

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSIE J. EASON and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Birmingham, Ala.

*Docket No. 97-209; Submitted on the Record;
Issued November 25, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant established that she sustained recurrences of disability on May 10 and October 9, 1991 and July 15, 1992; and (2) whether appellant's back condition after April 18, 1994 is causally related to employment factors.

The Board has duly considered the case record in the present appeal and finds that this case is not in posture for decision.

The facts in this case indicate that on May 5, 1989 appellant, then a 44-year-old licensed practical nurse, sustained an employment-related lumbosacral strain.¹ She stopped work that day and returned to regular duty on May 22, 1989. She subsequently filed claims alleging that she sustained recurrences of disability on May 10 and October 9, 1991 and July 15, 1992. She was off work from May 6 to 31, October 10 to 25, 1991 and July 15 to 31, 1992. By letters dated June 16 and September 2, 1993, the Office informed appellant of the type of information needed to accept her claim.

On March 9, 1994 appellant filed a claim, alleging that she sustained a back injury at work on March 8, 1994 when she lifted a heavy container.² Regarding appellant's recurrence claims, by decision dated March 10, 1994, the Office found that appellant's back condition was not causally related to the May 5, 1989 employment injury. Following appellant's request, a hearing was held on November 18, 1994 and, in a February 1, 1995 decision, an Office hearing representative affirmed the prior decision, finding that appellant failed to establish that her condition after March 10, 1994 was causally related to the May 5, 1989 employment injury. Appellant requested reconsideration and, by decision dated April 21, 1995, the Office denied the

¹ This case was adjudicated by the Office of Workers' Compensation Programs under number 060463393.

² This was adjudicated by the Office under number 060593928.

request. On July 14, 1995 appellant, through counsel, requested a hearing and, in an August 4, 1995 decision, the Office denied the request as untimely filed.

Regarding the March 8, 1994 injury, by decision dated February 27, 1995, the Office accepted that appellant had sustained an injury as alleged which had resolved as of April 18, 1994. On October 18, 1995 the two cases were consolidated and, in a June 26, 1996 decision, modification of the prior decisions was denied. The instant appeal follows.

The relevant medical evidence includes a July 24, 1992 report from Dr. Scott Morris, an orthopedic surgeon, who provided a second opinion evaluation for the Office and noted appellant's history of injury. He advised that appellant suffered an acute exacerbation of chronic lumbosacral strain in May 1991 which was aggravated by bending, stooping and lifting at work and concluded that the aggravation had not ceased. In a November 9, 1993 report, an Office medical adviser stated that appellant's condition was due to her degenerative spine disease and not to the May 5, 1989 employment injury. Dr. Dewey Jones, III, appellant's treating Board-certified orthopedic surgeon, provided reports covering the period 1982 forward.³ In a July 27, 1992 office note, he advised that appellant "just had a flare-up of her chronic mechanical pain." In a September 30, 1993 office note, Dr. Jones diagnosed degenerative disc disease and, by report dated October 18, 1993, checked the "yes" box, indicating that appellant's condition was employment related, stating "according to patient history and results of previous examinations." By letter dated October 13, 1994, Dr. Jones advised that appellant's back condition was causally related to the March 8, 1994 employment injury and, in a February 21, 1995 report, diagnosed chronic mechanical back pain secondary to injury. By letter dated April 6, 1995, he advised that appellant had an ongoing back problem which dated to her May 5, 1989 employment injury with specific recurrences in May and October 1991, July 1992, September 1993 and March 1994. Dr. Jones stated the electromyography demonstrated a right S1 radiculopathy and that magnetic resonance imaging revealed degenerative disc change at L3-4 and L4-5 with minimal bulges present. In a June 29, 1995 letter, Dr. Jones reiterated this conclusion, stating:

"[Appellant] has an ongoing chronic problem with her back with remissions and exacerbations. She has been treated conservatively with medication, physical therapy, epidural blocks and TENS [transcutaneous electrical nerve stimulator] unit.

"I think this injury subsequently caused leg weakness and development of degenerative joint disease. Her present medical condition of low back, hip and leg pain is caused by the injury of May 5, 1989, and intermittent treatments from May 6, 1991 through July 31, 1992 are related to this injury.... I think [appellant] can expect chronic ongoing mechanical back pain, as stated, with remissions and exacerbations."

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 recurrence of the disabling condition for which compensation is

³ Dr. Jones also provided additional reports that are not probative regarding the cause of appellant's condition.

sought is causally related to the accepted employment injury.⁴ This burden includes the condition necessity of furnishing evidence from a 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.⁵

Causal relationship is a medical issue,⁶ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷

Initially the Board notes that in the February 1, 1995 decision, the Office hearing representative stated that appellant had not entered a formal claim for leave utilized during the period May 6, 1991 and July 31, 1992, continuing, and that if she were to file such a claim, the Office should consider the July 24, 1991 second opinion evaluation provided by Dr. Morris. The Board, however, notes that appellant had submitted three recurrence claims covering this period, and had also submitted a CA-7 claim for continuing disability with documentation regarding the periods in question. Appellant's treating physician, Dr. Jones, continued to advise that her condition was employment related. Furthermore, Dr. Morris' July 24, 1991 second opinion evaluation was supportive of her recurrence claim at that time. Appellant, therefore, established that her disability from May 6 to 31, 1991 was employment related.

Regarding appellant's condition subsequent to that time, while Dr. Jones' reports do not contain sufficient detail and rationale to establish that her back condition is causally related to the May 5, 1989 employment injury or employment factors, the fact that the medical evidence contains deficiencies preventing appellant from discharging her burden does not mean that it should be completely disregarded by the Office. It merely means that the probative value of the evidence is diminished.⁸ It is well established that proceedings under the Federal Employees' Compensation Act⁹ are not adversarial in nature,¹⁰ and while the claimant has the burden to establish causal relationship, the Office shares responsibility in the development of the

⁴ *Kevin J. McGrath*, 42 ECAB 109 (1990); *John E. Blount*, 30 ECAB 1374 (1974).

⁵ *Frances B. Evans*, 32 ECAB 60 (1980).

⁶ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁷ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *See John J. Carlone*, 41 ECAB 354 (1989). The Board notes that the case record does not contain a medical opinion contrary to appellant's claim.

⁹ 5 U.S.C. § 8101 *et seq.*

¹⁰ *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

evidence.¹¹ The case must, therefore be remanded for the Office to refer appellant, along with an appropriate statement of accepted facts, to an appropriate specialist for a rationalized medical opinion on the issue of whether her back condition was either caused or aggravated by employment factors. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated June 26, 1996 is hereby vacated and the case is remanded to the Office for proceedings consistent with this opinion.

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

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

¹¹ See *Dorothy L. Sidwell*, 36 ECAB 699 (1985).