

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JANET L. FEINBERG and DEPARTMENT OF THE NAVY,  
CHIEF OF NAVAL EDUCATION & TRAINING, Pensacola, Fla.

*Docket No. 97-567; Submitted on the Record;  
Issued November 25, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability beginning July 11, 1995 causally related to her April 5, 1994 employment injury.

On April 12, 1994 appellant, then a 43-year-old automation clerk, filed a claim for traumatic injury alleging that she sustained cervical strain in her neck and shoulders as a result of a slip and fall at work on April 5, 1994. The Office of Workers' Compensation Programs accepted the claim for cervical strain. She received continuation of pay for intermittent days from April 11 through June 13, 1994.

Appellant submitted treatment records from Dr. John G. Brown, an osteopath, in support of her claim. On April 11, 1994 Dr. Brown stated that appellant was seen for neck, arm, and shoulder pain and a flare up of carpal tunnel syndrome after an accident which occurred on April 5, 1994. Dr. Brown noted that while appellant had no immediate impact, she later experienced "decreased range of motion, increasing pain with radiculopathy in the hands." He diagnosed cervical strain "related to fall at work on April 5, 1994." Dr. Brown subsequently treated appellant on May 9 and May 31, 1994 for neck and back pain "associated with work accident on April 5, 1994."<sup>1</sup> He diagnosed headache, cervical sprain, cervical spondylosis with radiculopathy.

In an April 14, 1994 report, a physical therapist stated that appellant "slipped and fell, landing in a split sitting position at work injuring her neck and upper thoracic region." The treatment notes for appellant's six week course of physical therapy treatment noted treatment for neck pain and cervical strain.

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<sup>1</sup> An undated x-ray of appellant's spine diagnosed cervical strain.

A magnetic resonance imaging (MRI) report of the cervical spine dated May 26, 1994 identified “cervical spondylosis with hypertrophic ridging at [C]4-5 and [C]5-6.”<sup>2</sup>

In a June 16, 1994 report, Dr. A.B. Sisco, a Board-certified neurological surgeon, to whom appellant was referred by Dr. Brown, noted the history of the April 5, 1994 work injury and diagnosed cervical strain and “mild cervical spondylosis centrally located at C4-5 and the right foramen at C5-6.” He concluded that “none of this is of surgical significance and certainly predated her pain.

Appellant filed a notice of recurrence of disability on July 31, 1995, for which she stopped work on July 11, 1995 and returned to work on July 31, 1995. On the CA-2a form, the employing establishment indicated that it had made adjustments to appellant’s regular duties, subsequent to the April 5, 1994 injury, such that it “limited the weigh [sic] she could carry.”<sup>3</sup> Appellant subsequently claimed compensation from July 11 to September 16, 1995.

In a July 20, 1995 progress note, Dr. Brown stated that appellant was treated for back pain associated with a fall which occurred on April 5, 1994 at work. Dr. Brown noted that appellant now had “persistent spasms, pain and burning on extended reach, grasp overhead.” Dr. Brown diagnosed: (1) facet syndrome, (2) sacroiliac dysfunction with somatic dysfunction, (3) history of chronic back pain, and (4) morbid obesity with weight loss as a factor affecting above listed injuries. A subsequent progress note on July 24, 1995 noted “possible HNP thoracic spine, secondary to trauma which occurred on fall at work on April 5, 1994.”

An MRI of the lumbar spine performed on July 26, 1995 revealed mild degenerative changes and minimal spinal canal stenosis.

An MRI of the cervical spine performed on September 7, 1995 revealed “no nuclear herniation or spinal stenosis.... Questionable focal thinning of the diameter of the thoracic cord at the T7-8 level without alteration of signal intensity in that segment of the cord.”

In a September 22, 1995 progress note, Dr. Brown noted tenderness at T7-8 and diagnosed “persistent back pain associated with traumatic injury of April 1995, work related.”

