

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EVETTE D. JEAN and U.S. POSTAL SERVICE,  
POST OFFICE, Anchorage, Alas.

*Docket No. 96-695; Submitted on the Record;*  
*Issued July 14, 1998*

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DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained a recurrence of disability on September 16, 1993 causally related to her April 19, 1979 employment injury; and (2) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's medical benefits.

On April 19, 1979 appellant, then a 26-year-old distribution clerk, sustained a cervical strain and bilateral thoracic outlet syndrome in the performance of duty. She resigned her position at the employing establishment on November 16, 1979.

In a report dated January 28, 1993, Dr. Edward D. Brown, a Board-certified internist, provided a history of appellant's condition, noting that appellant had a history of thoracic outlet syndrome for which she underwent surgery in 1981 and also had a history of cervical spine degenerative disease. He provided findings on examination and diagnosed cervical spine disease, thoracic outlet syndrome, status post bilateral first rib resection and possible carpal tunnel syndrome. He did not indicate that appellant was disabled.

In a report dated April 6, 1993, Dr. R. Charles Ray, a Board-certified orthopedic surgeon, noted that appellant had been experiencing problems with her neck intermittently since 1979 and that she had undergone surgery for thoracic outlet syndrome but continued to have problems. He noted that she currently complained of pain primarily in the midcervical spine with some radiation to her shoulders and forearm. He provided findings on examination and diagnosed cervical strain with mild radicular components. Dr. Ray recommended physical therapy but did not indicate that appellant was disabled for work.

In a report dated October 11, 1993, Dr. Brown provided findings on examination and diagnosed degenerative disc disease, especially at C6-7, chronic myofascial pain syndrome, a history of bilateral thoracic rib resection for thoracic outlet syndrome in February 1991, and a neck injury on April 19, 1979 related to her employment. He indicated that appellant was disabled commencing on September 15, 1993.

In a Form CA-8, claim for continuing compensation on account of disability, received by the Office on October 26, 1993, appellant claimed wage loss commencing on September 16, 1993 and continuing which she attributed to her April 19, 1979 employment injury.

By decision dated March 8, 1994, the Office denied appellant's claim for continuing compensation on the grounds that the medical evidence of record did not establish that her claimed medical condition and disability were causally related to the April 19, 1979 employment injury.

By letter dated January 18, 1994, submitted through her senator, appellant indicated that she was seeking further review of her claim.

By decision dated March 23, 1994, the Office denied appellant's claim for a recurrence of disability causally related to her April 19, 1979 employment injury and also terminated appellant's medical benefits.

By letter dated March 24, 1994, appellant requested an oral hearing before an Office hearing representative.

On October 18, 1994 a hearing was held before an Office hearing representative at which time appellant testified.

By decision dated January 3, 1995, the Office hearing representative affirmed the decisions of the Office dated March 8 and 23, 1994 which denied appellant's claim for a recurrence of disability and also terminated appellant's medical treatment benefits.

By letter dated April 19, 1995, appellant requested reconsideration of the denial of her claim and submitted additional evidence.

In a report dated March 6, 1995, Dr. Brown provided findings on examination and diagnosed degenerative disc disease at C4-5, C5-6, C6-7. He did not indicate that appellant was disabled. Dr. Brown stated:

"It is ... my opinion that [appellant's] history of thoracic outlet syndrome and her cervical neck problems are probably both related, as her thoracic outlet syndrome apparently was surgically corrected, but her neck problems have persisted."

By decision dated June 29, 1995, the Office denied appellant's claim for further merit review.

In a report dated September 18, 1995, Dr. H.S. Reese, a Board-certified orthopedic surgeon, provided a history of appellant's condition, a history of her medical treatment and findings on examination, and diagnosed myofascial strain to the neck and upper back, a history compatible with thoracic outlet syndrome bilaterally, and acceleration of cervical degenerative disc disease, all related to appellant's April 19, 1979 employment injury on a "more a-probable-than-not basis." He did not indicate that appellant was disabled. Dr. Reese stated:

"This examiner is, firstly, quite aware of the fact the [appellant] did not have her first imaging study of her neck with [magnetic resonance imaging] until 1990.

This examiner is also aware that [appellant] had her first positive [electromyogram] in 1993. Nevertheless, this examiner is fully familiar with this worker and the pain pattern with which she presents. This is the exact same pain pattern that was noted in 1979 and has existed to the present, waxing and waning in intensity at various times.”

By decision dated October 23, 1995, the Office denied modification of its January 3, 1995 decision.

