

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA M. JOHNSON and DEPARTMENT OF THE NAVY,
NORFOLK NAVAL SHIPYARD, Portsmouth, VA

*Docket No. 98-1154; Submitted on the Record;
Issued December 9, 1999*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish a recurrence of disability causally related to her April 9, 1987 employment injury.

The Board has duly reviewed the case record and finds that appellant has failed to establish that she sustained a recurrence of disability causally related to her April 9, 1987 employment injury.

On April 9, 1987 appellant, then a 45-year-old supply technician, filed a claim for a backache she sustained that date while moving materials. The Office of Workers' Compensation Programs accepted appellant's claim for a lumbar strain. Appellant stopped work on April 10, 1987 and was released to work light duty April 22, 1987. Appellant returned to regular duty November 1987 and sought medical treatment on an intermittent basis.

On May 17, 1996 appellant filed a claim of recurrence (Form CA-2a) indicating that since the original injury she had been in constant pain and her ability to bend, lift and move limited.

By letter dated July 17, 1996, the Office requested additional information from appellant in reply to her claim of recurrence, including medical bridging evidence. No statements from appellant or medical records were received.

By decision dated August 30, 1996, the Office rejected appellant's recurrence of disability claim on the basis that the medical evidence of record failed to explain how appellant's current condition was related to her original work injury.

By letter dated September 26, 1996, appellant requested a hearing before an Office hearing representative. Submitted with her request were a September 19, 1988 and May 10, 1996 report from Dr. Robert S. Neff, a Board-certified orthopedic surgeon and an Office referral physician.

In his May 10, 1996 note, Dr. Neff noted that appellant presented with low back pain and swelling on the left side, a problem which appellant had since her work injury in 1987. On physical examination, appellant had left paralumbar muscle spasm. She was unable to reverse her lumbar lordosis with forward flexion. She had osteophytes about her anterior lumbar spine diffusely and she has significant degenerative disc disease and narrowing of two areas in the mid lumbar spine. She was neurologically normal. He opined that appellant had significant degenerative disc disease and osteoarthritis of the lumbar spine which appeared, according to her history and medical records, secondary to a 1987 work injury.

By decision dated December 8, 1997 and finalized on December 11, 1997, an Office hearing representative affirmed the denial of benefits finding that appellant failed to establish that her recurrence of disability in May 1996 was causally related to the April 9, 1987 work injury.

Under the Federal Employees' Compensation Act,¹ an employee 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 recurrence of the disabling condition, for which compensation is sought, is causally related to the accepted employment injury.² As part of this burden the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition,³ and supports that conclusion with sound medical reasoning.⁴

Thus, the medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated, or aggravated by the accepted injury.⁵ In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.⁶

The Board notes that in this case, after Dr. Neff's September 19, 1988 report, the record is devoid of any medical documentation of appellant's condition until Dr. Neff's report of May 10, 1996.

An April 15, 1987 report from Dr. John A. Vann, a Board-certified orthopedic surgeon, noted that after appellant was injured on April 9, 1987 she had x-rays taken, which revealed some degenerative changes between L1-2 but no recent bone injury. Appellant was diagnosed with a back strain superimposed on some degenerative changes. In a May 6, 1987 report,

¹ 5 U.S.C. §§ 8101-8193.

² *Dennis J. Lasanen*, 43 ECAB 549-50 (1992).

³ *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

⁴ *Lourdes Davila*, 45 ECAB 139, 142 (1993).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁶ *Leslie S. Pope*, 37 ECAB 798, 802 (1986); cf. *Richard McBride*, 37 ECAB 748, 753 (1986).

