

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NINA HERNANDEZ and DEPARTMENT OF ENERGY,
ALBUQUERQUE OPERATIONS OFFICE, Albuquerque, N.M.

*Docket No. 96-1160; Submitted on the Record;
Issued May 8, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that her cervical and jaw conditions are causally related to her accepted January 23, 1992 employment injury.

The Office of Workers' Compensation Programs has accepted that appellant, an accountant, sustained lumbar strain and aggravation of a preexisting low back condition on January 23, 1992 while carrying a typewriter. Appellant filed a notice of traumatic injury on February 11, 1992 wherein she described the incident as follows: "I was carrying the typewriter and almost dropped it, I grabbed it and rested it on my knees till I got a better hold causing strain to the abdomen and knees. I did n[o]t drop it. Suspected hernia both side of abdomen, pain low on left side and all over the right side but intense on low right. I think knees are OK." Appellant did not stop work following this incident and medical care for the accepted conditions was authorized for a period of 180 days. The record indicates that appellant underwent bowel surgery on February 14, 1992 which appellant has explained was not causally related to the accepted injury.

On May 11, 1994 appellant filed a notice of recurrence of disability indicating that she had experienced intermittent neck pain since the 1992 injury, that she had not stopped work, but had missed work due to doctor and dental appointments. In a letter to the Office dated May 9, 1994, appellant explained that following the 1992 injury she slowly realized that the pain she experienced following the incident was back pain, not abdominal hernia pain. Appellant also stated that she had a history of TMJ problems and had received treatments for correction of this condition since 1969. Appellant stated that one of the symptoms of her bite being out of balance was strained muscles and tendons in the neck. Appellant stated that in April 1992 she had neck and ear pain so she sought dental treatment to balance the bite. Appellant stated that during the summer 1992 her neck pain worsened and by November 1992 her neck hurt and her left arm was numb. Appellant stated that her neck condition continued and in April 1994 she was informed by Dr. Robert W. Benson, a Board-certified orthopedic surgeon, that her neck condition was aggravated by the 1992 employment incident.

The Office denied appellant's notice of recurrence of disability by decision dated June 9, 1994. The Office denied an application for review on September 27, 1994 and denied modification of the June 9, 1994 decision on February 7, October 24, 1995 and February 16, 1996.

The Board has duly reviewed the record and finds that appellant has not met her burden of proof to establish a recurrence of disability causally related to her January 23, 1992 employment injury.

The claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.¹

In support of her claim, appellant submitted several reports from her treating physician, Dr. Benson. In a report dated May 10, 1994, Dr. Benson stated that appellant was examined on March 9, 1992 for complaints of low back pain which started when she was carrying a typewriter at work on January 23, 1992. Dr. Benson stated that appellant's pain was in her low back and radiated to her left hip. X-rays at that time revealed narrowing of the L5-S1 disc space and degeneration of the bilateral L5-S1 facet joints. Appellant was diagnosed with low back pain syndrome secondary to low back strain and to her L5-S1 degenerative disc disease and facet joint degeneration. Dr. Benson related that following a back rehabilitation program appellant reported improvement on April 15, 1992, however, that she continued to have some residual low back pain. Dr. Benson also related that appellant started developing some neck pain shortly after her work injury, which initially were minimal, but progressively became worse. He related that as appellant had a preexisting TMJ problem, appellant thought the neck pain and stiffness was due to that condition. Dr. Benson related that on examination on April 25, 1994 appellant was noted to have limitation of motion and tenderness in her neck, x-rays revealed marked spondylitic changes at C5-6 and C6-7 with disc space narrowing and also large anterior and posterior osteophytes and narrowing of the bilateral intervertebral foramina at both levels. Dr. Benson stated that appellant was "felt to have had cervical spondylosis at both C5-6 and C6-7 prior to her work injury of January 23, 1992, but it was felt that her work injury was an aggravating factor to her preexisting cervical spondylosis condition."

In a supplemental report dated May 26, 1994, Dr. Benson reported that he believed appellant suffered a soft tissue sprain in her neck and in her back from her work injury of January 23, 1992. Dr. Benson stated that he further believed that appellant had cervical spondylosis in her neck at both the C5-6 and C6-7 levels prior to her injury of January 23, 1992 that had been asymptomatic until that time, however, the work injury of January 23, 1992 wherein she sustained a neck sprain was an aggravating factor which changed her previously asymptomatic spondylosis into a painful neck condition. Dr. Benson opined in 1994 that he believed appellant had sustained a soft tissue sprain in her neck from her work injury of January 23, 1992.

