

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUANITA D. JACOBS and U.S. POSTAL SERVICE,
POST OFFICE, Greensboro, N.C.

*Docket No. 96-1645; Submitted on the Record;
Issued May 26, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish that she sustained a recurrence of disability on October 9, 1993 causally related to her August 20, 1991 employment injury.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a contusion to the right knee, a contusion to the back and lumbosacral strain on August 20, 1991. Appellant returned to her regular employment duties on June 29, 1992. On December 16, 1993 appellant alleged that on October 9, 1993 she sustained a recurrence of disability due to her August 20, 1991 employment injury.¹ By decision dated March 14, 1994, the Office denied appellant's claim on the grounds that the evidence did not establish that she sustained a recurrence of disability causally related to her August 20, 1991 employment injury. By decision dated December 6, 1994 and finalized December 8, 1994, an Office hearing representative affirmed the Office's March 14, 1994 decision, and by decision dated January 29, 1996, the Office denied modification of its prior decision.

The Board has duly reviewed the case record and finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability on October 9, 1993 causally related to her August 20, 1991 employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.² This burden includes the necessity of furnishing evidence from a

¹ At the time of the alleged recurrence of disability, appellant was working limited duty due to an unrelated employment injury to her left shoulder.

² *Robert H. St. Onge*, 43 ECAB 1169 (1992).

qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.³

Appellant has not submitted sufficient medical evidence to establish that she sustained a recurrence of disability on October 9, 1993 causally related to her August 20, 1991 employment injury. In support of her recurrence claim, appellant submitted numerous form reports from her attending physician, Dr. Vincent E. Paul, a Board-certified orthopedic surgeon, but his reports are of limited probative value as they contain only a checkmark indicating that the diagnosed condition was due to the history of injury described by appellant. The Board has held that the opinion of a physician on causal relation which consists only of checking “yes” to the form’s question of whether appellant’s condition was related to the history of injury as given, without any explanation or rationale, has little probative value and is insufficient to establish causal relation.⁴

Appellant further submitted progress notes from Dr. Paul. In a progress note dated November 3, 1993, Dr. Paul diagnosed an “[a]cute flare-up of chronic lumbar facet syndrome with multiple trigger points” but did not address the cause of the diagnosed condition. In a progress note dated November 30, 1993, Dr. Paul related that appellant continued to have pain in her middle and lower back and a sore shoulder and noted that all objective tests were normal. In an accompanying letter of the same date, Dr. Paul stated, “[Appellant] is currently having a flare-up of her low back which is an old injury not sustained on-the-job.” Thus, Dr. Paul’s November 3 and 30, 1993 reports do not support appellant’s claim for disability due to her employment injury.

In a progress note dated December 15, 1993, Dr. Paul related that appellant’s back problem was from a workers’ compensation injury. Dr. Paul, however, did not specifically discuss appellant’s employment injury or provide any rationale for his conclusion, and thus his opinion is of little probative value.⁵

In a report dated October 7, 1994, Dr. Paul stated that he treated appellant for her August 1991 employment-related injury to her back and right knee. He related:

“She initially had severe low back pain and as she continued to be treated, her pain in her back improved and developed pain up into her upper back and cervical spine.... She continued to have spasm and tightness in her neck, upper back and low back. It is my feeling, and my office notes confirm this, that all the symptoms I treated her for since her injury on August 21, 1991 are without question a direct result of her work injury.”

³ *Id.*

⁴ *Robert J. Krstyen*, 44 ECAB 227 (1992).

⁵ *See Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

However, Dr. Paul's opinion contains no rationale explaining how, with reference to the specific facts of this case, appellant's employment injury caused her current condition or any disability, and thus his opinion is insufficient to establish her claim.⁶

In a letter dated November 7, 1994, Dr. Paul stated that appellant's office visits from January 10, 1994 onward were due to her "original injury." Dr. Paul did not find appellant disabled or provide more than a conclusory statement regarding causation and thus his finding is of diminished probative value.⁷

In a progress note dated October 4, 1995, Dr. Paul noted that appellant had returned to full-time employment. He opined that her back condition was due to her August 20, 1991 employment injury, because the injury made her susceptible to flare-ups and reinjuries. However, Dr. Paul did not adequately explain the medical mechanics of how appellant's August 20, 1991 employment injury led to a recurring back condition or disability or relate any specific period of disability on or after October 9, 1993 to her accepted employment injury.

Moreover, the remaining reports of record, by Dr. Catherine A. Weymann, a Board-certified neurologist, and Dr. Paul D. Long, a Board-certified orthopedic surgeon, support a finding that appellant's current condition and disability are not due to her August 20, 1991 employment injury. In a report dated February 1, 1994, Dr. Weymann diagnosed unclassifiable chronic pain syndrome with no functional limitations as all neurological tests were within normal. Dr. Weymann stated:

"It is difficult to assess the connection between the 1991 injury as she had over a year of complete recovery in between according to her from March 1992 to June 1993, implying that she had full recovery. The second incident was of a different nature but it seemed to trigger the same symptoms she had initially, so in a second-hand way it may be related, but I find it difficult to assign an exact cause and effect in this case."

In a report dated February 3, 1994, Dr. Paul D. Long, a Board-certified orthopedic surgeon, discussed appellant's history of injury and the absence of objective findings of the cervical, thoracic and lumbar spine. He diagnosed healed thoracic and lumbar muscle strain and healed left shoulder muscle strain. Dr. Long found that appellant could return to her regular employment without restrictions.

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 her condition was aggravated by her employment is sufficient to establish causal relationship.⁸ Appellant failed to submit rationalized medical evidence

⁶ *Connie Johns*, 44 ECAB 560 (1993).

⁷ *Id.*

⁸ *See Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

establishing that her claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied her claim for compensation.

The decision of the Office of Workers' Compensation Programs dated January 29, 1996 is hereby affirmed.

Dated, Washington, D.C.
May 26, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member