

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARSHA D. BERGER and DEPARTMENT OF VETERANS AFFAIRS,  
SEATTLE VETERANS ADMINISTRATION HOSPITAL, Seattle, Wash.

*Docket No. 97-120; Submitted on the Record;  
Issued December 14, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability commencing March 1991 causally related to her October 1990 employment injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to establish that she sustained a recurrence of disability commencing March 1991 causally related to the October 1990 employment injury.

Appellant began working for the employing establishment as a handicapped employee on June 26, 1989 and was limited to part-time work due to her handicap which resulted from a nonfederal work-related plane crash on August 31, 1975. Her handicap consisted of chronic back pain secondary to a back injury and related fusion she underwent on September 24, 1975 for a T12 fracture. As a result of the airplane crash, appellant also had fractures in her left tibia, right fibula, right eleventh rib and had ankle ligament disruption. Appellant underwent additional fusion from T12 to T2 in 1977. She subsequently worked for intermittent periods but returned to full-time employment on January 2, 1991. Appellant missed work from March 1 to March 17, 1991, worked half days from March 18 through March 21, 1991 and was hospitalized from March 22 to 27, 1991 for aseptic meningitis. She returned to part-time work on July 1, 1991 and on July 5, 1991 she completed a notice of resignation effective July 19, 1991. On or around July 5, 1991 appellant began a job as a part-time employee at a crisis hot line but was discharged after two months and began collecting unemployment benefits. On August 9, 1991 the Office of Workers' Compensation Programs accepted appellant's claim for temporary aggravation of post laminectomy syndrome causing partial time loss from work from October 17 through December 31, 1990.<sup>1</sup>

On May 14, 1992 appellant filed a claim for a recurrence of disability, Form CA-2a, commencing in March 1991 causally related to the November 27, 1990 employment injury.<sup>2</sup>

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<sup>1</sup> Appellant filed a claim for her meningitis, No. A14-264776, which was rejected.

<sup>2</sup> Appellant's claim for an occupational disease, Form CA-2, filed on November 27, 1990 stated that she became aware her condition was work-related on February 1990.

Appellant stated that upon returning to part-time work, she had problems sitting for long periods of time due to constant back pain and the aseptic meningitis which exacerbated her condition. By decision dated December 7, 1993, the Office denied the claim, stating that the medical evidence was insufficient to establish a causal relationship between appellant's back condition subsequent to March 1, 1991 and her federal employment. By letter dated June 1, 1994, appellant requested reconsideration of the Office's decision which the Office denied on July 12, 1994. On July 12, 1994 appellant requested reconsideration of the decision which was denied on August 24, 1994. On November 5, 1994 appellant requested reconsideration of the decision. By decision dated September 13, 1995, the Office denied appellant's request, stating that appellant did not establish that she had a recurrence of any employment-related condition.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which she seeks compensation was causally related to her employment injury.<sup>3</sup> 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.<sup>4</sup> An award of compensation may not be made on the basis of surmise, conjecture or speculation, or on appellant's unsupported belief of causal connection.<sup>5</sup>

Appellant submitted medical reports to support her claim but they either do not address causation or fail to provide a sufficient rationalized opinion explaining how appellant's recurrence of disability is causally related to the October 1990 employment injury. In a report dated July 29, 1991, Dr. James P. Robinson, a Board-certified physiatrist, diagnosed post laminectomy syndrome and low back pain and opined that appellant could return to work part time. Dr. Robinson did not address causation and therefore his opinion is not probative.

In a report dated March 25, 1992, Dr. Patricia Gorai, a Board-certified orthopedic surgeon and appellant's treating physician, stated that appellant was pursuing a permanent partial disability status "presumably related to increasing load in the low back after fusing her upper back." Her opinion does not relate appellant's back pain to her employment and therefore is not probative.

In a report dated May 18, 1993, Dr. Michael Wukelic, a Board-certified orthopedic internist, considered appellant's history of injury and opined that appellant had discomfort in the low back presumably secondary to lack of mobility complicated by kyphosis and chronic lumbar strains status post her surgeries. He did not relate appellant's condition to her employment and therefore his opinion is not probative.

