

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANA M. MAYFIELD and DEPARTMENT OF THE NAVY,
NAVAL HOME, Gulfport, Miss.

*Docket No. 97-733; Submitted on the Record;
Issued May 13, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained a recurrence of total disability beginning June 7, 1993 causally related to her June 11, 1991 employment injury.

The Office of Workers' Compensation Programs accepted that appellant sustained a lumbar strain and an aggravation of her prior bladder suspension surgery on June 11, 1991 by trying to get a patient into a chair in the performance of her duties as a nursing assistant. Appellant received continuation of pay from June 16 to July 31, 1991, after which the Office began paying her compensation for temporary total disability. The Office paid such compensation until appellant accepted the employing establishment's offer of a position as a medical clerk and returned to work on April 5, 1993. Beginning April 7, 1993 the Office began paying appellant compensation for partial disability for her loss of premium pay in her position as a medical clerk.

By decision dated June 7, 1993, the Office found that the position of medical clerk fairly and reasonably represented appellant's wage-earning capacity. On June 7, 1993 appellant stopped work; she subsequently filed a claim for compensation for total disability beginning that date.

By decision dated September 24, 1993, the Office found that the evidence failed to establish that appellant's June 11, 1991 employment injury resulted in disability after June 7, 1993. Following a hearing held at appellant's request on September 29, 1994, an Office hearing representative, in a decision dated December 15, 1994, found that appellant had "failed to establish through the submission of probative and substantial evidence that the period of disability for work claimed beginning June 7, 1993 is causally related to the work injury of June 11, 1991." Appellant requested reconsideration, and the Office, by decision dated January 8, 1996, refused to modify its prior decision. Appellant again requested reconsideration, and the Office, by decision dated April 23, 1996, found the additional evidence insufficient to warrant further review of its prior decision.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. 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.¹

The Board finds that appellant did not meet her burden of proof to establish a recurrence of total disability beginning June 7, 1993.

Appellant's attending physician, Dr. Phillip L. Barnes, indicated in an undated report on an Office form that appellant was totally disabled and that her condition was due to her June 11, 1991 injury. In this report, which listed the date of the most recent examination as July 7, 1993, Dr. Barnes diagnosed lumbar neuralgia, and described the nature of appellant's impairment as lower back pain and difficulty in walking. In a treatment note dated July 7, 1993, Dr. Barnes diagnosed chronic lumbar neuralgia with acute exacerbation, and reported findings of diffuse tenderness throughout the lumbar spine and patchy tenderness and spasm of the cervical and thoracic area. These findings, and similar findings reported on April 27, 1993, do not show a change in appellant's condition such that she could no longer perform the position of medical clerk. The findings on these examinations are actually better than those reported by Dr. Barnes on his most recent examination before April 27, 1993, which occurred on August 24, 1992. The diagnosis -- chronic lumbar neuralgia -- also remained the same. None of the reports from Dr. Barnes dated after June 7, 1993, including one dated March 26, 1995, reflect an awareness that appellant worked from April 5 to June 6, 1993 in a position with lesser physical requirements than the job she held when injured. The reports of Dr. Barnes are not sufficient to show a change in the nature and extent of the injury-related condition.

Appellant also submitted reports from Dr. M.F. Longnecker, who apparently performed surgery on appellant's back on December 29, 1994. In a report dated February 15, 1995, Dr. Longnecker stated:

“Historically, as I understand the facts, this patient did not have any trouble with her back until the lifting incident in June of 1991, which apparently was well documented. Following this she had progressive problems with her back and left leg, therefore, I would causally and directly relate her current situation to that incident. I have no reason to believe otherwise. She also denies having had prior trouble with her back before that incident.”

This report is not sufficient to meet appellant's burden of proof. The Board has stated that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to establish causal relation.² Such rationale is especially needed in a case such as the present one,

¹ *Terry R. Hedman*, 38 ECAB 222 (1986).

² *Thomas D. Petrylak*, 39 ECAB 276 (1987).

where degenerative changes of the lumbar spine were confirmed by a computerized tomography scan in January 1992, and a previous magnetic resonance imaging scan did not show the changes for which Dr. Longnecker performed surgery. He also noted that appellant “returned to work in May of 1993, but, because of progressive pain in her back, she was unable to continue through the summer.” This is not sufficient to meet appellant’s burden of proof, as it amounts essentially to Dr. Longnecker’s repetition of appellant’s complaint that she hurt too much to work,³ especially given that he first examined appellant on November 16, 1993. The medical evidence does not show a change in the nature and extent of appellant’s employment-related condition such that she was unable to continue to work the position of medical clerk.

The decision of the Office of Workers’ Compensation Programs dated January 21, 1996 is affirmed.

Dated, Washington, D.C.
May 13, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

³ *John L. Clark*, 32 ECAB 1618 (1981).