¹ See *Mark A. Cacchione*, 46 ECAB 148 (1994).

The Board has held that a physician's opinion is not dispositive simply because it is offered by a physician.² To be of probative value to appellant's claim, the physician must provide a proper factual background and must provide medical rationale which explains the medical issue at hand, be that whether the current condition is disabling or whether the current condition is causally related to the accepted employment injury. Where no such rationale is present, the medical opinion is of diminished probative value.³ Dr. Benson provided no medical explanation as to how appellant would have sustained a neck injury as a result of an incident wherein appellant only reported strain to her low back and knees. Dr. Benson also did not provide any medical findings which would substantiate a finding of soft tissue neck strain in April 1992. Furthermore, while Dr. Benson also related that appellant had preexisting cervical spondylosis at C5-7 and he felt her work injury of April 15, 1992 aggravated this condition, Dr. Benson did not provide any medical rationale to support this conclusion. Dr. Benson did not indicate that he had reviewed x-rays or any other studies of appellant's cervical spine, taken prior to the 1992 incident and compare such with studies taken after the incident to ascertain the progression of the condition due to the alleged aggravation. Dr. Benson offered no medical basis for his conclusion and his reports are therefore of limited probative medical value.

Appellant also submitted reports from her dentist, Dr. Ben J. Brabb. In a May 24, 1994 report, Dr. Brabb stated that he had not been able to maintain for appellant a balanced occlusion bite because of neuromuscular imbalances within the muscles of appellant's head, neck and jaw. Dr. Brabb stated that these disorders are orthopedic and neuromuscular conditions and were characterized by the presence of an abnormal maxilomandibular relationship. Dr. Brabb did not causally relate the conditions for which he treated appellant to the accepted injury. The Office record was also received pertaining to treatment appellant received from Dr. Joseph H. Bowers, a specialist in periodontics dating from February 1989. Dr. Bowers does not note treatment pertaining to appellant's employment injury. Dental records were also received from Dr. Paul M. Clifford. Dr. Clifford's records indicate frequent visits by appellant during 1991 and two January 1992 visits, prior to appellant's injury on January 23, 1992, for tooth pain and splint adjustment.

Regarding the evidence of record submitted by appellant's dentists, the Federal Employees' Compensation Act defines the term "physician" to include surgeons, podiatrists, dentists, clinical psychologists, optometrist, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law.⁴ A dentist is licensed to treat conditions of the teeth and oral structure, but does treat conditions of the cervical and lumbar spine. Appellant's dentists opinions are of probative medical value only regarding appellant's TMJ disorder, not appellant's cervical spine disorder.

In a report dated January 13, 1995, Jerry L. Jones, D.D.S. reported that he did not feel that appellant had a current "TMJ" condition, but that appellant had pain of myofascial origin, possibly increased by recruitment of muscles from her upper back and cervical spine area,

² See *Michael Stockert*, 39 ECAB 1186 (1988).

³ See generally *John T. Russell, II*, 46 ECAB 536 (1995).

⁴ 5 U.S.C. § 8101(2).

complicated by chronic bruxism. Dr. Jones offered no opinion regarding the relationship between appellant's condition and the employment incident.

On December 21, 1995 the Office received a report from Dr. Daniel E. Clifford, a dentist. Dr. Clifford related that appellant had been under his care for treatment of temporomandibular dysfunction from December 7, 1987 through July 20, 1995. Dr. Clifford stated that appellant's dysfunction had been stabilized by an intraoral orthotic until an incident occurred on January 23, 1992 when appellant "caught" a typewriter that had dropped or was falling. Dr. Clifford stated that this motion with the resultant whiplike effect on her cervical site and associated musculature caused a misalignment of her cervical spine and an aggravation of her previously existing temporomandibular dysfunction. As a dentist, Dr. Clifford's opinion regarding the cause of appellant's cervical condition is of no medical value. Furthermore, while he has opined that appellant's TMJ disorder was aggravated by the "whiplike effect on her cervical spine" when appellant kept the typewriter from falling, this opinion is also of limited probative value. At the time of the 1992 incident appellant did not report any "whiplike" injury to her cervical area. Appellant has only reported strain to her low back and knees during the January 23, 1992 incident. Dr. Clifford's conjecture regarding the mechanism of appellant's injury is not based upon the factual evidence of record and is therefore of limited medical value.