In a report dated June 14, 1993, Dr. Gorai opined that "it was hard" to determine the difference between appellant's disability prior to the aggravation of the claim at the employing establishment and stated that because her pains had persisted despite orthopedic and physiatry attempts and family practice visits, she recommended a disability assessment by an orthopedist,

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<sup>3</sup> *Dominic M. DeScala*, 37 ECAB 369 (1986).

<sup>4</sup> *Louise G. Malloy*, 45 ECAB 613, 617 (1994).

<sup>5</sup> *Ausberto Guzman*, 25 ECAB 362 (1974).

neurologist and psychiatrist. Dr. Gorai was unable to conclusively state that appellant's current condition was due to her employment and did not provide a rationalized opinion establishing the requisite causation.

In a report dated August 13, 1993, Dr. Reginald Q. Knight, a Board-certified orthopedic surgeon, considered appellant's history of injury, performed a physical examination, and diagnosed, *inter alia*, chronic mechanical low back pain secondary to degenerative disc disease and biomechanical derangement secondary to hyperthoracic kyphosis and hyperlumbar lordosis. He opined:

“In my view, the patient is a candidate for permanent partial disability due to post-traumatic injury and resultant and spinal reconstruction as it related to the work-related injury of 1975, *i.e.*, the plane crash and spinal fracture, and the subsequent exacerbation of that initial injury through the employing establishment in 1990.”

Dr. Knight opined that appellant's condition was related, in part, to a 1975 injury and that appellant had an exacerbation of that injury at work in 1990 but he did not provide specific details on the exacerbation or provide a rationalized opinion as to how her condition resulted from that exacerbation. His opinion is therefore not probative.<sup>6</sup>

In a report dated October 21, 1993, Dr. Aleksandra M. Zietak, a physiatrist, considered appellant's history of injury, performed a physical examination and diagnosed, *inter alia*, chronic pain syndrome, strong illness, disability and entitlement conviction and chronic depression. She stated that there were many inconsistencies on examination and appellant might be using narcotic analgesics to substantiate her disability. Dr. Zietak stated that appellant was “fairly physically fit.” She stated that “it appeared” that appellant had a strong sense of entitlement and was using her alleged injury for secondary financial gain. Further, Dr. Zietak “question[ed]” whether an injury actually occurred at the employing establishment and, if it did, she opined that it most likely resulted only in a temporary setback. Her opinion indicated that she did not believe appellant had a disability related to her employment.

In a report dated October 25, 1993, Dr. Robinson, who dictated but did not read or sign the report, noted that appellant unsuccessfully tried to work in July 1991. He stated that he had no information more current than November 1991 and was therefore unable to describe appellant's back condition or state whether she had any long-term adverse effects that might be related to her work during 1990 and 1991. His opinion is not probative because he was unable to relate appellant's back condition to her employment.

In a report dated July 13, 1994, Dr. Robinson noted that he had resumed treatment of appellant on May 11, 1994 and that she continued to have very long-standing low back pain related to her airplane crash in 1975 and possibly post-traumatic stress disorder dating back to the 1975 airplane accident. He stated that he did not have records of a specific injury that appellant sustained on the job but “it appear[ed] that the job was simply too demanding on her back so that her preexisting condition was aggravated.” He stated that appellant could work part time in July 1991 because he felt that the strain associated with full-time employment was more

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<sup>6</sup> See Louise G. Malloy, *supra* note 4 at 617.

than her back could tolerate. Dr. Robinson opined that he saw no evidence of secondary gain as a factor in her being out of the work force and that appellant had made an excellent effort to continue in the work force but was unable to continue. His opinion that he knew of no specific injury that appellant sustained on the job does not establish that appellant sustained a recurrence of disability. Further, his statement that her preexisting condition was aggravated because her job was simply too demanding on her back does not constitute a rationalized medical opinion establishing causation as it does not describe the specific conditions which aggravated appellant's back and does not explain medically how the aggravation affected appellant's condition. His opinion is therefore too general and does not establish causation.<sup>7</sup>

As appellant has not presented sufficient medical evidence to establish that she sustained a recurrence of disability on March 1991 or that her current back condition is related to her employment, she has failed to meet her burden for establishing her claim.

The decision of the Office of Workers' Compensation Programs dated September 13, 1995 is affirmed.

Dated, Washington, D.C.  
December 14, 1998

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> *Id.*