

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSAN BREWER and U.S. POSTAL SERVICE,
POST OFFICE, Stroudsburg, Pa.

*Docket No. 97-1647; Submitted on the Record;
Issued May 14, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability beginning November 24, 1992 causally related to an accepted February 23, 1987 laceration and contusion of the left knee and a right shoulder contusion.

The procedural history of the case is as follows. The Office of Workers' Compensation Programs accepted that on February 23, 1987, appellant, then a 40-year-old rural letter carrier, sustained a contusion and laceration of the left knee and a right shoulder contusion, in a motor vehicle accident.¹ She returned to light duty in late March 1987 and to full duty on April 12, 1987. Appellant had intermittent, occasional absences from work due to left knee symptoms through 1992.² She stopped work on December 11, 1992 due to right shoulder impingement, subsequently returned to light duty, then to full duty. Following a nonoccupational motor vehicle accident on December 29, 1993 in which she sustained a concussion and an open tibial fracture requiring surgical fixation, appellant was placed on permanent light duty.³ On February 23, 1996 appellant filed a notice of recurrence of disability alleging that her medical condition on and after November 24, 1992, including a herniated cervical disc at C6-7 and right shoulder impingement syndrome, was causally related to the February 23, 1987 motor vehicle accident.⁴

¹ The Office noted concurrent, nonoccupational conditions of degenerative joint disease, a tibia fracture, a cyst of the humeral head, hemangiomas of the thoracic vertebrae, herniorrhaphy, and the presence of a "foreign body."

² Appellant filed a notice of recurrence of disability on December 1, 1988, alleging that her left knee condition beginning November 17, 1988 was related to the February 23, 1987 accident, as she had persistent knee pain and swelling since the accident. The record indicates that the Office accepted this claim.

³ It appears from the record that appellant was on full duty at the time of the alleged November 24, 1992 recurrence of disability.

⁴ In an April 1, 1996 letter, the Office advised appellant of the additional medical and factual evidence needed to

By decision dated May 20, 1996, the Office denied appellant's claim for recurrence of disability on the grounds that causal relationship was not established. Appellant disagreed with this decision and requested an oral hearing, held November 20, 1996. At the hearing, appellant newly asserted that she sustained a right shoulder injury at work on December 11, 1992 while lifting boxes of canned food collected for an employing establishment food drive.

By decision dated and finalized January 6, 1997, the Office hearing representative affirmed the Office's May 20, 1996 decision denying appellant's claim for recurrence of disability, on the grounds that causal relationship was not established. The hearing representative found that although Dr. James W. Dwyer, an attending Board-certified orthopedic surgeon, who began treating appellant on May 24, 1993, supported causal relationship between the February 23, 1987 motor vehicle accident and appellant's condition on and after November 24, 1992, his opinion relied on appellant's account of constant, unabated right shoulder pain since February 23, 1987. The hearing representative found that appellant's account was not supported by the medical record, in particular appellant's lack of medical treatment from April 1987 to April 1989.⁵

After a complete and thorough review of the record, the Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability beginning November 24, 1992 causally related to sequelae of the February 23, 1987 accident.

When an employee claims a recurrence of disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed recurrence of disability 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 employment factors and supports that conclusion with sound medical reasoning.⁶

An award of compensation may not be made on the basis of surmise, speculation or appellant's belief of causal relation unsupported by medical evidence.⁷ In order to meet her burden of proof in establishing causal relationship in this case, appellant must submit medical evidence from a physician who, on the basis of a complete and accurate factual and medical

establish her claim for recurrence of disability.

⁵ The hearing representative noted that appellant had newly alleged a December 11, 1992 right shoulder injury related to collecting canned food while in the performance of duty. The hearing representative noted that the "medical evidence currently on file [did] not specifically mention this incident but [appellant] did immediately stop work. [Appellant] may wish to pursue a claim for traumatic injury for that date."

⁶ See *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁷ *Ausberto Guzman*, 25 ECAB 362 (1974).

history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁸

In support of her claim for recurrence of disability, appellant asserted that she experienced neck and right shoulder pain consistently from the date of the February 23, 1987 accident onward and thus believed that her neck and shoulder conditions were causally related to the accepted accident. However, the medical evidence does not support appellant's account of events.

