

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTOINETTE J. LAVARDA and DEPARTMENT OF VETERANS
AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER,
Nashville, Tenn.

*Docket No. 97-961; Submitted on the Record;
Issued November 12, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on and after February 1, 1996 causally related to her July 2, 1994 employment injury.

On July 2, 1994 appellant, then a 44-year-old registered nurse, sustained a back strain in the performance of duty while lifting a patient.¹

In a form report dated February 15, 1996, Dr. Caroline C. McGee, a Board-certified family practitioner, related that appellant was complaining of worsening back pain, which she attributed to her July 2, 1994 employment injury. She diagnosed a back strain and checked the block marked "yes" indicating that the condition was employment related. Dr. McGee indicated that appellant was totally disabled commencing on February 1, 1996.

By decision dated April 22, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to establish that she sustained a recurrence of disability and need for medical treatment on and after February 1, 1996 causally related to her July 2, 1994 employment injury.

By letter dated May 8, 1996, appellant requested reconsideration of the denial of her claim and submitted additional evidence.

In a report dated March 7, 1996, Dr. Richard T. Hoos, a Board-certified neurologist and psychiatrist, related that in May 1994 appellant experienced pain in her groin while helping a patient who was falling. He related that during the next two weeks appellant had persistent pain in her buttocks. Dr. Hoos related that when appellant returned to work two weeks later her first

¹ The record shows that on May 26, 1994 appellant had sustained an employment-related right groin strain. In 1996 the files for the May 26 and July 2, 1994 employment injuries were combined into one file

lifting experience caused pain in the buttocks and thighs and the next morning she felt a pop in her back with pain shooting to the left leg and ankle. He provided findings on examination and stated his belief that most of appellant's discomfort was from a chronic back strain. Dr. Hoos did not mention appellant's July 2, 1994 employment injury in his report nor did he provide an opinion as to the cause of the condition.

In a form report dated April 25, 1996, Dr. McGee diagnosed S1 radiculopathy secondary to catching a falling patient in July 1994 and indicated that appellant was able to return to work on that date. She checked the block marked "yes" indicating that the condition was employment related and also indicated that appellant was totally disabled from February 1 through March 11, 1996.

By decision dated July 26, 1996, the Office denied modification of its April 22, 1996 decision.

By letter dated September 20, 1996, appellant requested reconsideration of her claim and submitted additional evidence.

In an affidavit dated September 2, 1996, Dr. McGee related that appellant sustained an injury at work on May 26, 1994 and experienced another injury at work on July 3, 1994 when she stood up and experienced severe pain and numbness radiating into her left leg. She stated that a magnetic resonance imaging (MRI) scan showed a significant disc herniation at L5-S1. Dr. McGee stated that all of appellant's complaints of pain and numbness were consistent with the disc herniation at L5-S1 with nerve root impingement. Dr. McGee stated:

"It is my opinion that [appellant] originally injured herself in May 1994 while in the course and scope of her employment, that she remained off from work for some period and when she returned to work aggravated the original injury. It is not uncommon for nurses in particular to suffer lower back injuries as a result of having to lift and maneuver heavy patients.

"It is my medical opinion that [appellant's] disc herniation and lower back condition is a direct and proximate result of the injuries she suffered in May and July 1994 while performing her duties as a nurse."

By decision dated December 20, 1996, the Office denied modification of its previous decisions denying appellant's claim.

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a recurrence of disability on or after February 1, 1996 causally related to her July 2, 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.² 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 rationale.³ Where no such rationale is present, medical evidence is of diminished probative value.⁴

In this case, appellant alleged that she sustained a recurrence of disability on February 1, 1996, which she attributed to her July 2, 1994 employment injury.

In a form report dated February 15, 1996, Dr. McGee, a Board-certified family practitioner, related that appellant was complaining of worsening back pain, which she attributed to her July 2, 1994 employment injury. She diagnosed a back strain and checked the block marked “yes” indicating that the condition was employment related. Dr. McGee indicated that appellant was totally disabled commencing on February 1, 1996. The Board has held that an opinion on causal relationship, which consists only of checking “yes” to a form report question on whether the claimant’s disability was related to the history given is of little probative value.⁵ Without any explanation or rationale, such a report has little probative value and is insufficient to establish causal relationship.⁶ Therefore, this report is not sufficient to establish that appellant sustained an employment-related recurrence of disability on February 1, 1996 causally related to her July 2, 1994 employment injury.

In a report dated March 7, 1996, Dr. Hoos, a Board-certified neurologist and psychiatrist, provided findings on examination and stated his belief that most of appellant’s discomfort was from a chronic back strain. Dr. Hoos did not mention appellant’s July 2, 1994 employment injury in his report nor did he provide any rationalized medical opinion as to the cause of the condition. Therefore, this report is not sufficient to discharge appellant’s burden of proof.

In a form report dated April 25, 1996, Dr. McGee diagnosed S1 radiculopathy secondary to catching a falling patient in July 1994 and indicated that appellant was able to return to work on that date. She checked the block marked “yes” indicating that the condition was employment related and also indicated that appellant was totally disabled from February 1 through March 11, 1996. However, as noted above, an opinion as to causal relationship which consists only of checking “yes” to a form report question on whether the claimant’s disability was related to the history given is of little probative value. Therefore, this report is not sufficient to discharge appellant’s burden of proof.

² *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

³ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁴ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁵ *Deborah S. King*, 44 ECAB 203 (1992); *Donald W. Long*, 41 ECAB 142, 146 (1989).

⁶ *Id.*

In an affidavit dated September 2, 1996, Dr. McGee stated that an MRI scan showed a significant disc herniation at L5-S1. Dr. McGee stated that all of appellant's complaints of pain and numbness were consistent with the disc herniation at L5-S1 with nerve root impingement. Dr. McGee stated:

"It is my opinion that [appellant] originally injured herself in May 1994 while in the course and scope of her employment, that she remained off from work for some period and when she returned to work aggravated the original injury. It is not uncommon for nurses in particular to suffer lower back injuries as a result of having to lift and maneuver heavy patients.

"It is my medical opinion that [appellant's] disc herniation and lower back condition is a direct and proximate result of the injuries she suffered in May and July 1994 while performing her duties as a nurse."

However, a herniated disc is not an accepted condition in this case and Dr. McGee has provided insufficient explanation as to how appellant's herniated disc in 1996 is causally related to her employment-related back and groin strains in 1994. She also did not explain why her earlier reports in 1996 did not contain a diagnosis of a disc herniation. Therefore, this report is not sufficient to establish that appellant sustained an employment-related recurrence of disability on February 1, 1996.

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.⁷ Appellant failed to submit rationalized medical evidence 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.

⁷ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

The December 20, July 26 and April 22, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
November 12, 1998

George E. Rivers
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member