

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JERRYSTEAN RICH and DEPARTMENT OF VETERANS AFFAIRS,
REGIONAL OFFICE, St. Louis, Mo.

*Docket No. 97-1762; Submitted on the Record;
Issued February 18, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant sustained a recurrence of disability as of October 6, 1992 causally related to her accepted August 16, 1990 lower back injury.

On August 16, 1990 appellant, a 44-year-old program clerk, injured her chest and shoulders when she fell while descending a staircase; appellant subsequently began to experience pain in her lower back, which she contended was causally related to the August 16, 1990 employment incident. Appellant filed a Form CA-1 claim for benefits based on traumatic injury on August 17, 1990, which the Office of Workers' Compensation Programs accepted for right foot strain and back strain.

On October 9, 1990, February 21, 1991 and October 7, 1992 appellant filed Forms CA-2 claims for recurrence of disability. In the claim dated October 7, 1992, appellant alleged that on October 6, 1992 she experienced aggravation of her lower back pain due to the chronic strain caused by constant sitting at her regular job. Appellant alleged that this recurrence had been caused or aggravated by her August 16, 1990 employment injury.¹

By decision dated September 7, 1993, the Office denied appellant compensation for a recurrence of her accepted August 16, 1990, employment-related low back condition. The Office found that appellant failed to submit medical evidence sufficient to establish that the claimed condition or disability was caused or aggravated by the August 16, 1990 employment injury.

By letter to the Office dated September 23, 1993, appellant requested an oral hearing, which was held on July 12, 1994.

In a decision dated September 13, 1994, the Office affirmed its previous decision.

¹ Appellant filed another Form CA-2 claim for recurrence of disability on January 22, 1993.

By letter dated August 29, 1995 appellant requested reconsideration of the Office's previous decision.

By decision dated December 1, 1995, the Office denied appellant's request for reconsideration, finding that the evidence submitted was not sufficient to warrant modification.

By letter to the Office dated November 27, 1996, appellant requested reconsideration of the Office's prior decision. Appellant subsequently submitted a November 26, 1996 report from a chiropractor, Dr. Bob Einertson. Dr. Einertson stated that he had initially examined appellant on August 28, 1996, at which time she complained of discomfort and injuries as the result of a fall sustained on August 16, 1990. Dr. Einertson took x-rays of appellant's spine, which revealed a subluxation at L5. Dr. Einertson diagnosed an acute traumatic hyperextension injury of the lumbar spine along with an acute discogenic subluxation at the L3, L4 and L5 levels, which was further complicated by the longevity of the injury and the work ergonomics present. Dr. Einertson advised that, in light of his past experience with similar cases, appellant's weakness may very well predispose these areas to further trouble from aggravation, trauma, or a similar occupation which might not have otherwise bothered her prior to the fall. Dr. Einertson stated that due to the extreme structural weakness of the L3, L4 and L5 lumbar spinal segments, traumatically induced and the neurological defects manifested, it was most probable that appellant's symptoms were going to be recurrent.

In a decision dated February 4, 1997, the Office denied appellant's request for reconsideration, finding that the evidence submitted was not sufficient to warrant modification of the previous decision. The Office stated that the medical evidence appellant submitted did not provide a well-rationalized probative medical opinion indicating a causal relationship between her accepted August 16, 1990 employment injury and her current condition or a complete and accurate history of appellant's current condition.

The Board finds that appellant has not sustained a recurrence of disability as of October 6, 1992 causally related to the August 16, 1990 employment injury.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing 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 who supports that conclusion with sound medical reasoning.²

The record contains no such medical opinion. Indeed, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates her disability for work as of October 6, 1992 to her August 16, 1990 employment injury. For this reason, she has not discharged her burden of proof to establish her claim that she sustained a recurrence of disability as a result of her accepted employment injury.

² *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. §10.121(a).

The only medical evidence which appellant submitted was Dr. Einertson's November 26, 1996 medical report, which described appellant's complaints of back pain and generally indicated that she was totally disabled as a result of her August 16, 1990 employment injury, but did not provide a rationalized, probative medical opinion indicating that her current condition was caused or aggravated by the accepted August 16, 1990 employment injury.³

Dr. Einertson's opinion on causal relationship is of limited probative value in that he did not provide adequate medical rationale in support of his conclusions.⁴ He did not explain the process through which appellant's current condition was caused or aggravated by the accepted August 16, 1990 employment injury. Moreover, his opinion is of limited probative value for the further reason that it is generalized in nature and equivocal in that he only stated that "appellant's weakness may very well predispose these areas to further trouble from aggravation, trauma, or a similar occupation which might not have otherwise bothered her prior to the fall," and that it was "most probable that appellant's symptoms were going to be recurrent."

As there is no medical evidence addressing and explaining why the claimed condition and disability as of October 6, 1992 was caused or aggravated by her August 16, 1990 employment injury, appellant has not met her burden of proof in establishing that she sustained a recurrence of disability.

The February 4, 1997 decision of the Office of Workers' Compensation Programs is therefore affirmed.

Dated, Washington, D.C.
February 18, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member

³ *William C. Thomas*, 45 ECAB 591 (1994).

⁴ *Id.*