

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHARON ROLLINS and DEPARTMENT OF THE NAVY,
NORFOLK NAVAL SHIPYARD, Portsmouth, Va.

*Docket No. 96-633; Submitted on the Record;
Issued March 25, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

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 11, 1985 employment injury.

In this case, the Office of Workers' Compensation Programs accepted that appellant sustained a low back strain due to her December 11, 1985 employment injury and authorized compensation benefits.¹

On September 7, 1988 appellant filed a claim for recurrence of disability alleging that she sustained a recurrence of disability causally related to her December 11, 1985 employment injury.

By decision dated January 30, 1989, the Office denied appellant's claim finding that she had failed to establish a causal relationship between her employment-related injury and the claimed recurrence of disability.

On June 9, 1993 appellant filed a second claim for a recurrence of disability sustained in September 1991. In support of her claim, appellant submitted a November 12, 1991 medical report from Dr. Glenn Nichols, appellant's treating physician and a Board-certified orthopedic surgeon, who demonstrated a familiarity with appellant's 1985 history of injury, while stating that, in September 1991, she had sustained severe lower back strain as a result of bending to pick-up some raked leaves in her back yard. He diagnosed chronic lumbar strain.

By decision dated October 7, 1993, the Office denied appellant's claim for failure to establish a causal relationship between the injury and claimed disability. The Office found that

¹ Appellant returned to work on January 27, 1986, but was terminated from her employment on February 21, 1986 due to the expiration of her appointment.

appellant failed to offer the necessary rationalized medical opinion evidence to establish that her disability was causally related to the accepted employment injury.

Appellant requested reconsideration on January 10, 1994, and submitted a deposition dated December 16, 1993 from Dr. Nichols. In his deposition, he demonstrated a familiarity with her history of injury and stated that he first treated appellant in October 1991 for acute back pain caused by lifting a 2- to 3-pound bag of leaves. He noted that appellant had a history of intermittent pain over the years subsequent to her 1985 employment-related injury which precluded her from participating in strenuous activities. Dr. Nichols referred to his October 1993 report wherein he stated that appellant had sustained a severe extension injury when she fell back from a ladder without any means of arresting her fall. He stated that the combination of gravity and appellant's weight contributed to her severe extension injury. Dr. Nichols then distinguished an extension injury from a simple back sprain which can be caused by lifting a heavy object. In those cases, after the immediate onset of pain, a person would release the heavy object. This is distinguishable from appellant's extension injury where there was no mechanism available to lessen the degree of her injury. He doctor noted that appellant had fallen back from a ladder, catching her feet on the steps, and hung without an arresting support until she apparently blacked out and fell to the floor.

Dr. Nichols stated that appellant's intermittent pain spasms subsequent to the injury were caused by the body's own attempt to isolate pain to the strained area. He explained that muscles will tighten to prevent the injured part of the body from moving and therefore appellant's intermittent spasms were attributable to her employment-related injury. Dr. Nichols noted that it is common for a severe significant soft tissue injury to not heal properly which results in abnormal ligament scar tissue or muscle which are susceptible to fatigue, cold or strenuous activity. These conditions cause inflammation and pain in the scar tissue. He indicated that in appellant's case, any activity that would aggravate the back would cause inflammation, pain and back spasms which would require emergency care treatment. Based on periodic examinations, he found that appellant had constant low back pain and a left sided sacroiliac joint type pain. Her range of motion was severely restricted. Dr. Nichols concluded that, given appellant's history of injury in 1985 and his treatment history since 1991, appellant's work-related injury was the cause of her continued back pain. He noted that her back condition was permanent and that she will always have pain and some disability.

By decision dated April 22, 1994, the Office denied modification of its October 7, 1993 decision.

Appellant requested reconsideration on December 13, 1994, and submitted a medical report dated October 17, 1994 from Dr. Nichols.

By decision dated January 18, 1995, the Office denied modification of its prior decisions.

Appellant requested reconsideration on July 11, 1995 and submitted a June 28, 1995 medical report from Dr. Nichols.

By decision dated September 26, 1995, the Office denied reconsideration on the grounds that the evidence submitted was repetitive and insufficient to warrant review of the January 18, 1995 decision.

The Board finds that this case is not in posture for decision.

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 the compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a qualified physician who, on the basis of 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 reasoning.²

In this case, appellant attributed her recurrence of disability to her accepted employment injury of low back strain. In support of her claim, appellant submitted a deposition and several medical reports from Dr. Nichols, a Board-certified orthopedic surgeon. In his deposition dated December 16, 1993, he stated that appellant had sustained a severe extension injury to her lower back in October 1985 which became aggravated by her lifting a bag of leaves in September 1991. Dr. Nichols noted that while appellant continued to complain of symptoms since her 1985 injury, he had not reviewed her prior medical records to ascertain appellant's findings between 1985 and 1991.

Although the medical evidence submitted by Dr. Nichols is not sufficient to meet appellant's burden of proof, this medical evidence raises an uncontroverted inference of causal relationship between appellant's medical condition and her accepted employment injury and is sufficient to require further development of the case record by the Office.³

On remand, the Office should further develop the medical evidence by referring appellant and a statement of accepted facts to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether appellant's medical condition is causally related to her accepted employment injury. After such development of the case record as the Office deems necessary, the Office should issue an appropriate decision.

² *Lourdes Davila*, 45 ECAB 139 (1993); *Louise G. Malloy*, 45 ECAB 613 (1994).

³ *John J. Carlone*, 41 ECAB 354 (1989).

The decisions of the Office of Workers' Compensation Programs dated September 26 and January 18, 1995 are hereby set aside and remanded for further development consistent with this opinion.

Dated, Washington, D.C.
March 25, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member