

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NORMA J. SILVA and DEPARTMENT OF HEALTH & HUMAN SERVICES, NATIONAL INSTITUTES OF HEALTH, Rockville, Md.

*Docket No. 97-2221; Oral Argument Held July 21, 1998;
Issued November 20, 1998*

Appearances: *John J. Beins, Esq.*, for appellant; *Catherine P. Carter, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant's recurrences of disability in July 1990, November 1993 and beginning July 25, 1994 and her medical care after July 6, 1990, including her November 10, 1994 surgery, are causally related to her March 2, 1987 employment injury.

The Office of Workers' Compensation Programs accepted that appellant's March 2, 1987 employment injury, in which she slipped on a ramp and twisted her left side, resulted in a herniated lumbar disc at L5-S1. Appellant received continuation of pay, followed by compensation for temporary total disability from March 3, 1987 until she returned to her regular work as a phlebotomist on May 18, 1987.

On July 18, 1990 appellant filed a claim for a recurrence of disability due to the March 2, 1987 employment injury. Appellant used four hours of annual leave on July 6, 1990 four hours of sick leave on July 18, 1990 and eight hours of sick leave on both July 19 and 20, 1990. On August 6, 1994 appellant filed another claim for a recurrence of disability due to the March 2, 1987 employment injury, listing the date of the recurrence as November 24, 1993 and the date she stopped work following the recurrence as July 25, 1994. Appellant did not work on November 29, 1993 and again stopped work on July 25, 1994. On November 10, 1994 she underwent surgery on her low back, described as a "laminotomy and disc excision L5 left" for a "markedly protruding disc."

The Office denied appellant's claims for recurrences of disability by decision dated December 19, 1994. Following a hearing held at appellant's request on October 31, 1995, an Office hearing representative, by decision dated February 6, 1996, found that the medical evidence was insufficient to establish appellant's claims for recurrences of disability due to the March 2, 1987 employment injury. Appellant's February 5, 1997 request for reconsideration was denied by decision dated March 20, 1997.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability, for which she claims compensation is causally related to the accepted injury.¹ This burden includes the 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.²

The Board finds that appellant has not established that she sustained a recurrence of disability in July 1990 causally related to her March 2, 1987 employment injury.

Appellant was examined twice in July 1990, on the 12th and the 26th, by her attending physician, Dr. N. Thomas Debevoise. In progress notes from those visits, Dr. Debevoise noted that appellant developed recurrent low back pain several weeks ago and that she was “much better” following an epidural block. Dr. Debevoise, however, did not offer an opinion that appellant’s recurrent low back pain was related to her March 2, 1987 employment injury. In a report dated October 26, 1995, Dr. Charles F. Mess, a Board-certified orthopedic surgeon, who became appellant’s attending physician in November 1993, stated, “I feel that this patient’s symptoms, even in the post-1990 time until the present are directly related to the injury of March 1987.” Dr. Mess, however, did not provide any rationale for this opinion. The medical evidence is not sufficient to establish that appellant sustained a recurrence of disability in July 1990 causally related to her March 2, 1987 employment injury.

The Board further finds that the case is not in posture for a decision on the issue of whether appellant’s disability on November 29, 1993 and beginning July 25, 1994 and her November 10, 1994 surgery, are causally related to her March 2, 1987 employment injury.

As noted above, Dr. Mess stated in an October 26, 1995 report that he felt appellant’s symptoms after 1990 were directly related to her March 1987 employment injury. In this report, Dr. Mess also stated, “The patient’s symptoms and her need for surgery are more likely than not directly related to the March 1987 accident.” Dr. Mess offered the same opinion in a July 11, 1995 report: “I feel that there is a relationship between the 1987 injury and the recurring problems this patient has had in her lumbar spine and the need for subsequent surgery.”

In a report dated September 16, 1996, another of appellant’s attending physicians, Dr. William J. Launder, a Board-certified neurosurgeon, offered an explanation of how

¹ *John E. Blount*, 30 ECAB 1374 (1974).

² *Frances B. Evans*, 31 ECAB 60 (1980).

appellant's herniated disc, for which surgery was performed on November 10, 1994, related to her March 2, 1987 employment injury:

“In my opinion, [appellant] has a herniated lumbar disc that was directly caused by an accident that took place on April 4, 1987.³ A simple stumble can cause a herniated disc such as hers. With time and with age, people's disc material generally becomes somewhat brittle. More traumatic events, such as this, can cause a fissure or crack to develop in the outer annular ring of the lumbar disc, which allows the soft internucleus to squirt out the defect in the disc's annular structure; this results in a herniated disc with only minimal trauma. This is consistent with her having felt a pop in her low back and subsequent pain.”

Although the reports of Drs. Mess and Launder are not sufficient to meet appellant's burden of proof, they are sufficient to make a *prima facie* case, in that they support the essential elements of appellant's claim including causal relation. These reports are, therefore, sufficient to require the Office to further develop the medical evidence.⁴

The decision of the Office of Workers' Compensation Programs dated March 20, 1997 is affirmed insofar as it determined that appellant did not establish that she sustained a recurrence of disability in July 1990 causally related to her March 2, 1987 employment injury. Insofar as it determined that appellant's disability on November 29, 1993 and beginning July 25, 1994 and her November 10, 1994 surgery, are not causally related to her March 2, 1987 employment injury, the Office's decision is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
November 20, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

³ Although Dr. Launder incorrectly listed the date of injury as April 4, 1987, there is no other indication he is referring to any injury other than the March 2, 1987 employment injury.

⁴ See *Lourdes Davila*, 45 ECAB 139 (1993).