

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHELBY S. SEARCY and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS AFFAIRS MEDICAL CENTER, Birmingham, Ala.

*Docket No. 97-1051; Submitted on the Record;
Issued January 15, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability causally related to her accepted March 30, 1994 employment injury.

On April 7, 1994 appellant filed a claim for a traumatic injury occurring on March 30, 1994 when she pushed a desk. The Office of Workers' Compensation Programs accepted appellant's claim for lumbar strain. Appellant returned to work on April 11, 1994.

On November 16, 1994 appellant filed a notice of recurrence of disability alleging that she had ongoing problems due to her March 30, 1994 employment injury. Appellant related that since returning to work she experienced pain from her lower spine through her left hip and left foot.

By decision dated August 8, 1995, the Office denied appellant's claim on the grounds that the evidence did not establish a causal relationship between the original injury and the claimed condition or disability. In a decision dated October 31, 1996, the Office denied modification of its prior decision.¹

The Board has duly reviewed the case record and concludes that appellant has not met her burden of proof to establish that she sustained a recurrence of disability causally related to her accepted March 30, 1994 employment injury.

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

¹ By decision dated March 6, 1995, the Office denied appellant's claim on the grounds that the evidence did not establish fact of injury; and by decision dated May 30, 1995, the Office denied modification of its decision. However, in its August 8, 1995 decision, the Office vacated the March 6 and May 30, 1995 decisions and found that appellant had established fact of injury.

evidence that the subsequent disability for which she claims compensation is causally related to the accepted injury.² 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.³

Following her employment injury, appellant received treatment from Dr. Michael E. Miller, who is Board-certified in internal medicine and orthopedic surgery. In a report dated April 7, 1994, Dr. Miller noted that appellant's complaints of back pain began on or about March 30, 1994 and that she had helped move furniture at work. He diagnosed lumbosacral spine strain and found that she could resume employment on April 11, 1994. The record contains no further indication that appellant sought medical treatment for her back until February 2, 1995, when in an office visit note Dr. Miller related that appellant "returns after a fairly long absence having last been seen in April 1994." He discussed her complaints of "severe pain in the lower lumbosacral spine" and diagnosed probable facet joint degenerative changes. Dr. Miller's report is of limited probative value on the relevant issue of the present case in that it does not contain any clear opinion that appellant's pain in her spine is causally related to her March 30, 1994 employment injury.

In a report dated June 9, 1995, Dr. Nolan C. Hudson, a Board-certified internist, related that a lumbar myelogram performed on May 10, 1995 revealed moderate disc bulging at L4-5 and L3-4, a mild central disc herniation at C4-5 and central and left-sided disc protrusion at C5-6. He stated:

"[Appellant] again reports to me that she had no prior problems with her back prior to injuring her back while moving some furniture at work last year. Her findings are compatible with an injury which one might receive with heavy lifting."

Although Dr. Hudson stated that appellant's objective findings were consistent with the type of injury she sustained and that she had not experienced problems prior to her employment injury, he failed to provide the necessary medical rationale needed to meet appellant's burden of proof. Dr. Hudson did not provide a well-reasoned discussion explaining in medical terms why and how appellant's herniated and bulging discs were caused by her March 1994 employment injury, particularly in view of the fact that appellant returned to work in April 1994 and did not seek medical treatment until February 1995. Without supportive medical rationale, Dr. Hudson's opinion on causal relationship is not sufficient to meet appellant's burden of proof.

In a report dated March 2, 1995, Dr. Robert Q. Craddock, a Board-certified neurosurgeon, noted that appellant related back problems since the previous May and that she "says she was lifting something at work in March 1994." In an office visit note dated June 22, 1995, Dr. Craddock stated that appellant "was injured lifting heavy furniture at work in March

² *Robert H. St. Onge*, 43 ECAB 1169 (1992).

³ *Id.*

1994. In my opinion, the condition for which I am treating her is related to that incident.” Dr. Craddock, however, does not provide a specific diagnosis or any medical rationale explaining how appellant’s injury caused her to sustain disability over a year later. Such medical rationale is especially necessary in the present case as the record does not contain any medical evidence bridging the period between April 1994 and February 1995.⁴

In an office visit note dated May 11, 1995, Dr. Craddock diagnosed a disc herniation at C5-6 on the left. In an office visit note dated July 26, 1995, Dr. Craddock diagnosed spinal stenosis at C3-4 and C4-5 and a mild central disc herniation at C4-5. Dr. Craddock, however, does not address the cause of the diagnosed conditions in his office visit notes.

In a report dated June 24, 1996, Dr. Craddock related that in March 1994 appellant was “lifting or pushing something at work and has been having trouble in her low back and down her left leg since that time.” He stated:

“The only thing I know to tell you more is that [appellant] gives a clear history of not having a problem until her injury on March 30, 1994. Obviously there is no way for me to know how she was injured, other than what the history is, but I think that it is clear from the records that she was injured on the job.”

Dr. Craddock’s opinion on causal relationship is equivocal as he states that he cannot determine how she was injured.⁵ Moreover, the fact that appellant had no symptoms prior to her employment injury does not raise an inference of causal relationship between the condition and the employment.⁶ Causal relationship may not be inferred but must be established by rationalized medical opinion evidence which explains how the implicated factors of employment caused the diagnosed condition.

In a report dated July 17, 1996, Dr. Michael G. Gibson, a surgeon, related that there was a “high probability” that appellant’s March 30, 1994 employment injury when she pushed and lifted furniture either caused or aggravated the ruptured disc in her neck. He noted that since that time appellant had been unable to work. Dr. Gibson’s opinion is of diminished probative value as it is speculative in nature and based on an inaccurate history of injury, that of appellant being unable to work since March 30, 1994, when in fact she returned to work in April 1994.⁷

In a report dated August 10, 1995, Dr. Gordon J. Kirschberg, a Board-certified neurologist, discussed appellant’s history of back, leg, neck and arm pain since a lifting incident at work and diagnosed mild central disc herniation at C4-5, disc bulging at L3-4 and L4-5 and a mild disc protrusion at C5-6. Dr. Kirschberg, however, does not relate the diagnosed conditions

⁴ *Leslie S. Pope*, 37 ECAB 798 (1986).

⁵ *Connie Johns*, 44 ECAB 560 (1993).

⁶ *Norman E. Underwood*, 43 ECAB 719 (1992).

⁷ *Geraldine H. Johnson*, 44 ECAB 745 (1993).

to the March 30, 1994 employment injury and thus his opinion is insufficient to establish appellant's claim.

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.⁸ 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 October 31, 1996 is hereby affirmed.

Dated, Washington, D.C.

January 15, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁸ *Donald W. Long*, 41 ECAB 142 (1989).