After receiving emergency room care, appellant was followed by Dr. F.A. Lovecchio, an orthopedic surgeon, beginning February 27, 1987. In his initial report, Dr. Lovecchio noted "minimal discomfort" of the coracoid process on right shoulder flexion and a one-and-a-half inch laceration of the left knee. The report does not mention any neck complaints or abnormal findings associated with the cervical spine. In reports from March 17 to April 9, 1987 he diagnosed a resolving contusion and laceration of the left knee with collateral ligament sprain and a right shoulder contusion with coracoid process. Dr. Lovecchio released appellant to full duty as of April 9, 1987 and released appellant from his care as of a May 21, 1987 examination, at which Dr. Lovecchio found appellant to be asymptomatic except for an occasional left knee ache. He treated appellant for left knee complaints from November 23, 1988 to April 24, 1989, which he attributed to a suspected "peripheral tear of the lateral meniscus." However, Dr. Lovecchio's reports from November 23, 1988 onward do not mention any neck or shoulder complaints. Again, he characterized appellant's right shoulder as "asymptomatic" as of April 9, 1987.⁹

Appellant did not again seek treatment for her right shoulder, or report any neck complaints until she consulted Dr. Robert Van Metter, a chiropractor, on December 30, 1991, nearly five years after the February 23, 1987 accident and after Dr. Lovecchio found appellant's shoulder asymptomatic as of April 9, 1987. Dr. Van Metter related appellant's account of neck and back pain and stiffness, from the day after the accident, a version of events which conflicts significantly with her comments to Dr. Lovecchio. Dr. Van Metter diagnosed late effects of the motor vehicle accident, chronic cervicothoracic sprain/strain, tendinitis complicated by moderate cervical spondylosis and brachial neuritis and a cervical spinal headache related to unspecified vertebral subluxations. He submitted periodic brief chart notes through 1992. In a June 10, 1993 report, Dr. Van Metter diagnosed subluxations of D1-3, C6-7 and T2-3 by x-ray, attributable to the February 23, 1987 accident. As Dr. Van Metter diagnosed spinal subluxations by x-ray, he is considered a physician under the Federal Employees' Compensation Act for the purposes of this case.¹⁰ However, like any other physician, in order for his opinion on causal

⁸ See *Nicolea Brusco*, *supra* note 6.

⁹ The record contains brief chart notes from Dr. Joseph Viglione which do not contain medical rationale addressing causal relationship. The November 23, 1987 entry notes "poss EMG-? CTS??" and a subsequent 1990 note was illegible. Also, the record contains unsigned periodic chart notes dated from February 1, 1990 to June 27, 1992. Without proper attribution, these notes cannot be considered as medical evidence in appellant's case. *Merton J. Sills*, 39 ECAB 572 (1988).

¹⁰ Section 8101(2) of the Act provides that the term "physician" ... includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a

relationship to be of probative value, he must provide medical rationale explaining how and why the February 23, 1987 accident would cause the diagnosed spinal subluxations. As Dr. Van Metter did not provide such rationale, his opinion on causal relationship is of diminished probative value.¹¹

Appellant then sought treatment for neck and right shoulder pain from Dr. James B. Kim, a physiatrist, who submitted periodic reports from December 29, 1992 through February 1993. He related appellant's account of neck and right shoulder pain beginning at the time of the February 23, 1987 motor vehicle accident, again at odds with the reports of Dr. Lovecchio made contemporaneously to the February 23, 1987 injuries. Dr. Kim noted findings on examination, and diagnosed right shoulder impingement syndrome, degenerative cervical spondylosis and degenerative disc disease of the thoracic spine. He attributed these diagnoses not to the February 23, 1987 accident, but to repetitive use and heavy lifting at work. Thus, Dr. Kim does not support a causal relationship between appellant's neck and right shoulder condition on and after November 24, 1992 and the February 23, 1987 accident.¹²