On November 8, 1995 the Office requested that appellant submit additional medical evidence in support of her claim for recurrence of disability.

In a December 1, 1995 letter, appellant indicated that around the middle of June 1995 she began having a burning sensation in her middle back which became progressively worse as the days passed. According to appellant, Dr. Brown advised her that her pain was a recurrence of the original injury.

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<sup>2</sup> A nerve conduction study and electromyography performed on June 8, 1994 was interpreted as normal.

<sup>3</sup> Evidence subsequently submitted by the employing establishment indicated that appellant eventually returned to unrestricted duties.

The Office issued a decision denying the claim on January 29, 1996. The Office determined that the evidence was insufficient to demonstrate that appellant sustained a recurrence of disability or that her claimed thoracic and lumbar conditions were related to her April 5, 1994 work-related injury for cervical strain.

On February 22, 1996 appellant requested reconsideration of the Office's January 29, 1996 decision. Accompanying her request was a February 16, 1996 report from Dr. Brown. Dr. Brown noted the history of appellant's treatment since the April 5, 1994 work injury indicating that she was treated five times for cervical symptoms from April 11 through June 13, 1994 and that the treatment again resumed on July 11, 1995 for treatment of fibromyositis and thoracic and lumbar spine complaints. He opined that the April 5, 1994 work injury "progressed to deconditioning, somatic dysfunction, and chronic pain syndrome." Dr. Brown noted that "while many of appellant's conditions preexisted her work injury, she was never treated for them. He opined that appellant's chronic pain resulted from cervical spondylosis, facet syndrome and arthritis, all of which were exacerbated by the April 5, 1994 injury.

In a May 29, 1996 decision, the Office denied modification based on a review of the merits. The Office found the evidence insufficient to establish a causal relationship between appellant's treatment for lumbar and thoracic spine conditions and her compensable neck injury of April 4, 1994.

Appellant next filed a request for reconsideration on August 23, 1996.

In conjunction with the reconsideration request, appellant submitted an August 17, 1996 report from Dr. Prokop, an osteopath. Dr. Prokop stated that he treated appellant for long-standing back pain. The doctor noted that appellant's discomfort started "in 1992 when she slipped on moisture on the floor at work." He also noted that appellant had a preexisting arthritic condition in her lower back. Dr. Prokop opined:

"[I]t is conceivable that the patient's preexisting condition was aggravated by the fall. Now the patient has a chronic intermittent back and lower extremity discomfort which did not predate the fall. Frequently trauma can irritate an arthritic condition which was previously asymptomatic. This can be followed by recurrent pain and functional deficits following the trauma."

In an August 29, 1996 report, Dr. Brown stated that he had been treating appellant in relation to a fall at work in 1992.

On October 16, 1996 after conducting a merit review, the Office issued a decision denying modification of its January 29, 1996 decision. The Office noted that appellant's new medical evidence attributed appellant's back conditions to an injury which occurred in February 1992 and, therefore, the evidence was insufficient to meet claimant's burden of establishing a

causal relationship between her alleged recurrence of disability beginning July 11, 1995 and her April 5, 1994 compensable injury for cervical strain of her neck.<sup>4</sup>

The Board finds that appellant has not sustained a recurrence of disability beginning July 11, 1995 causally related to her April 5, 1994 employment injury.

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 disability for which compensation is claimed is causally related to the accepted injury.<sup>5</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>6</sup> An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on appellant's unsupported belief of causal relation.<sup>7</sup>

Appellant has not submitted sufficient medical evidence to establish that she sustained a recurrence of disability beginning July 11, 1995 attributable to her April 5, 1994 work-related cervical strain or that she sustained any other condition due to her April 5, 1994 work-related cervical strain. As the Office only accepted the claim for cervical strain, appellant retains the burden of establishing that any other conditions were caused or aggravated by her employment.<sup>8</sup>

Although appellant has submitted reports by Drs. Brown and Prokop, these reports are not sufficient to establish that she sustained a recurrence of disability due to her April 5, 1994 work injury or that the April 5, 1994 work injury caused or aggravated any other condition.