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a recurrence of disability on September 16, 1993 causally related to her April 19, 1979 employment injury.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.<sup>1</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 the employment injury and supports that conclusion with sound medical rationale.<sup>2</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>3</sup>

The record shows that appellant sustained a cervical strain and thoracic outlet syndrome on April 19, 1979 in the performance of duty. Appellant subsequently alleged that she sustained a recurrence of disability on September 16, 1993 which she attributed to her April 19, 1979 employment injury and she submitted evidence in support of her claim.

In a report dated January 28, 1993, Dr. Brown, a Board-certified internist, provided a history of appellant’s condition, noting that appellant had a history of thoracic outlet syndrome and of cervical spine degenerative disease. He did not indicate that appellant was disabled. Therefore this report does not establish that appellant had a recurrence of disability causally related her April 19, 1979 employment injury.

In a report dated April 6, 1993, Dr. Ray, a Board-certified orthopedic surgeon, noted that appellant had been experiencing problems with her neck intermittently since 1979 and that she had surgery for thoracic outlet syndrome but continued to have problems. He recommended physical therapy but did not indicate that appellant was disabled for work. As he did not find that appellant was disabled, this report is not sufficient to support appellant’s claim of an employment-related recurrence of disability.

In a report dated October 11, 1993, Dr. Brown provided findings on examination and diagnosed degenerative disc disease especially at C6-7, chronic myofascial pain syndrome, and history of bilateral thoracic rib resection for thoracic outlet syndrome in February 1991, and a

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<sup>1</sup> *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

<sup>2</sup> *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

<sup>3</sup> *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

neck injury on April 19, 1979 employment injury. He indicated that appellant was disabled commencing on September 15, 1993 but he did not explain the cause of appellant's disability and therefore this report is not sufficient to discharge appellant's burden of proof.

In a report dated March 6, 1995, Dr. Brown provided findings on examination and diagnosed degenerative disc disease at C4-5, C5-6, C6-7. He did not indicate that appellant was disabled. Therefore, this report is not sufficient to establish that appellant sustained an employment-related recurrence of disability.

In a report dated September 18, 1995, Dr. Reese, a Board-certified orthopedic surgeon, provided a history of appellant's condition, a history of her medical treatment and findings on examination, and diagnosed myofascial strain to the neck and upper back, thoracic outlet syndrome, and acceleration of cervical degenerative disc disease related to appellant's April 19, 1979 employment injury on a "more a-probable-than-not basis." However, he did not indicate that appellant was disabled. Therefore, this report does not support appellant's claim for a recurrence of disability.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that his condition was aggravated by his employment is sufficient to establish causal relationship.<sup>4</sup> Appellant failed to submit rationalized medical evidence establishing that her claimed recurrence of disability was causally related to the accepted employment injury and, therefore, the Office properly denied her claim for compensation.

The Board further finds that the Office has not met its burden of proof in terminating appellant's medical benefits.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>5</sup> The Office may not terminate medical benefits without establishing that the medical condition ceased or that it was no longer related to the employment.<sup>6</sup>

In this case, the record shows that the Office continued to pay for medical treatment for appellant's back problems through 1994 at which time it terminated appellant's medical benefits in its March 23, 1994 decision.

In a report dated March 6, 1995, Dr. Brown provided findings on examination and diagnosed degenerative disc disease at C4-5, C5-6, C6-7. Dr. Brown stated:

"It is ... my opinion that [appellant's] history of thoracic outlet syndrome and her cervical neck problems are probably both related, as her thoracic outlet syndrome apparently was surgically corrected, but her neck problems have persisted."

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<sup>4</sup> See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

<sup>5</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>6</sup> *Id.*

As Dr. Brown's report indicated that appellant still had cervical problems related to the 1979 employment injury, this report does not support the Office's decision to terminate medical benefits.

In a report dated September 18, 1995, Dr. Reese stated that appellant was still experiencing pain which was related to her 1979 employment injury. He provided a history of appellant's condition, a history of her medical treatment and findings on examination, and diagnosed myofascial strain to the neck and upper back, a history compatible with thoracic outlet syndrome bilaterally, and acceleration of cervical degenerative disc disease, all related to appellant's April 19, 1979 employment injury on a "more probable-than-not basis." He did not indicate that appellant was disabled. Dr. Reese stated that this was the same pain pattern that was noted in 1979 and had existed to the present, waxing and waning in intensity at various times. As Dr. Reese opined that appellant was still experiencing residuals of her 1979 employment injury, this report does not support the Office's decision to terminate her medical benefits.

As there is no medical evidence of record which establishes that appellant's accepted medical conditions stemming from her 1979 employment injury had resolved, the Office has not met its burden of proof in terminating appellant's entitlement to medical benefits.

The October 23 and June 29, 1995 decisions of the Office of Workers' Compensation Programs are affirmed as to the issue of recurrence of disability but are reversed as to the termination of appellant's medical benefits.

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

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member