

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ADELLE L. WILLMAN and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Waco, TX

*Docket No. 98-721; Submitted on the Record;  
Issued December 2, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on September 11, 1995 causally related to her November 26, 1993 employment injury.

On November 29, 1993 appellant, then a 36-year-old phlebotomist, filed a claim for a traumatic injury occurring on November 26, 1993 when she slipped and fell on ice. The Office of Workers' Compensation Programs accepted the claim for a contusion and fractured ribs.

Appellant returned to work in a limited-duty capacity on January 3, 1994. She continued to receive compensation from the Office for intermittent periods of temporary total disability. In an April 11, 1994 letter to appellant's attending physician, Dr. John Speckmear, who is Board-certified in family practice, the employing establishment noted that appellant continued to work in a light-duty capacity in accordance with his restrictions and requested that he comment on whether she could return to full-duty employment.

In a report dated April 26, 1994, Dr. Speckmear discussed appellant's November 26, 1993 employment injury and resulting thoracic musculature spasm. He noted that her work duties required restraining resistant patients when drawing blood. Dr. Speckmear indicated that appellant began to experience low back pain which was initially thought to be due to her thoracic injury but may instead be due to endometriosis. He concluded that appellant's thorax had "completely recovered" but opined that she should continue on light-duty employment pending a further evaluation from her gynecologist. In an accompanying work restriction evaluation, Dr. Speckmear listed limitations and indicated that appellant should work light duty until May 2, 1994.

The record indicates that on May 5, 1994 appellant returned to her regular employment.<sup>1</sup>

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<sup>1</sup> At the hearing, appellant stated that she did not return to her regular employment duties. However, an internal

In a report dated May 19, 1995, Dr. Rima Bishara, an employing establishment physician, performed a fitness-for-duty examination on appellant. She found that appellant was not able to perform the duties of her position due to the following conditions: “back pain, had fractured ribs, [p]ost hernia repair, pain [with] probable nerve entrapment and [a history] of renal stones” and noted that “at present, she is being evaluated for possible [right upper extremity] radiculopathy....”

On August 14, 1995 the employing establishment terminated appellant on the grounds that she was unable to physically perform the duties of her position.<sup>2</sup>

On September 11, 1995 appellant filed a notice of recurrence of disability due to her November 26, 1993 employment injury. She related:

“Problems from [the] injury have never subsided for any period of time -- total problems have included incapacitating endometriosis which required [a] hysterectomy, hernia repair, kidney stones requiring urologic intervention, continued back pain, also related problems included post[-]surgical complications.”

By decision dated July 22, 1996, the Office denied appellant’s claim for a recurrence of disability on the grounds that the medical evidence was insufficient to establish a causal relationship between her current condition and the November 26, 1993 employment injury.

Appellant requested a hearing before an Office hearing representative, which was held on July 16, 1997. By decision dated September 18, 1997, the Office hearing representative affirmed the Office’s July 22, 1996 decision. The Office hearing representative found that the evidence supported that appellant sustained thoracic and lumbar strains due to her employment injury but noted that appellant had not submitted any evidence from April 1994 to May 1995 supporting that she had continuing medical problems due to her accepted injury. The Office hearing representative further found that the evidence submitted after the claimed recurrence of disability was insufficiently rationalized to establish that appellant had any current condition or disability causally related to the November 26, 1993 injury.

The Board has duly reviewed the case record in the instant appeal and finds that appellant has not met her burden of proof to establish that she had a recurrence of disability on September 11, 1995 causally related to her November 26, 1993 employment injury.

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memorandum from the employing establishment indicates that appellant was released to perform her full duties on May 5, 1994. Additionally, an Equal Employment Opportunity (EEO) investigator noted in his report that appellant resumed her regular employment on May 5, 1994. On the reverse side of the recurrence of disability claim form, the employing establishment noted that appellant worked with limitations until May 2, 1995 but this appears to be a typographical error.

<sup>2</sup> An EEO investigator determined that the employing establishment discriminated against appellant in dismissing her from employment. Appellant subsequently returned to light-duty employment.

