

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EULA M. KENNEDY and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, East Orange, N.J.

*Docket No. 97-1792; Submitted on the Record;
Issued June 11, 1999*

DECISION and ORDER

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

The issue is whether appellant established that her recurrences of disability were causally related to the accepted work injury sustained on November 29, 1994.

The Board has carefully reviewed the record evidence and finds that appellant has failed to meet her burden of proof in establishing the requisite causal relationship.

Under the Federal Employees Compensation Act,¹ 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 recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.² As part of this burden the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition,³ and supports that conclusion with sound medical reasoning.⁴

Section 10.121(b) provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a medical report covering the dates of examination and treatment, the history given by the employee, the findings, the results of x-ray and laboratory tests, the diagnosis, the course of treatment, the physician's

¹ 5 U.S.C. §§ 8101-8193 (1974).

² *Dennis J. Lasanen*, 43 ECAB 549, 550 (1992).

³ *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

⁴ *Lourdes Davila*, 45 ECAB 139, 142 (1993).

opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions, and the prognosis.⁵

Thus, the medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁶ In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.⁷ Further, neither the fact that appellant's condition became apparent during a period of employment nor appellant's belief that his condition was caused by his employment is sufficient to establish a causal relationship.⁸

When an employee, who is disabled from the job he held when injured, returns to a light-duty position, or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence that he cannot perform such light duty.⁹ As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.¹⁰

In this case, appellant's claim was accepted by the Office of Workers' Compensation Programs for a lumbar strain sustained on November 29, 1994 and appellant received continuation of pay.¹¹ Appellant returned to light duty on March 6, 1995 but subsequently claimed recurrences of disability on January 26 and February 27, 1995 and February 5, 1996.

In support of her claim, appellant submitted two medical forms dated February 14 and March 3, 1995 from Dr. Jackson Okoya, a practitioner in internal medicine, who diagnosed an acute lumbar strain and right carpal tunnel syndrome and indicated that these conditions were related to appellant's employment. Appellant also submitted forms dated April 21 and May 9, 1995 from Dr. Frank J. Casella, Board-certified in internal medicine, and Dr. Nathan E. Doctry, an orthopedic surgeon, as well as a September 30, 1995 narrative report prepared by Dr. Doctry.

On March 1, 1996 the Office informed appellant that to establish her claim she must submit evidence showing that she could not perform the light duty she was assigned upon her return to work. The Office explained the type of medical evidence needed to demonstrate a

⁵ 20 C.F.R. § 10.121(b).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁷ *Leslie S. Pope*, 37 ECAB 798, 802 (1986); cf. *Richard McBride*, 37 ECAB 748, 753 (1986).

⁸ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

⁹ *Richard E. Konnen*, 47 ECAB 388 (1996).

¹⁰ *Gus N. Rodes*, 46 ECAB 518, 526 (1995).

¹¹ Appellant initially filed a notice of recurrence of disability on December 14, 1994 resulting from an initial back injury on July 27, 1992. Based on appellant's explanation, the Office determined that the November 29, 1994 work incident represented a new injury.

change in the nature and extent of either her work-related condition or the light-duty requirements.

Appellant submitted no further evidence and the Office denied her claim on May 22, 1996 on the grounds that the medical reports were insufficient to establish any causal relationship between the recurrences of disability and the 1994 work injury. Appellant requested reconsideration, which was denied on February 27, 1997 on the grounds that her request was insufficient to warrant merit review.

The Board finds that appellant failed to submit medical evidence sufficient to establish that her recurrences of disability were causally related to the 1994 accepted injury. First, the medical forms from Drs. Okoya and Casella indicated a prior work-related injury in 1992 but provided no history of the 1994 injury or its relationship to the diagnosed conditions of acute lumbar strain or carpal tunnel syndrome. Moreover, neither physician exhibited any knowledge of appellant's light-duty assignment in finding her totally disabled for the stated periods. Finally, neither physician offered any results from diagnostic testing to support his diagnosis or conclusion that the conditions were causally related to employment. Therefore, these reports have little probative value.¹²

Dr. Nathan's narrative report is similarly deficient. He examined appellant on March 28, 1995 and diagnosed acute lumbar sprain with radiculitis and carpal tunnel syndrome. He concluded that, based upon appellant's history of injury in 1992 when a dumpster fell on her lower back and right leg and the type of work she does, the "workplace injury contributed wholly and significantly to the disabling condition that caused her back problem."

Dr. Nathan failed to consider the November 1994 work injury at all. Nor did he mention the specific duties of appellant's light-duty work. Rather, he indicated that appellant's "normal occupation" many times actually stopped her from being able to work due to severe pain and numbness. Noting his agreement with appellant that her carpal tunnel syndrome was causally related to the 1992 injury, he added:

"The precise dates of disability and the times out of work that the patient has had will have to be taken from the patient. I know that she has spent some time out and has had to use her vacation and sick time to cover herself for the days she was out directly related to these on-the-job injuries."

Finally, Dr. Doctry failed to provide the results of any of the diagnostic tests administered in April and June 1995 upon which he relied in reaching his conclusions.

Thus, Dr. Doctry based his opinion on an inaccurate history of the accepted work injury, failed to discuss appellant's light-duty work requirements and relied on appellant's desire not to

¹² See *Ruth S. Johnson*, 46 ECAB 237, 242 (1994) (finding that a causation opinion that consists only of checking "yes" to a form question has little probative value and is thus insufficient to establish causal relationship).

work on certain days, rather than objective medical evidence, to find her totally disabled. Because of these deficiencies, his report fails to meet appellant's burden of proof.¹³

Inasmuch as appellant was apprised of the medical evidence necessary to support her claim and failed to submit the required evidence -- no medical documentation relative to the February 5, 1996 recurrence of disability was received -- the Board finds that the Office properly denied her claim.¹⁴

Appellant's attorney argues on appeal that the Office ignored his request that appellant's claim be consolidated with the 1992 claim. Appellant offered no reason why her recurrence of disability claims should be consolidated with the earlier 1992 claim except that Dr. Doctry inaccurately referred to that injury. In any event, the 1994 lumbar strain was accepted as work-related and her subsequent recurrence of disability claims arise from that injury.

The February 27, 1997 and May 22, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
June 11, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹³ See *Mary A. Howard*, 45 ECAB 646, 652 (1994) (finding that appellant failed to submit medical evidence establishing her disability for a light-duty position and was thus not entitled to compensation).

¹⁴ See *Jose Hernandez*, 47 ECAB 288 (1996) (finding that despite a request from the Office, appellant failed to submit a rationalized medical opinion showing that the claimed recurrence was related to his employment injury); see also *Connie Johns*, 44 ECAB 560, 570 (1993) (finding the medical evidence insufficient to establish that appellant had any disability causally related to the residuals of her accepted back condition).