

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOUISE HARRIS and DEPARTMENT OF AGRICULTURE,
FOREST SERVICE -- REGION 5, San Francisco, Calif.

*Docket No. 97-1268; Submitted on the Record;
Issued January 19, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a recurrence of disability commencing June 28, 1996, causally related to her April 29, 1994 accepted cervical strain and thoracic strain injuries.

The Office of Workers' Compensation Programs accepted that on April 29, 1994 appellant sustained cervical strain and thoracic strain from twisting her neck, shoulder and back to help customers. Appellant returned to light duty on May 13, 1994; she was released to full duty on August 31, 1994 with no limitations.

On January 22, 1996 appellant began submitting new medical evidence containing a history of injury that was not consistent with the histories and diagnoses presented in the medical evidence of record most contemporaneous with the injury, from April 29 through May 4, 1994, which noted left neck, left trapezius, left upper thoracic pain and mid back pain from turning her head to help customers. This new evidence contained the history and diagnosis, two years after the fact, that appellant's twisting to see who was behind her on April 29, 1994 caused low back strain. Other medical evidence submitted failed to address the causal relationship of appellant's present condition with the incident of April 29, 1994.

On August 7, 1996 appellant filed a claim for recurrence of disability commencing June 28, 1996, causally related to her April 29, 1994 accepted employment injuries. Appellant complained of constant back pain.

By decision dated August 28, 1996, the Office rejected appellant's recurrence claim finding that appellant's claim had been accepted only for cervical and thoracic strain, that the medical evidence submitted beginning in 1996 referred to an inaccurate history of injury, that subsequently submitted medical reports attributed her low back pain to degenerative disc disease, which was not accepted by the Office as being related to the April 29, 1994 incident, that in fact May 15, 1994 lumbosacral spine x-rays were reported as negative, and that, therefore,

there was no basis for expansion of this claim to include the newly diagnosed condition of degenerative disc disease or low back strain. It found that appellant's currently diagnosed conditions were not causally related to the April 29, 1994 injuries or to any other factors of her federal employment.

Appellant requested reconsideration and in support she submitted further medical reports. A September 9, 1996 report included the history that appellant sustained low back strain on April 29, 1994. Another April 29, 1996 Kaiser Permanente form merely repeated what the originally considered Kaiser Permanente form had stated. Diagrams and billing statements were also submitted, which had no probative value. One witness statement noted that she observed appellant turning her neck normally a little over two weeks after the April 29, 1994 incident. Another witness statement indicated that appellant asked for a claim form before the April 29, 1994 incident and was given the form on April 29, 1994. A duplicate of the May 4, 1994 Kaiser Permanente physician's report was submitted. It noted left-sided upper/mid back pain. A duplicate of the employers report of injury dated April 29, 1994 was submitted. It noted left neck/back muscle strain. Duplicates of other medical reports previously submitted were also presented.

By decision dated November 21, 1996, the Office denied modification of the prior decision finding that the evidence submitted in support was not sufficient to warrant modification. The Office noted that the duplicative evidence had been previously considered was, therefore, repetitive, that the evidence referring to an April 29, 1994 low back strain was based upon an inaccurate history of injury, that the evidence most contemporaneous with the injuries supported that appellant sustained cervical and thoracic strain, and that there were no medical opinions relating her more recent degenerative disc disease and low back strain problems to the April 29, 1994 injuries.

The Board finds that appellant has failed to establish that she sustained a recurrence of disability commencing June 28, 1996, causally related to her April 29, 1994 accepted cervical strain and thoracic strain injuries.

An individual who claims a recurrence of disability due to an accepted employment injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of 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 supports that conclusion with sound medical reasoning.¹ Causal relationship is a medical issue and can be established only by medical evidence.² Such medical evidence is not present in this case.

The medical evidence that appellant submitted, which actually mentioned her history of injury on April 29, 1994, used the inaccurate history that appellant was giving at the time of the

¹ *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

² *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

writing of the reports, namely, that on April 29, 1994 she sustained low back strain. This history, however, is not supported by the factual evidence of record. The Board notes that the Office has never accepted that appellant sustained low back strain on April 29, 1994. In fact, the medical evidence most contemporaneous to the incident supports that she sustained cervical and thoracic strains. Those are the only conditions which the Office accepted as occurring on April 29, 1994, cervical and thoracic strains. Appellant has not demonstrated that her current complaints are related to those accepted conditions.

Later medical evidence mentions that appellant is complaining about low back pain also, but that the history of these complaints is noted to precede the April 29, 1994 incident and to succeed the April 29, 1994 incident and was also noted to be related to a later diagnosed condition of degenerative disc disease. None of this evidence relates appellant's current low back complaints to the April 29, 1994 cervical and thoracic strains and none of the medical evidence is sufficiently rationalized or sufficiently contemporaneous to the April 29, 1994 incident, to be highly probative and to support that appellant also sustained low back strain on April 29, 1994, and now, two years later, suffers from recurrence.

Consequently, appellant has failed to establish her recurrence claim.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated November 21 and August 28, 1996 are hereby affirmed.

Dated, Washington, D.C.
January 19, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member