

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOUISE A. CATAPANO and DEPARTMENT OF DEFENSE,
DEFENSE CONTRACT ADMINISTRATION SERVICE, Garden City, N.Y.

*Docket No. 97-965; Submitted on the Record;
Issued February 5, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability beginning February 28, 1995 which was causally related to her accepted September 7, 1993 employment injuries of lumbosacral sprain and contusion of the left fifth toe.

On September 7, 1993 appellant, then a 38-year-old administrative contract officer, filed a notice of traumatic injury and claim, alleging that she was injured when she fell on stairs. Appellant stopped work. On October 28, 1993 the Office of Workers' Compensation Programs accepted appellant's claim for lumbosacral strain and contusion of the left fifth toe. Appellant received appropriate compensation for all periods of temporary total disability. On May 12, 1994 appellant returned to work without restriction. On August 14, 1995 appellant filed a claim for recurrence of disability beginning February 28, 1995. By decision dated February 9, 1996, the Office denied appellant's claim on the grounds that the medical evidence did not establish a causal relationship between the claimed recurrence and appellant's accepted employment injuries. In a decision dated November 21, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant modification of the prior decision.

The Board has duly reviewed the entire case record on appeal and finds that this case is not in posture for decision.

Where appellant claims 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

¹ *John E. Blount*, 30 ECAB 1374 (1979).

that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

In the present case, appellant has submitted evidence which suggests that the claimed recurrence of disability was causally related to her accepted employment injuries.³ Specifically, appellant submitted several reports by her treating physician, Richard M. Linchitz, a Board-certified neurologist, in which he concluded that appellant's current condition was causally related to her accepted injuries. In a report dated January 4, 1996, Dr. Linchitz noted the history of injury and diagnosed myofibrositis involving the paraspinal of the lumbar region and buttocks, lumbar strain which led to chronic lower back pain secondary to appellant's work-related fall and continued reactive depression with major depressive features. He also reported that appellant's magnetic resonance imaging (MRI) scan of June 7, 1994 revealed disc degeneration in the LS area, greatest at the L2-3 through the L5-S1 levels, a small left posterior disc herniation at the L5 to S1 level and a left postero-lateral intraforaminal disc herniation at the L4-5 levels with impingement on the L4 dorsal root ganglion. Dr. Linchitz explained that the exacerbation of pain appellant experienced on February 28, 1995 was related to the original injury of September 7, 1993 as her symptoms on palpitation were exactly duplicated and were congruent and equal to the areas of tenderness that were first reported when he examined appellant in September 1994. While the reports by Dr. Linchitz are not sufficient to establish that appellant's claimed recurrence is causally related to her accepted employment as he fails to adequately explain his conclusion of causal relationship in light of appellant's other back conditions, the Board finds that these reports, given the absence of evidence to the contrary, are sufficient to require further development of the evidence. The Board notes that when an employee initially submits supportive factual and/or medical evidence which is not sufficient to carry the burden of proof, the Office must inform the claimant of the defects in proof and grant at least 30-calendar days for the claimant to submit the evidence required to meet the burden of proof. The Office may undertake to develop either factual or medical evidence for determination of the claim.⁴ It is well established that proceedings under the Federal Employees' Compensation Act are not adversarial in nature,⁵ and while the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.⁶ The Office has the obligation to see that justice is done.⁷

² *Frances B. Evans*, 32 ECAB 60 (1980).

³ A review of the record indicates that, although appellant returned to work without restrictions, she began taking periods of extended leave related to pain due to her myofibrositis and two levels of herniated disc beginning October 1994. The Office accepted and paid compensation related to appellant's employment injury-related physical therapy and absence from work due to pain.

⁴ 20 C.F.R. § 10.11(b); *see also John J. Carlone*, 41 ECAB 354 (1989).

⁵ *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985); *Michael Gallo*, 29 ECAB 159 (1978).

⁶ *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

⁷ *William J. Cantrell*, 34 ECAB 1233 (1983).

In the present case, as there was an uncontroverted inference of causal relationship, the Office was obligated to request further information from appellant's treating physician. On remand the Office should further develop the evidence by providing Dr. Linchitz with a statement of accepted facts and requesting that he submit a rationalized medical opinion on whether appellant's claimed recurrence is related to her accepted employment injuries and is not related to her concurrent conditions of disc degeneration, herniated discs or impingement of the ganglion root at the L4 level. After such development as the Office deems necessary, a *de novo* decision shall be issued.

The decisions of the Office of Workers' Compensation Programs dated November 21 and February 9, 1996 are set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
February 5, 1999

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member