

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEY A. McDONALD and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Lexington, Ky.

*Docket No. 96-2684; Submitted on the Record;
Issued August 4, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on May 22, 1995 causally related to her June 9, 1994 employment injury.

The Board has duly reviewed the case record on appeal and finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability on May 22, 1995 causally related to her June 9, 1994 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 that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

In the instant case, the Office of Workers' Compensation Programs accepted that appellant sustained a lumbar strain due to her June 9, 1994 employment injury. Appellant returned to limited-duty employment on March 6, 1995 and to her regular employment on May 2, 1995. On September 7, 1995 appellant alleged that she sustained a recurrence of disability on May 22, 1995 causally related to her June 9, 1994 employment injury. By decision dated May 29, 1996, the Office denied appellant's claim on the grounds that the evidence did not establish a causal relationship between her accepted injury and the claimed condition or disability.

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

² *Id.*

In support of her claim for a recurrence of disability, appellant submitted a note from her attending physician, Dr. John J. Vaughn, a Board-certified orthopedic surgeon, in which he indicated that she was unable to work from July 5 to 7, 1995 due to back pain. In an office visit note dated October 2, 1995, Dr. Vaughn noted that appellant was currently performing light-duty employment and complained of axial back pain. He stated, “[Appellant] says she can[not] work unless I continue her restrictions, I will continue her restrictions for three months.” These reports, however, are not sufficient to meet appellant’s burden of proof as Dr. Vaughn did not offer an opinion as to whether appellant’s current condition and disability was causally related to her accepted employment injury.

In a treatment note dated April 10, 1996, Dr. Vaughn diagnosed “severe degeneration of the L5-S1 disc” and recommended that appellant continue working with restrictions. The Board notes that the Office accepted appellant’s claim for lumbar strain due to the June 9, 1994 employment injury. The Office did not accept appellant’s claim for any other condition and it is appellant’s burden to establish causal relationship for conditions not accepted by the Office.³ In the instant case appellant has not submitted a rationalized medical opinion establishing that her degenerative disc disease is causally related to her accepted employment injury.

In a form report dated May 11, 1996, Dr. Vaughn diagnosed severe degeneration of the L5-S1 disc and checked “yes” that the condition was caused or aggravated by employment. However, the opinion of a physician on causal relation which consists only of checking “yes” to the form’s question of whether appellant’s condition was related to the history as given, without any explanation or rationale, has little probative value and is insufficient to establish causal relation.⁴

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant’s own belief that there is causal relationship between her claimed condition and her employment.⁵ To establish causal relationship, appellant must submit a physician’s report in which the physician reviews the employment factors identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination of appellant and her medical history, state whether the employment injury caused or aggravated appellant’s diagnosed conditions and present medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to discharge her burden of proof.

³ *Charlene R. Herrera*, 44 ECAB 361, 370 (1993).

⁴ *Robert J. Krstyen*, 44 ECAB 227 (1992).

⁵ *Donald W. Long*, 41 ECAB 142 (1989).

The decision of the Office of Workers' Compensation Programs dated May 29, 1996 is hereby affirmed.

Dated, Washington, D.C.
August 4, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member