Dr. Vann stated that the symptoms appellant was experiencing in her lower back were consistent with the degenerative disc syndrome. On May 29, 1987 he again stated that appellant's pain was consistent with her degenerative disc problem. On June 24, 1987 Dr. Vann advised that he rex-rayed appellant's back and did not see any progression of the degenerative changes. He opined that appellant has a back strain with minimal degenerative arthritis. On June 25, 1987 the Office requested Dr. Vann to advise whether appellant's continuing medical treatment was due to the lumbar strain or due to her degenerative disc disease. In a response dated July 8, 1987, he stated that appellant has a back strain superimposed on the degenerative disc disease. Dr. Vann stated that her treatment was for the lumbosacral strain; and since she has recovered at this time, the preexisting condition did not enter into her more recent symptoms. In subsequent reports, he noted that appellant had persistent low back pain and stated that he felt that she has degenerative disc disease. In a November 25, 1987 report, Dr. Thomas C. Markham, a Board-certified orthopedic surgeon, stated that, because of the length of time it has taken appellant to recover from her injury, a bone scan, blood work and MMPI would be obtained. He stated that it is most unusual for pain to persist this long after an injury. In a December 4, 1987 report, Dr. J. Abbott Byrd, III, a Board-certified orthopedic surgeon, noted an essentially normal examination with tenderness over the left L5, S1 facet region. Review of the plain radiographs were essentially normal as was the bone scan. Dr. Byrd opined that appellant's pain originated from the left L5, S1 joint and her symptoms and physical examination were fairly classic for a facet syndrome. He recommended anti-inflammatory medication and a generalized conditioning program. Dr. Byrd also stated that appellant was able to perform her job without limitations. He also outlined a program including possible left L5, S1 facet joint injection. Accordingly, the medical documentation indicates that appellant's accepted back strain resolved in June 1987 and her continued symptoms stemmed from degenerative disc disease at left L5-S1 and facet syndrome.

Dr. Neff's reports are not sufficient to meet appellant's burden of proof in establishing that she sustained a recurrence of disability causally related to her accepted employment injury. Although in his September 19, 1988 medical report Dr. Neff found appellant's conditions of chronic low back sprain and possible left L5-S1 facet syndrome was "probably a direct result of her injury on April 8, 1987," the medical documentation upon which he relied on shows that the accepted back strain resolved in June 1987. The medical reports thereafter appear to suggest appellant's continued symptoms stemmed from degenerative disc disease at left L5-S1 and facet syndrome. None of the medical reports provide an opinion as to the causal relationship of those conditions to the April 1987 back strain. Preexisting degenerative changes were documented as early as April 15, 1987, but, in his September 19, 1988 report, Dr. Neff stated that no preexisting conditions were present. This was reiterated in his October 27, 1997 report whereby he stated, "I find no evidence of preexisting spine abnormality or degenerative disc disease." As Dr. Neff's reports are based on an inaccurate medical history, they are of diminished probative value.

Although Dr. Neff continued to opine that appellant's current conditions were related to the April 9, 1987 injury, he failed to provide an opinion as to how and why appellant's current back condition was related to her April 9, 1987 injury. In Dr. Neff's September 19, 1988 report, he reported only that "it is my opinion that the condition found on her examination is probably a direct result of her injury on April 9, 1987." Similarly, in Dr. Neff's May 10, 1996 report, he only opined that appellant's conditions "appears to be, according to her history and medical

records, secondary to a 1987 work injury.” Dr. Neff failed to provide a rationalized opinion explaining how appellant’s degenerative disc disease was caused or aggravated by the accepted lumbar strain of April 9, 1987. The Board has found that a medical opinion not fortified by medical rationale is of little probative value.⁷

Accordingly, as appellant has not submitted rationalized medical evidence explaining how and why her condition was related to her April 9, 1987 work injury, appellant has not met her burden of proof in establishing her claim.⁸

The decision of the Office of Workers’ Compensation Programs dated December 8, 1997 and finalized on December 11, 1997 is affirmed.

Dated, Washington, D.C.
December 9, 1999

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

⁸ The record contains medical evidence which was not reviewed by the Office hearing representative’s December 11, 1997 decision. As such, it constitutes new evidence which may not be reviewed for the first on appeal; see 20 C.F.R. § 501.2(c).