

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEAN M. BOYLAN and NATIONAL AERONAUTICS & SPACE
ADMINISTRATION, LEWIS RESEARCH CENTER, Cleveland, Ohio

Docket No. 97-2533; Submitted on the Record;
Issued June 23, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on or about December 1, 1995, causally related to her March 5, 1991 employment-related injury.

On March 5, 1991 appellant, then a 44-year-old purchasing agent, slipped on ice and fell to the ground, and as a result, sustained injuries to her left shoulder, hip and knee. Appellant also experienced headaches as a result of her injury. The Office of Workers' Compensation Programs accepted appellant's claim for left knee abrasion, contusions of the left hip and left shoulder, and headaches, and she received continuation of pay to cover her absences from work due to various medical treatments received for her accepted conditions. On March 21, 1994 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that she sustained a recurrence of disability on March 17, 1994, causally related to her March 5, 1991 injury. Appellant described the nature of her recurrence as continual neck, back and head pain and progressive immobility of the neck.¹ On November 1, 1994 the Office accepted appellant's claim for exacerbation of cervical arthritis and cervical strain, and awarded her 48 hours of compensation for the period of March 17 through April 5, 1994.

Appellant filed a second claim for recurrence of disability on November 1, 1996, alleging that she sustained a recurrence of disability causally related to her March 5, 1991 injury; however, appellant did not identify the specific date of recurrence or the date on which any

¹ In support of her claim for recurrence of disability, appellant submitted an August 19, 1994 report from Thomas L. Tulisiak, M.D., a Board-certified family practitioner and appellant's treating physician since 1984. Dr. Tulisiak explained that appellant's previously documented degenerative disc disease of the cervical spine was aggravated by her injury of March 5, 1991. He further noted that on August 8, 1991 appellant jarred her neck when she fell between a boat and the boat dock, catching herself with her arms. However, Dr. Tulisiak explained that this subsequent incident was not the cause of appellant's recurrence of disability, which he described as exacerbation of cervical arthritis.

disability began.² Appellant described the nature of her recurrence as continual pain in her head and neck and loss of mobility in her neck. In support of her claim of recurrence, appellant submitted treatment records from the employing establishment's health clinic covering the period of March 1, 1995 through October 25, 1996. By letter dated December 20, 1996, the Office advised appellant that the information submitted was insufficient to establish that her recurrence was causally related to her initial injury of March 5, 1991. The Office requested additional factual and medical information, and specifically asked that appellant submit a detailed medical report addressing, among other things, whether her four herniated cervical discs were directly related to her employment injury of March 5, 1991. In response, appellant submitted treatment notes from Medina General Hospital covering the period of November 7 through December 18, 1996 as well as additional treatment notes from the employing establishment's health clinic covering the period of November 1 through November 13, 1996. Additionally, by letter dated December 31, 1996, Dr. Tulisiak indicated that appellant wished to reopen her claim due to a recurrence of symptoms related to her injury of March 5, 1991. He further noted that his treatment notes for October 31 and December 30, 1996 should provide the information required.

By decision dated February 10, 1997, the Office denied appellant's claim on the basis that the evidence failed to demonstrate that the claimed recurrence of disability was causally related to the accepted employment injury of March 5, 1991. In an accompanying memorandum, the Office noted, among other things, that a detailed medical opinion had not been submitted as previously requested.

On February 12, 1997 appellant filed a request for reconsideration and subsequently submitted additional medical evidence, including a February 10, 1997 report from Dr. Tulisiak.³ On May 21, 1997 the Office referred appellant to Moses Leeb, M.D., a Board-certified orthopedic surgeon, for a second opinion evaluation.⁴ Dr. Leeb examined appellant on June 12, 1997, and in a report dated June 18, 1997, he found that appellant had suffered a cervical strain as a result of the March 5, 1991 employment incident. He also noted that the x-ray and magnetic resonance imaging (MRI) scan indicated "long-standing cervical arthritis with multiple levels of disc degeneration." Dr. Leeb explained that appellant's present objective findings indicated that

² In an accompanying statement, appellant noted a progression of her symptoms in December 1995. Also accompanying the claim were leave records indicating that appellant had intermittent absences from work. Appellant, however, did not indicate which, if any, absences were related to her March 5, 1991 work injury.

³ In his most recent report, Dr. Tulisiak summarized his prior treatment of appellant and that she had a cervical strain, chronic in nature, chronic pain secondary to degenerative disc disease and apparent herniated disc with spinal stenosis. He further noted that appellant's condition was secondary to underlying cervical arthritis, which was exacerbated by her injury of March 5, 1991. Although Dr. Tulisiak noted that appellant had to miss work on several occasions because of the severity of her pain, he did not identify any specific periods of disability.