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.<sup>3</sup> 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.<sup>4</sup>

In the present case, appellant sustained a contusion, fractured ribs, thoracic and lumbar strains due to an injury on November 26, 1993. Appellant worked in a limited-duty capacity following her employment injury until May 5, 1994, when she returned to her regular employment. In support of her claim for a recurrence of disability on September 11, 1995, appellant submitted a report dated October 2, 1995 from Dr. John Speckmear, an attending physician, Board-certified in family practice. Dr. Speckmear related that he treated appellant on August 14, 1995 for “some discomfort in her thoracic area” which he related to her employment injury. He recommended nerve blocks. Dr. Speckmear did not find appellant disabled from work or provide more than a conclusory statement regarding causation and thus his report is of diminished probative value.<sup>5</sup>

In a report dated December 4, 1995, Dr. Speckmear discussed his treatment of appellant since her 1993 employment injury and noted that subsequent to the injury she experienced thoracic and low back problems in addition to nonemployment-related problems of “endometriosis, kidney stones and incisional hernia repair.” He found that appellant continued to experience “fairly significant radicular thoracic pain” and concluded that she could work for eight hours per day with limitations. However, Dr. Speckmear did not explain, with reference to the specific facts of the case, how appellant’s 1993 fractured ribs and thoracic strain continued to cause any condition or disability two years later. Medical reports not containing rationale are entitled to little probative value and are thus insufficient to establish causal relationship.<sup>6</sup>

Dr. Speckmear further provided a work limitations evaluation dated March 6, 1996 in which he found that appellant could work for eight hours with restrictions. In this report, however, he did not discuss whether the limitations were due to appellant’s employment injury or to her other nonemployment-related conditions and thus his report is insufficient to meet appellant’s burden of proof.

In a report dated January 31, 1997, Dr. Speckmear related that in “April 1994 it appear[ed] that [appellant] was going to recover from her thoracic injury. However, unfortunately she has persisted with thoracic neuralgia.” He noted that appellant obtained relief from pain with intercostal nerve blocks. As Dr. Speckmear did not render any disability finding

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<sup>3</sup> *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>4</sup> *Id.*

<sup>5</sup> *Connie Johns*, 44 ECAB 560 (1993).

<sup>6</sup> *Arlonia B. Taylor*, 44 ECAB 591 (1993).

or explain the mechanics by which appellant continued to experience pain, his opinion is of little probative value.

In a report dated July 14, 1997, Dr. Speckmiear indicated that appellant continued to require nerve blocks for thoracic pain, that she had undergone breast reduction surgery to help her thoracic discomfort and that she had mild, early osteoporosis. He found that appellant's symptoms were slowly improving. This evidence is not pertinent to the issue presented as he did not discuss the causal relationship between his findings and the November 26, 1993 employment injury.

In a report dated October 3, 1995, Dr. Michael Gibson, an anesthesiologist, related that he originally treated appellant on May 1995 for "neuralgia in the right inguinal area following an inguinal herniorrhaphy." Dr. Gibson stated:

"During the initial history and physical, [appellant] did state to me that she had an injury in the past to where she had broken several ribs in the right present posterior chest. However, initially she was fairly consumed by her inguinal pain and did not complain of chest wall tenderness. As she underwent several blocks in the inguinal area and received significant improvement in the pain, she then apparently began to notice increasing difficulty with pain in her right posterior chest."

Dr. Gibson noted that x-rays showed "old fracture si[tes] at her level of pain." He opined that it was "certainly possible after old rib fractures to develop intermittent bouts of costo chondritis in the area of the old fracture which usually responds to local infiltration with local anesthetic and steroids." In a report dated October 16, 1995, Dr. Gibson related that appellant had a history of fractured ribs which correlated to her area of pain and recommended nerve blocks and possible surgery. In his October 1995 reports, however, he did not provide any opinion regarding whether appellant was disabled from employment or relate any specific period of disability on or after September 1995 to her accepted employment injury.

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between her claimed condition and her employment.<sup>7</sup> To establish causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination of appellant and her medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to discharge her burden of proof.

The decision of the Office of Workers' Compensation Programs dated September 18, 1997 is hereby affirmed.

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<sup>7</sup> *Donald W. Long*, 41 ECAB 142 (1989).

Dated, Washington, D.C.  
December 2, 1999

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member