

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EVELYN M. EVERIDGE and DEPARTMENT OF THE ARMY,
ANNISTON ARMY DEPOT, Anniston, Ala.

*Docket No. 96-637; Oral Argument Held January 14, 1999;
Issued March 12, 1999*

Appearances: *Milly Rodriguez*, for appellant; *Cornelius Donahue, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for medical benefits after April 22, 1994.

On September 12, 1989 appellant, then a 36-year-old packer, was struck in the back by a box being lifted in a hoist. She stopped working the next day. In a September 28, 1989 report, Dr. Kenneth L. Vandervoort, a Board-certified orthopedic surgeon, diagnosed left lumbar radiculopathy. Dr. Vandervoort noted that he had treated appellant in October and November 1988 for lumbar disc syndrome. In a November 14, 1989 letter, the Office informed appellant that it had accepted her claim for lumbar strain.

In a January 31, 1990 report, Dr. James A. Flanagan, a Board-certified orthopedic surgeon, indicated that a magnetic resonance imaging (MRI) scan was suspicious of a herniated L4-5 disc on the right. In a February 6, 1990 report, Dr. Zenko Hrynkiw, a Board-certified neurosurgeon, indicated that appellant's examination was consistent with L5 radiculopathy. Dr. Hrynkiw noted that a myelogram was postponed because appellant thought she might be pregnant. In a March 16, 1990 report, he stated that a lumbar myelogram showed possible disc herniation at the L5-6 level. Dr. Hrynkiw noted that a computerized tomography (CT) scan showed a possible lateralizing soft disc herniation. In a March 28, 1990 report, Dr. Perry L. Savage, a Board-certified orthopedic surgeon, diagnosed degenerative disc disease.

Appellant returned to work part time on June 27, 1990 as a clerk at a lower grade but the same salary as she had at the time of her employment injury. She received continuation of pay for the period September 13 through October 27, 1989 and temporary total disability compensation from October 30, 1989 until she returned to work. The Office continued to pay compensation for the hours appellant did not work until she began working eight hours a day effective July 22, 1991.

On April 22, 1994 appellant filed a claim for recurrence of disability. She indicated that she had not stopped working but continued to have back pain due to the employment injury. Appellant reported that her condition was progressively deteriorating and she continued to lose time from work. She sought medical benefits for treatment for her condition. In a September 6, 1994 decision, the Office rejected appellant's claim on the grounds that the medical evidence of record did not establish a causal relationship between the condition for which she claimed compensation and medical benefits after April 22, 1994 and the September 12, 1989 employment injury. In a September 13, 1994 decision, the Office denied appellant's claim for medical expenses submitted from the years 1991, 1992 and 1994. The Office indicated that the medical expenses from 1991 and 1992 were submitted more than one year after the calendar year in which the medical services were performed and therefore could not be paid. The Office found that appellant's claim for recurrence had been rejected previously and no authorization was given for medical care in connection with the recurrence. In merit decisions dated August 18 and October 16, 1995, the Office denied appellant's requests for modification of the September 6 and 13, 1994 decisions.

The Board finds that appellant has not met her burden of proof in establishing that her condition after April 22, 1994 was causally related to the September 12, 1989 employment injury.

A person who claims benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim. Appellant has the burden of establishing by reliable, probative and substantial evidence that her medical condition was causally related to a specific employment incident or to specific conditions of employment.² As part of such burden of proof, rationalized medical opinion evidence showing causal relation must be submitted.³ The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁴ Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.⁵

Appellant contended that her degenerative disc disease was causally related to her employment injury. The Office, however, only accepted that appellant had sustained a lumbar strain. Medical evidence, including a MRI scan, a myelogram and a CT scan suggested a disc herniation. The physicians at that time indicated that appellant had lumbar radiculopathy and a possible disc herniation. The disc herniation, however, was never confirmed to have occurred. More importantly, none of the physicians discussed whether any such disc herniation was causally related to the September 12, 1989 employment injury.

¹ 5 U.S.C. §§ 8101-8193.

² *Margaret A. Donnelly*, 15 ECAB 40, 43 (1963).

³ *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

⁴ *Juanita Rogers*, 34 ECAB 544, 546 (1983).

⁵ *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).

Subsequently to the April 22, 1994 claim for recurrence of disability, appellant submitted several reports from Dr. Hyrnkiw. In an August 19, 1994 report, he stated that he had been following appellant for degenerative disc disease and related her disability to the degenerative disc disease. In a December 2, 1994 report, Dr. Hyrnkiw noted that appellant had injured her back on two occasions, September 1988 and September 12, 1989. He indicated that in the first injury appellant fell on her back and had low back, left hip and left leg pain which gradually improved. Dr. Hyrnkiw stated that after the September 12, 1989 employment injury appellant had severe low back, left hip and left leg radicular pain radiating down the L4 dermatome. He commented that he had followed appellant since that time for the same pain which represented an aggravation of her degenerative disc disease by the employment injury. In a September 1, 1995 report, Dr. Hyrnkiw stated that appellant's complaints were of low back and sciatica pain which she dated to employment injuries in 1988 and September 1989. His reports are insufficient to meet appellant's burden of proof. Dr. Hyrnkiw only indicated that the employment injury aggravated appellant's degenerative disc disease. He did not give a detailed physiological description on how the September 12, 1989 employment injury would have caused or contributed the development of degenerative disc disease. Dr. Hyrnkiw did not discuss the earlier medical reports which suggested that appellant had a herniated disc. No medical evidence was presented to confirm or refute that appellant had a herniated disc or that such a condition was related to the September 12, 1989 or any other employment injury. Appellant therefore has not met her burden of proof in establishing that her condition after April 22, 1994 was causally related to the September 12, 1989 employment injury.

The decisions of the Office of Workers' Compensation Programs dated October 16 and August 18, 1995 are hereby affirmed.

Dated, Washington, D.C.
March 12, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member