

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALVINA BOYD and ENVIRONMENTAL PROTECTION AGENCY,
OFFICE OF CIVIL RIGHTS, Research Triangle Park, NC

*Docket No. 98-240; Submitted on the Record;
Issued December 8, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established a recurrence of disability on or after March 21, 1995 due to her accepted July 11, 1994 employment injury.

On July 11, 1994 appellant, then a 32-year-old Equal Employment Opportunity assistant, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she injured her lower back while picking up stacks of paper.¹ The Office of Workers' Compensation Programs accepted the claim for lumbar strain.

Appellant returned to work on July 25, 1994 and in a treatment note dated August 15, 1994, Dr. David S. Johnson, an attending physician, noted full range of motion of the upper and lumbar spine and "back pain, improved to baseline."

On May 18, 1995 appellant was hospitalized for severe depression.

On November 30, 1995 appellant filed a recurrence of disability claim alleging that she sustained a recurrence of disability on November 22, 1994.² She indicated that she was treated for severe depression starting in November 1994 and that she had been institutionalized due to her depression. Appellant stopped work on March 21, 1995. She also requested spinal fusion surgery with her recurrence claim. Appellant retired on disability effective December 15, 1995.

By decision dated April 4, 1996, the Office denied appellant's recurrence claim on the basis that there was insufficient medical evidence establishing a causal relationship between her current disability and her accepted employment injury.

¹ This was assigned Claim No. A6-06-3574.

² The Board notes that appellant subsequently filed a notice of occupational disease claim alleging that her major depression was due to her work and referred to the medical evidence contained in her recurrence claim.

On April 2, 1997 appellant, through her counsel, requested reconsideration of the April 4, 1996 decision and submitted medical evidence in support of her request. Appellant's counsel also alleged that her depression was due to harassment by her supervisor.³

On June 18, 1997 appellant, through her counsel, submitted additional medical information in support of her reconsideration request.

In a June 5, 1997 report, Dr. Paul B. Suh, an attending Board-certified orthopedic surgeon, noted that appellant had injured her back when she lifted a box of pamphlets, felt her back crack, walked a few steps and her legs gave out. Dr. Suh diagnosed symptomatic lumbar degenerative disc at L5-S1 and L4-5 due to her July 1994 employment injury. He indicated that it was possible that appellant had degenerative disc disease prior to her injury, but that the July 1994 lifting incident would have aggravated her condition.

By decision dated July 1, 1997, the Office denied appellant's request for modification of the prior decision.

By decision dated September 10, 1997, the Office denied modification on the basis that the evidence was insufficient to warrant modification.

The Board finds that appellant did not meet her burden of proof in establishing that she sustained a recurrence of disability causally related to her July 11, 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. This burden includes the necessity of furnishing medical evidence from a qualified 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.⁴

In this case, the evidence of record shows that appellant returned to work on July 25, 1994, was institutionalized for severe depression and stopped work on March 25, 1995. Dr. Johnson opined in his August 15, 1994 treatment note that appellant had full range of motion in her upper and lumbar spine and that her back pain had improved to baseline.

Dr. Suh, in his June 5, 1997 report, diagnosed symptomatic lumbar degenerative disc at L5-S1 and L4-5 due to her July 1994 employment injury. He also indicated that it was possible that appellant had degenerative disc disease prior to her injury, but that the July 1994 lifting incident would have aggravated her condition. Dr. Suh's opinion that appellant has continued disability due to her July 1994 employment injury without precipitating factors causing a

³ On October 16, 1997 appellant, through counsel, filed an occupational disease claim alleging that her depression was work related.

⁴ *Louise G. Malloy*, 45 ECAB 613 (19994); *Lourdes Davila*, 45 ECAB 139 (1993); *Robert H. St. Onge*, 43 ECAB 169 (1992).

recurrence, is inconsistent with the past factual and medical history and is not well rationalized. He also noted that appellant injured her back when she lifted two boxes, felt her back crack and walked a few steps before her legs gave out. In Dr. Suh's June 5, 1997 report, his version of appellant's employment injury is inconsistent with the version appellant gave at the time of the employment injury. Without any explanation or rationale for the conclusion reached, Dr. Suh's June 5, 1997 opinion is of insufficient probative value to establish causality because of the incorrect medical history upon which it was based.⁵

Appellant has failed to provide any rationalized medical evidence establishing that she sustained a recurrence causally related to her July 1994 employment injury, and has failed to discharge her burden of proof.

The decisions of the Office of Workers' Compensation Programs dated September 10 and July 1, 1997 are hereby affirmed.

Dated, Washington, D.C.
December 8, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁵ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).