⁴ To assist in his evaluation, the Office provided Dr. Leeb with a statement of accepted facts and appellant's entire case file.

there was no residual impairment of function that could be attributed to the incident of March 5, 1991.⁵ He further explained that the medical evidence of record indicated that appellant's physical findings predated her March 5, 1991 injury and that her symptoms had been intermittent. In conclusion, Dr. Leeb opined that, while there was apparently some aggravation resulting from the incident of March 5, 1991, it was temporary in that it neither resulted in any particular period of disability nor required any definitive treatment. He further opined that the temporary aggravation probably ceased in April 1991.⁶

In a merit decision dated June 30, 1997, the Office denied appellant's request for reconsideration, noting that the evidence submitted in support of the application was not sufficient to warrant modification of the prior decision. In an accompanying memorandum, the Office explained that, while Dr. Tulisiak's February 10, 1997 report related appellant's current condition to her injury of March 5, 1991, the doctor did not provide a medical rationale to support his opinion. The Office further noted that Dr. Tulisiak specialized in family medicine and not orthopedic injuries. In contrast, the Office noted that Dr. Leeb specialized in orthopedics and provided medical rationale in support of his opinion. The Office found that Dr. Leeb's June 18, 1997 report represented the weight of medical opinion evidence, and consequently, the Office denied modification. Appellant subsequently filed an appeal with the Board on July 29, 1997.

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability on or about December 1, 1995, causally related to her March 5, 1991 employment-related 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 reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.⁷ 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.⁸ Moreover, sound medical reasoning must support the physician's conclusion.⁹ While the opinion of a physician supporting causal relationship need

⁵ Dr. Leeb also submitted a work capacity evaluation (Form OWCP 5c), in which he indicated that appellant had no physical limitations that would interfere with her performance of an eight-hour workday.

⁶ Dr. Leeb based this assessment on an April 30, 1991 report from Dr. Matt J. Likavec, a Board-certified neurosurgeon, who noted at the time that appellant "has some occipital neuralgia from her whiplash injury that appears to be abating on its own."

⁷ *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁸ Section 10.121(b) of the Code of Federal Regulations 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 detailed medical report. The physician's report should include 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 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. 20 C.F.R. § 10.121(b).

⁹ See *Robert H. St. Onge*, *supra* note 6.

not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.¹⁰

In the instant case, the Office properly concluded that Dr. Leeb's June 18, 1997 report represented the weight of medical opinion evidence inasmuch as he clearly explained the basis for his conclusion that appellant has "no residual impairment of function that can be attributed to the incident of [March 5, 1991]." He based his opinion on appellant's present objective findings as well as the fact that appellant's physical findings predated her March 5, 1991 employment injury. Dr. Leeb further emphasized the fact that appellant's symptoms had been intermittent and that she neither experienced any particular period of disability subsequent to March 5, 1991 nor received any definitive treatment as a result of his injury. Lastly, Dr. Leeb correctly noted that according to Dr. Likavec's April 30, 1991 report, appellant's condition was abating on its own approximately two months after her injury.

In contrast, while Dr. Tulisiak attributed appellant's current condition to her March 5, 1991 employment injury, he failed to explain how appellant's alleged recurrence of disability on or about December 1, 1995 was causally related to the prior employment injury. Although the doctor noted that appellant subsequently developed spinal stenosis and disc bulging as a result of her March 5, 1991 fall, he failed to provide any rationale for his conclusion. Additionally, Dr. Tulisiak did not document any particular periods of disability. A physician's mere conclusion without explanation or medical reasoning does not rise to the level of rationalized medical opinion evidence.¹¹ Moreover, Dr. Leeb's contrary opinion is entitled to greater weight in view of his qualifications as a Board-certified orthopedic surgeon.¹² Accordingly, Dr. Tulisiak's February 10, 1997 report is insufficient to satisfy appellant's burden. Inasmuch as the remainder of the record is similarly insufficient to establish that appellant sustained a recurrence of disability on or about December 1, 1995, causally related to her March 5, 1991 employment-related injury, the Office properly denied compensation.

¹⁰ *Norman E. Underwood*, 43 ECAB 719 (1992).

¹¹ *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (the Board found that a medical opinion not fortified by medical rationale is of little probative value).

¹² *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (the Board found that the opinions of physicians who have training and knowledge in a specialized medical field have greater probative value concerning medical questions peculiar to that field than the opinions of other physicians).

The June 30, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
June 23, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member