On May 24, 1993, appellant sought treatment from Dr. James W. Dwyer, a Board-certified orthopedic surgeon specializing in spine surgery. He related appellant's account of neck and right shoulder pain since the February 23, 1987 motor vehicle accident and an unspecified December 1992 right shoulder injury leading to rotator cuff tendinitis. Dr. Dwyer diagnosed right cervical radiculitis, right rotator cuff tendinitis, cervical spondylosis and traumatic cervical sprain. He restricted appellant to light duty, and submitted periodic notes through April 22, 1996 diagnosing cervical radiculopathy with periods of total disability. In an August 11, 1996 videotaped deposition, Dr. Dwyer opined that the first definite radiographic evidence of a herniated disc was an April 1996 myelogram and computerized tomography (CT) scan showing a herniated disc with nerve root compression at C6-7.¹³ He noted he was unaware that appellant did not report any neck symptoms to Dr. Lovecchio in 1987, or that Dr. Lovecchio had released appellant from treatment in 1987 as she was asymptomatic. Although Dr. Dwyer generally supported a causal relationship between the cervical disc herniation and the February 23, 1987 accident, he noted relying "a great deal" on appellant's description of her

subluxation as demonstrated by x-ray to exist...." 5 U.S.C. § 8101(2).

¹¹ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

¹² Appellant then sought treatment from Dr. James Tobey, an orthopedic surgeon, who submitted May 6 and 12, 1993 reports. He related appellant's account of continuous right shoulder pain since the February 23, 1987 accident. Dr. Tobey diagnosed right shoulder impingement syndrome, without opinion on causal relationship and recommended arthroscopy and subacromial decompression. As he did not express an opinion on causal relationship, his opinion is of little relevance.

¹³ An August 27, 1992 MRI scan of the cervical and thoracic spine showed degenerative cervical spondylosis from C3 to C7, no evidence of a herniated disc, and minor degenerative changes of the thoracic vertebrae. August 31, 1993 electromyography and nerve conduction velocity studies showed no evidence of a cervical radiculopathy. A November 23, 1993 cervical spine MRI scan showed a small herniation at C4-5 and degenerative disc disease at C6-7. A July 19, 1995 MRI scan of the cervical spine showed degenerative disc disease at C5-6 with osteophyte formation and degeneration in the uncovertebral joint. An April 2, 1996 myelogram report showing a "[s]mall anterior dural defect at C6-7," with a CT scan showing "[m]ild disc herniation at C6-7,"

symptoms as unabated from the time of the February 23, 1987 accident, which did not match Dr. Lovecchio's reports. As Dr. Dwyer thus admits that his opinion on causal relationship is based on an inaccurate factual history, it is of greatly diminished probative value.¹⁴

The Board also notes that, although appellant contended that her right shoulder symptoms continued unabated from February 23, 1997 onward, the medical evidence submitted by appellant fails to establish definite bridging symptoms between the accepted accident and her claimed recurrence of disability beginning November 24, 1992.¹⁵ Dr. Lovecchio, who treated appellant most contemporaneously to the February 23, 1987 accident, did not indicate that appellant had any neck symptoms following the accident and pronounced appellant's right shoulder "asymptomatic" as of April 9, 1987. Thus, his reports indicate that the right shoulder condition resolved as of April 9, 1987, more than five years prior to the alleged November 24, 1992 recurrence of disability. Moreover, there is no indication in Dr. Lovecchio's reports that appellant sustained a herniated C6-7 disc or other neck injury in the February 23, 1987 as alleged. While December 22, 1992 and July 20, 1995 magnetic resonance imaging (MRI) scans showed subacromial impingement of the right shoulder, there are no radiographic studies of record from February 23, 1987 to December 21, 1992 indicating the presence of right shoulder impingement syndrome.

The reports of Drs. Dwyer, Kim and Van Metter do not contain sufficient medical rationale explaining the pathophysiologic mechanisms whereby the February 23, 1987 accident or other employment factors would cause the claimed C6-7 disc herniation or right shoulder impingement syndrome. Without such rationale, appellant cannot meet her burden of proof in establishing a causal relationship between the February 23, 1987 injuries and the claimed herniated cervical disc and right shoulder impingement syndrome, or other medical conditions on and after November 24, 1992.

Consequently, appellant has failed to meet her burden of proof, as she submitted insufficient rationalized medical evidence establishing a causal relationship between the February 23, 1987 accident and her claimed neck and right shoulder condition on and after November 24, 1992.

¹⁴ See *Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

¹⁵ For the importance of bridging information in establishing a claim for a recurrence of disability, see *Robert H. St. Onge*, 44 ECAB 1169 (1992); *Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Richard McBride*, 37 ECAB 748 (1986). See *Willie R. Thompson*, 32 ECAB 1705 (1981).

The decision of the Office of Workers' Compensation Programs dated and finalized January 6, 1997 is hereby affirmed.

Dated, Washington, D.C.
May 14, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member