Reports from Dr. Brown, while providing some support for causal relationship between the claimed disability and the April 5, 1994 accepted employment injury, are insufficient as Dr. Brown provided little medical rationale explaining why a cervical spine strain would cause or aggravate lumbar, thoracic, and noncervical conditions.<sup>9</sup> In his February 16, 1996 report,

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<sup>4</sup> The Office noted that a review of the Office's records showed a prior claim by appellant for lumbar strain on February 4, 1992 which was accepted. The Office advised appellant that if she wished to pursue compensation under the 1992 claim, she needed to furnish copies of all medical records since 1992, with a reasoned medical opinion, explaining the various conditions to that specific injury.

<sup>5</sup> *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

<sup>6</sup> *See Nicolea Bruso*, 33 ECAB 1138 (1982).

<sup>7</sup> *Ausberto Guzman*, 25 ECAB 362 (1974).

<sup>8</sup> *See Gary L. Whitmore*, 43 ECAB 441, 446-48 (1992); *see also Clement Jay After Buffalo*, 45 ECAB 707, 715 (1994) (regarding consequential injuries). In this case there is, as explained in the text of the decision, insufficient medical evidence to establish that any other condition is causally related to the accepted cervical strain.

<sup>9</sup> *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where Board found that a medial opinion not fortified by medical rationale is of little probative value). Dr. Brown generally treated appellant for cervical spine conditions from April 11 to June 13, 1994 but, when treatment resumed on and after July 11, 1995, treatment was generally for conditions that did not involve the cervical spine.

Dr. Brown noted the history of treatment and concluded that the April 5, 1994 injury “has progressed to deconditioning, somatic dysfunction and chronic pain syndrome.” However, Dr. Brown did not provide medical reasoning to explain, for example, how appellant became deconditioned due to her work injury when in the same report he stated that appellant participated with enthusiasm in physical therapy [and] weight reduction.” There is also a lack of medical evidence documenting bridging symptoms in a one year period, from June 13, 1994 to July 11, 1995, in which there is no indication that appellant received any medical treatment for any of the conditions at issue.<sup>10</sup> Although Dr. Brown opined that the preexisting conditions were not the cause of appellant’s conditions beginning July 11, 1995, the only reasoning provided was that she had not previously been treated for any of her preexisting conditions. Such reasoning is insufficient to establish a claim.<sup>11</sup> Furthermore, the premise in Dr. Brown’s February 16, 1996 report, that appellant’s conditions were all due to the April 5, 1994 injury and that she had received no prior treatment for such conditions, seems undermined by evidence that appellant had been treated for a 1992 low back injury and by his own August 29, 1996 report in which he seemed to relate appellant’s continuing treatment to the 1992 injury, without any mention of the April 5, 1994 injury.

Dr. Prokop’s opinion is insufficient to establish appellant’s claim as his report also attributed, in a speculative manner, appellant’s condition to a 1992 injury. The doctor did not specifically mention the April 5, 1994 work injury.<sup>12</sup>

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<sup>10</sup> See *Leslie S. Pope*, 37 ECAB 798 (1986); *Willie Thompson*, 32 ECAB 1705 (1981) (regarding importance of bridging symptoms when there is a passage of time between the original injury and subsequently claimed disability or condition).

<sup>11</sup> Neither the fact that a condition became apparent during a period of employment nor the belief of the employee that a condition was caused, precipitated or aggravated by factors of employment is sufficient to establish causal relationship. *Barbara A. Roberson*, 45 ECAB 797 (1994).

<sup>12</sup> See *Leonard J. O’Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

The decisions of the Office of Workers' Compensation Programs dated October 16, May 29 and January 29, 1996 are affirmed.

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

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member