bilateral carpal tunnel syndrome with decompressions based on an earlier electromyogram test and had had an ulnar nerve transposition on the right elbow. Dr. MacArthur stated that appellant had resigned from the federal work force based on a medical disability and that it was only after her retirement that she developed symptoms in her left upper extremity. He noted that appellant was symptomatic along the left hand with numbness, tingling, and aching. Upon examination he noted a positive Tinel's sign at the left elbow. On the basis of his objective findings and a review of her medical records, Dr. MacArthur determined that appellant had tardy ulnar palsy across the left elbow. In response to the Office's question as to whether his objective findings of left ulnar palsy were causally related to appellant's employment-related injury, he stated in an October 25, 1995 treatment note that appellant's current condition of left ulnar palsy was not related to her right elbow and cervical and lumbar areas.

On November 22, 1995 the Office, in a decision, denied appellant's request for reconsideration on the basis that the medical evidence failed to establish that she had sustained a recurrence of disability based on her employment injury of December 15, 1992.

As mentioned above, it is appellant's burden to establish a causal relationship between her medical condition and her December 15, 1992 employment injury. In support of her claim, appellant submitted a medical report from Dr. Horne, her treating physician, who stated that appellant's condition was causally related to her employment-related injury. However, Dr. Horne did not explain in a rationalized medical opinion precisely how a December 1992 injury to the right elbow and cervical and lumbar spine caused left arm symptoms eight months later. For example, Dr. Horne stated that appellant's herniated discs in her neck which were identified in August 1993 occurred as a result of her December 15, 1992 employment-related injury but did not indicate how he reached that conclusion, nor did he indicate how the two herniated discs caused appellant's current medical condition. However, a clinical treatment note from the employing establishment's clinic dated January 4, 1993 noted that appellant had full range of motion of the neck. Further, Dr. Horne's treatment note dated March 19, 1993 failed to include a medical diagnosis regarding her left extremity, nor did he refer her for an MRI for additional diagnostic evaluations. In fact, appellant initially complained of pain in her left arm on August 13, 1993 at which time Dr. Horne contemplated further diagnostic tests. In addition, Dr. MacArthur, a second opinion specialist and a Board-certified orthopedic surgeon, stated that, after examination and review of appellant's medical records, he could not establish a causal relationship between appellant's condition and her employment-related injury. He noted that her

³ The Office initially referred appellant to Dr. Albert Martin. However, the Office requested clarification from him regarding his May 9, 1995 medical report on June 7, 1995, and an additional clarification on July 20, 1995. Based on its determination that Dr. Martin's responses were ambiguous, the Office, on August 22, 1995, referred appellant to Dr. MacArthur as a second opinion consultant.

current medical condition concerned the left extremity while her employment-related injury concerned her right extremity and spine.

As appellant has failed to submit the necessary rationalized medical opinion evidence to meet her burden of proof, the Office properly denied her claim.

The decision of the Office of Workers' Compensation Programs dated November 22, 1995 is hereby affirmed.

Dated, Washington, D.C.
April 10, 1998

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member