

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CORA M. GOUDY and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, New Orleans, La.

*Docket No. 97-1338; Submitted on the Record;
Issued February 8, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish that she had a recurrence of disability commencing on August 4, 1994 causally related to her employment injury.

On November 4, 1993 appellant, then a 43-year-old registered nurse, filed a claim for compensation alleging that on September 12, 1993 she sprained her left and right sacroiliac muscles while in the performance of duty. The Office of Workers' Compensation Programs accepted her claim for sacroiliac strain.

In an attachment to a June 6, 1994 claim for wage loss from September 14, 1993, the employing establishment noted that appellant was released to regular duty by Dr. John B. O'Keefe, appellant's treating physician and Board-certified in orthopedic surgery, on October 13, 1993 but that she returned to work on October 19, 1993 at which time she submitted her resignation. Appellant received continuation of pay from September 14 to October 13, 1993.

On August 4, 1994 appellant filed a claim for recurrence of disability, alleging that she was unable to return to work after her employment injury on September 12, 1993 and that her pay stopped on October 19, 1993.

By letter dated August 15, 1994, the Office advised appellant that she needed to submit additional information regarding her claimed recurrence of disability including a detailed narrative medical report containing a well-rationalized medical opinion as to the relationship between her current disability and the original injury.

On that same date, the Office received treatment notes dated September 14, October 12 and November 9, 1993 from Dr. O'Keefe. He noted in the September 14, 1993 treatment note that appellant "apparently restrained her back." In the October 12, 1993 treatment note, Dr. O'Keefe, at appellant's request, released her to regular duty effective October 18, 1993. On

November 9, 1993 he noted that appellant resigned on October 19, 1993 when she was “confronted with someone who was unhappy with her performance.”

On November 16, 1994 the Office, in a decision, denied appellant’s claim on the grounds that the medical evidence of file failed to establish that her claimed recurrence of disability on or after August 4, 1994 was causally related to the accepted September 12, 1993 injury.

On November 21, 1994 appellant requested an oral hearing. In her letter, appellant stated that her initial injury date was December 28, 1992 and that her recurrence of disability occurred on September 14, 1993. A hearing was held in New Orleans, Louisiana, on February 13, 1996. At the close of the hearing, the hearing representative allowed for the submission of additional evidence. Appellant then submitted a February 23, 1996 medical report from Dr. O’Keefe who stated that appellant originally injured her back in December 1992 and that he understood that she reinjured her back in September 1993. He noted that a February 23, 1994 computerized tomography (CT) scan revealed a herniated disc at L5-S1. Dr. O’Keefe stated that upon examination conducted on February 21, 1996 appellant had diminished reflexes at the knees and ankles and weakness of extension of both great toes. He stated that appellant was totally disabled.

In a decision issued on April 3 1996 and finalized on April 4, 1996, the hearing representative affirmed the Office’s decision denying appellant’s claim.

Appellant then filed a request for reconsideration on August 14, 1996. In support of her request, appellant submitted an August 2, 1996 medical report from Dr. O’Keefe who stated that appellant’s work-related herniated lumbar disc of September 12, 1993 caused her disability. On August 28, 1996 the Office denied appellant’s request for reconsideration.

On October 30, 1996 appellant again filed a request for reconsideration. In support of her request, appellant submitted a February 12, 1996 medical report from Dr. Lawrence Levy, an internist, who stated that appellant had bronchitis, postoperative transsphenoidal resection of pituitary tumor, hypertension, vascular necrosis of the right hip and previous cholecystectomy. In a medical report dated May 8, 1996, Dr. Alain F. Cracco, Board-certified in orthopedic surgery, stated that he had examined appellant on July 28, 1995, noted a familiarity with appellant’s medical history and reported findings based on examination and x-ray readings. He noted that appellant’s February 23, 1994 CT scan revealed a normal L3-4 and L4-5 segments. Dr. Cracco found that appellant had avascular necrosis of the right knee, valgus knee on the right, arthrosis of the left knee and lumbar degenerative disc disease at L4-5. In an undated letter received by the Office on November 14, 1996 from a home health agency, appellant was reported to have had worked as a registered nurse from October 1993 to July 31, 1994.

On January 28, 1997 the Office denied appellant’s request for reconsideration in a merit decision on the grounds that the evidence of record failed to establish that she had sustained a recurrence of disability based on her employment injury.

The Board finds that appellant has failed to establish that she sustained a recurrence of disability on or after August 4, 1994 causally related to her September 12, 1993 accepted injury.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As appellant filed her appeal with the Board on February 27, 1997, the only decisions properly before the Board are the April 4, 1996 hearing representative's decision and the August 22, 1996 and January 28, 1997 Office decisions denying appellant's applications for review.

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 disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish 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.²

In this case, appellant has not submitted rationalized medical evidence addressing whether her employment injury caused her disability commencing on or after August 4, 1993. For example, Dr. O'Keefe, appellant's treating physician, stated in his February 23, 1996 report that appellant reinjured her back while at work. This report is of limited probative value because it does not include a rationalized medical opinion establishing a causal relationship between appellant's condition and her accepted injury. Further, Dr. O'Keefe's medical report of August 2, 1996 likewise failed to establish a causal relationship between her current condition and her employment injury. His statement that appellant's disability was caused by her employment injury of September 12, 1993 is insufficient to support appellant's claim because it fails to establish a causal relationship through a rationalized medical opinion between appellant's condition and her accepted injury. An award of compensation may not be based on surmise, conjecture or speculation.³ Further, neither Drs. Levy nor Cracco's reports contained a rationalized medical opinion establishing causal relationship between appellant's condition and her employment injury and thus these reports are insufficient to establish appellant's recurrence of disability because they do not address the causal relationship between appellant's condition and her employment injury.⁴ Dr. Levy's report listed appellant's illnesses without identifying her alleged recurrence of disability. Dr. Cracco listed diagnoses as well but failed to present a rationalized medical opinion establishing causation.

As noted above, part of appellant's burden of proof includes the submission of reasoned medical evidence which address whether the claimed disability is causally related to the accepted employment injury. Although the Office advised appellant of the type of medical evidence needed to establish her claim for a recurrence of disability, appellant failed to submit medical evidence addressing the dispositive issue of causal relationship. Accordingly, the Board finds

¹ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

² *Lourdes Davila*, 45 ECAB 139 (1993).

³ *Carolyn F. Allen*, 47 ECAB 240 (1995); *Alfredo Rodriguez*, 47 ECAB 437 (1996).

⁴ *Arlonia B. Taylor*, 44 ECAB 519(1993).

that appellant has not established that she sustained a recurrence of disability on or after August 4, 1993.

The decisions of the Office of Workers' Compensation Programs, dated January 28, 1997 and August 28 and April 4, 1996 are hereby affirmed.

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

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member