

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LYNDA L. VIDALES and DEPARTMENT OF THE NAVY,
SEA SYSTEMS COMMAND, Port Hueneme, Calif.

*Docket No. 97-783; Submitted on the Record;
Issued October 28, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained a recurrence of disability, causally related to her September 4, 1990 cervical chip fracture and cervical muscular strain injuries.

On September 4, 1990 appellant a 28-year-old electronics engineer, fell while descending a ladder aboard a ship, injuring her neck. Her claim was accepted for cervical muscle strain and for chip fractures of the spinous processes of C4-5. On December 20, 1990 appellant's treating physician released her to full duty.

On October 11, 1995 appellant filed a claim for recurrence of disability, causally related to her 1990 injuries. Appellant alleged that she had continued to experience pain since the time of injury but had not sought treatment for each episode and had decreased range of neck motion and "cracking" with movement. Appellant claimed that work activities such as telephone conversations, computer usage and ship work aggravated her condition. In support of her recurrence claim appellant submitted a June 10, 1995 magnetic resonance imaging (MRI) scan report, which identified mild degenerative changes of the posterior facets at L1-2, L2-3 and L3-4, moderate disc degeneration at L4-5 with moderate posterior facet degeneration and mild ligamentum flavum hypertrophy and moderate disc degeneration at L5-S1 with a tiny central disc protrusion. Also noted were degenerative changes in the subchondral marrow of the L5-S1 vertebral bodies.

Additionally in support of her claim, appellant submitted an October 16, 1995 report from Dr. John M. Adams, Jr., a Board-certified orthopedic surgeon, which stated that appellant demonstrated limited range of cervical motion and paraspinous muscle tenderness and that radiographic evidence showed disc degeneration at the C5-6 level with significant posterior osteophytes, which was a "considerable change" from earlier x-rays. He concluded that appellant had cervical spine degenerative disc disease at C5-6 with cervical radiculopathy. He did not explain or discuss whether the condition found was related to the 1990 injuries.

By decision dated January 9, 1996, the Office of Workers' Compensation Programs rejected appellant's recurrence claim finding that the evidence submitted did not address causal relation. The Office noted that Dr. Adams failed to discuss causal relationship between appellant's present condition and her accepted employment injuries of cervical muscular strain and chip fractures at C4-5.

By letter dated August 23, 1996, appellant, through her representative, requested reconsideration of the January 9, 1996 decision. In support, appellant's representative submitted an August 5, 1996 report from Dr. Jacob E. Tauber, a Board-certified orthopedic surgeon, which discussed her current symptoms, provided physical examination results and diagnosed degenerative disc disease, cervical spine, C5-6 with radiculitis, sciatica and left carpal and cubital tunnel syndrome. Dr. Tauber opined that "with a degree of medical certainty ... her continuing neck complaints are as a result of her 1990 work injury." Dr. Tauber's rationale was that appellant had sustained no other cervical injury and that her original injury was "significant enough to cause irregularities of her spinous processes" which never totally resolved.

Also submitted was a duplicate of the previously submitted MRI report.

By decision dated September 12, 1996, the Office denied appellant's application for review of the case on its merits, finding that the evidence submitted was irrelevant and immaterial and was not sufficient to warrant reopening the case for a merit review. In the attached memorandum to the director, however, the Office substantively conducted a merit review of the evidence submitted, finding that Dr. Tauber provided three diagnoses, which had no apparent connection to appellant's accepted employment injuries of cervical muscular strain and chip fractures of C4-5. Further, the Office noted that, despite Dr. Tauber's conclusory statement that appellant's current cervical condition was related to the 1990 injury, her 1990 cervical injury was at C4-5 and the current problems were at C5-6, a different level and were of a degenerative nature and not of traumatic origin. Additionally, the Office found that Dr. Tauber's statement was completely unrationalized and was not supported by objective evidence substantiating his conclusion of causal relation.

The Board finds that appellant has failed to establish that she sustained a recurrence of disability, causally related to her accepted 1990 employment injuries.

An individual who claims a recurrence of disability due to an accepted employment 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. 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.¹ Causal relationship is a medical issue and can be established only by medical evidence.²

Appellant did not meet that burden in this case.

The Board notes that Dr. Adams's October 16, 1995 report, does not contain a statement addressing causal relation, opining that the conditions diagnosed are related to the accepted employment injuries, or explaining why they are related. Accordingly, this report does not support causal relation with the cervical muscular strain and C4-5 cervical chip fractures injuries and contains no rationale or medical reasoning. Therefore, it is insufficient to establish appellant's claim.

The Board notes that the June 10, 1995 MRI report, does not reveal any condition related to any C4-5 chip fractures or cervical muscular strain injury and contains no opinion on causal relation of the conditions detected. Consequently, this report also fails to support appellant's claim.

Finally, although the September 12, 1996 decision, of the Office facially states that it is not reviewing the evidence submitted on its merits, the accompanying memorandum does reveal that the Office considered the evidence on its merits and found that it was insufficient to support appellant's recurrence claim, and irrelevant and immaterial because the diagnosed conditions of the report bear no relation to the accepted employment injuries of cervical soft tissue muscular strain and chip fractures at C4-5. The conditions of the report are noted as occurring at a cervical level other than C4-5 and in other body parts and are of degenerative nature and origin. Further, supporting that the Office reviewed the evidence on its merits, the Office found that it was completely unrationalized and conclusory and hence insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence diagnosing a disabling condition that is causally related to either appellant's 1990 cervical soft tissue muscular strain injury or to her C4-5 spinous process chip fractures, she has failed to establish her claim.

¹ *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

² *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

Accordingly, the decisions of the Office of Workers' Compensation Programs dated September 12 and January 9, 1996 are hereby affirmed.

Dated, Washington, D.C.
October 28, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member