

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTY J. ALBERT and DEPARTMENT OF THE NAVY,
NAVAL SUPPORT ACTIVITY, New Orleans, La.

*Docket No. 97-549; Submitted on the Record;
Issued November 24, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established a recurrence of disability commencing December 28, 1992, causally related to her June 26, 1990 employment injury.

In the present case, the Office of Workers' Compensation Programs accepted that appellant, a clerk-typist, sustained a right shoulder sprain in the performance of duty on June 26, 1990 while lifting several file folders. Appellant returned to work and then resigned from federal employment on December 28, 1992.¹ On September 19, 1994 appellant filed a notice of recurrence of disability commencing December 28, 1992.

By decision dated January 12, 1995, the Office denied the claim for a recurrence of disability commencing December 28, 1992. In a decision dated November 20, 1995, an Office hearing representative affirmed the denial. Appellant requested reconsideration, and by decisions dated March 14 and September 24, 1996, the Office determined that the evidence was insufficient to warrant merit review of the claim.

The Board has reviewed the record and finds that appellant has not established a recurrence of disability commencing December 28, 1992.

A person 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 she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the

¹ The reason for resignation was "refusal of medical treatment" according to a standard form 50-B dated January 8, 1993.

disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

In the present case, the record indicates that appellant resigned her federal employment on December 28, 1992. The employing establishment indicated that appellant had been subject to suspensions for unsupported absences and falsification of a medical excuse slip during 1992 and denied any refusal to grant sick leave for appropriate treatment. With respect to a claim for a recurrence of disability, the issue presented is whether appellant has established that she had a disabling condition causally related to her employment injury commencing on December 28, 1992. The Board finds that the medical evidence is not sufficient to establish the claim in this case.

The record contains a treatment note dated January 19, 1993 from Dr. Alain F. Cracco, an orthopedic surgeon, stating that appellant complained of headaches and a knot on the top of her right shoulder. He stated that appellant had resigned from work on December 28, 1992 “because of interference with physical therapy and it was a hassle to get to physical therapy.” Dr. Cracco noted that appellant should avoid work above the shoulder, without specifically indicating whether appellant was disabled for work and explaining whether the disabling condition was causally related to the employment injury.

In a report dated May 24, 1993, Dr. Cracco noted that appellant had complaints of right shoulder discomfort, but her main concern was over seizures which had caused her to bite her tongue and lose speech control. He opined that appellant could not return to work. Dr. Cracco did not, however, provide a reasoned opinion relating any disability to the employment-related shoulder injury. In a form report (Form CA-20) dated June 17, 1993, Dr. Cracco diagnosed myofascial inflammation and checked a box “yes” that the condition was causally related to employment. The diagnosis of myofascial inflammation has not been accepted as employment related and the checking of a box “yes” in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.³

Dr. Cracco also submitted a brief report dated July 23, 1996, stating that appellant had been under his care from December 23, 1991 to December 6, 1995, and during that time had not been discharged. He does not provide any additional explanation or a reasoned opinion on the issues presented.

The Board accordingly finds that appellant has not submitted probative medical opinion evidence establishing that she was disabled on or after December 28, 1992 causally related to her accepted employment injury. Since it is her burden to establish her claim of a recurrence of disability on that date, the Board finds she has not met her burden in this case.

The Board also notes that appellant submitted an October 5, 1995 report from Dr. Daniel J. Trahan, a neurologist. He reported that appellant had been treated for possible seizure disorder, and he further stated, “in my opinion, the Amitriptyline, which she was given

² *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

³ *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

‘for her nerves’ due to a work-related injury, may have precipitated or triggered a seizure, but did not primarily cause a seizure, as I feel with this type of EEG [electroencephalogram] abnormality, she most likely had an underlying seizure tendency, which the Amitriptyline activated.” The Board notes that the record does not establish that the medication referred to by Dr. Trahant was prescribed to treat the employment injury, since Dr. Cracco does not appear to mention the medication in his reports and provides no opinion on this issue. Moreover, he does not provide medical rationale to explain his statement that the medication “may have” precipitated a seizure.⁴ Dr. Trahant’s report is speculative and of diminished probative value and does not establish a seizure condition as a consequential injury of the accepted right shoulder sprain.

The decisions of the Office of Workers’ Compensation Programs dated September 24 and March 14, 1996, and November 20, 1995 are affirmed.

Dated, Washington, D.C.
November 24, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ A speculative opinion as to causal relationship between medication and a condition is of diminished probative value; see *William S. Wright*, 45 ECAB 498 (1994).