

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARCIA RANKINS and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS HOSPITAL, North Little Rock, Ark.

*Docket No. 96-1379; Submitted on the Record;  
Issued March 6, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a recurrence of disability due to her accepted December 11, 1992 employment injury.

In the present case, the Office of Workers' Compensation Programs has accepted that appellant, a nurse, sustained a lumbar strain on December 11, 1992 while moving a patient. Appellant's treating physician, Dr. John L. Wilson, a Board-certified orthopedic surgeon, noted on December 30, 1992 that examination on that day of appellant's lumbar spine revealed a very mild muscle spasm. Dr. Wilson advised appellant to return to her normal work activities. Appellant filed notices of recurrence of disability on October 18, 1993 and May 8, 1995 alleging that her back conditions were recurrences of the accepted injury. The record does not indicate that appellant stopped work due to her back condition in 1993, but rather that she resumed medical treatment for her back in September 1993. Appellant did stop work in April 1995.

The Office denied appellant's claim for recurrence of disability on February 7, 1996 on the grounds that the evidence of record failed to demonstrate a causal relationship between the accepted work injury and the claimed condition or disability.

The Board has duly reviewed the case record and finds that appellant has not established a recurrence of disability causally related to the accepted December 11, 1992 employment injury.

A recurrence of disability is a subsequent period of disability which is caused by residuals of a previously accepted employment injury. Where an employee 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 medical evidence that she is disabled, and

that the recurrence of the disabling condition is causally related to the accepted employment injury.<sup>1</sup>

In the present case, the evidence of record establishes that appellant was released by her treating physician, Dr. Wilson to return to her regular duties on December 30, 1992. Appellant was again seen by Dr. Wilson on September 17, 1993 at which time he noted that appellant had a recent exacerbation of back pain without any injury, that appellant had had "mild problems off and on since her injury, and this is merely an exacerbation." Dr. Wilson concluded that appellant had no objective evidence of impairment. Appellant was again seen for back pain and right leg pain by Dr. Wilson on October 21, 1993, August 16 and October 5, 1994, February 13 and April 10, 1995. In a narrative report dated April 25, 1995, Dr. Wilson stated that appellant had been seen on April 10, 1995 with acute exacerbation of low back pain and bilateral leg pain. He stated that appellant had been followed in the past for recurrent sciatic on the right. Dr. Wilson noted that "at this time, she had bent over to dry herself off after coming out of the shower and had severe back, buttock, and bilateral leg pain. She could hardly move without assistance." He explained that appellant had recurring pain and was admitted to the hospital for intensive physical therapy on April 12, 1995. Dr. Wilson reported that thereafter on April 14, 1995 a magnetic resonance imaging study revealed a huge disc at L4-5, which was removed by laminectomy on April 18, 1995.

Dr. Wilson has never explained, however, with medical rationale, why the lumbar strain for which he treated appellant in December 1992 and released appellant to regular duty on December 30, 1992 would have caused the condition requiring medical treatment commencing in September 1993 and the herniated disc diagnosed in April 1995.

While the record indicates that appellant had symptoms of back and right leg pain, for which she commenced occasional treatment with Dr. Wilson in September 1993, Dr. Wilson has never explained with medical rationale why the accepted December 1992 strain, which he had noted resolved to the point where appellant could return to regular duties, would progress to cause a chronic condition requiring treatment beginning in September 1993. Dr. Wilson failed to explain why physiologically the accepted condition caused the condition for which he treated appellant commencing in September 1993 and the herniated disc some two and a half years later. The medical evidence of record is not sufficient to establish causal relationship between the accepted injury and appellant's conditions after September 1993 as there is no medical report of record which is based upon a complete and accurate factual and medical history concludes that appellant's conditions as of September 1993 and after April 1995 were causally related to the accepted injury and supports that conclusion with sound medical rationale.<sup>2</sup>

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<sup>1</sup> See *Lourdes Davila*, 45 ECAB 139 (1993).

<sup>2</sup> See *Louise G. Malloy*, 45 ECAB 613 (1994).

The decision of the Office of Workers' Compensation Programs dated February 7, 1996 is hereby affirmed.

Dated, Washington, D.C.  
March 6, 1998

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member