Dr. Martin B. Kistin, Board-certified in internal medicine, reported on June 15 and July 6, 1994 that he had evaluated appellant in 1991 and 1992 and that appellant was referred to Dr. Calvin Dudley for a second opinion and advised to see an orthopedic surgeon if her symptoms did not improve. Dr. Kistin did not note the conditions for which he treated appellant in 1991 and 1992. In this regard, the Board notes that treatment provided prior to the January 23, 1992 incident could not have been for a condition arising from such incident.

In a report dated October 20, 1994, Dr. Mark D. Erasmus, a Board-certified neurosurgeon, stated that appellant had related a history that after dropping a typewriter she began having neck pain. He stated that this "can be associated only by history. Dr. Erasmus stated that there was nothing on physical examination, since he had not seen appellant before her injury, to allow him to make any association of the injury and her arthritic condition. Dr. Erasmus noted that in view of the fact that appellant had chronic degenerative changes in both the neck and back, it was unlikely that any of those changes were directly related to the typewriter incident, but by history, the symptoms were related. Dr. Erasmus does not provide a medical opinion causally relating appellant's condition to the accepted injury, rather he only notes appellant's own correlation of symptoms. To be of probative medical value, an opinion regarding causal relationship must be based upon medical rationale. The Board has held that the manifestation of symptoms after an employment injury is not sufficient to establish necessary causal relationship.⁵

In a report dated October 26, 1994, Dr. Fredrico Mora, a Board-certified neurosurgeon, noted that appellant related her neck symptomatology to the 1992 work incident wherein she kept a heavy typewriter from falling. He stated that appellant's most prominent symptoms at first were low back complaints, but after awhile the neck symptoms, which were mild at first,

⁵ *Thomas D. Petrylak*, 39 ECAB 276 (1987).

began to increase. Dr. Mora stated that assuming her history of injury to be correct and that appellant had to bend over to forcibly keep the typewriter from falling, her neck symptomatology probably represented aggravation of a preexisting cervical spondylosis, which was seen on x-ray examination. On April 13, 1995 Dr. Mora reported that computerized tomography evaluation showed degenerative changes at C5-7 which were consistent with the previous x-ray examination. Dr. Mora's speculation that "probably" appellant sustained an aggravation of her preexisting cervical condition as a result of the employment incident is not a firm opinion. The Board has long found that such a speculative opinion is of limited medical probative value.⁶ Again, like Dr. Benson, Dr. Mora did not indicate that he had compared studies taken prior to and after the alleged incident to ascertain that the incident had in fact aggravated the preexisting cervical condition. Dr. Mora's opinion that appellant's cervical condition in 1994 was causally related to her January 1992 employment incident is therefore of limited probative medical value.

On May 9, 1995 appellant submitted another notice of recurrence of disability to the record, alleging that her back injury had caused a sleeping disorder. Appellant submitted several reports to the record from Dr. Richard Seligman, Board-certified in internal medicine, dated May 19 and June 8, 1995 which noted that appellant had a sleep disorder, periodic limb movement disorder, which was aggravated by her low back arthritis and which was caused or aggravated by the 1992 employment incident. Appellant also submitted a June 29, 1995 report from Dr. Benson who concluded that appellant's chronic neck and back syndrome following her injury of January 23, 1992 disturbed her sleep to the point that she sought sleep therapy. Dr. Benson concluded that appellant's sleep therapy was directly causally related to her injury of January 23, 1992. The Office has not issued a decision regarding this recurrence of disability and appellant's additional claim that her sleep disorder is causally related to the accepted injury. This issue is therefore not before the Board on this appeal.

Appellant has not met her burden of proof to establish that her cervical and jaw conditions were causally related to the accepted January 23, 1992 employment incident.

⁶ See *Shirley L. Burreston*, 34 ECAB 1154 (1983).

The decisions of the Office of Workers' Compensation Programs dated February 16, 1996 and October 24, 1995 are hereby affirmed.

Dated, Washington, D.C.
May 8, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member