

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOUISE CANNIDA and DEPARTMENT OF THE ARMY,
DEFENSE COMMISSARY AGENCY, Fort Clayton, Panama

*Docket No. 97-2562; Submitted on the Record;
Issued November 4, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant had any disability or medical condition on and after January 24, 1993 causally related to her November 6, 1992 employment injury.

On November 6, 1992 appellant, then a 40-year-old warehouse worker, sustained a herniated disc at L5¹ when she picked up a 20-pound bag of dog food.

A medical report dated January 23, 1993 indicated that a magnetic resonance imaging (MRI) scan demonstrated no herniated nucleus pulposus or other abnormality and no objective findings of a back problem.

In a medical report dated December 16, 1993, Dr. Luis Pitty, a neurosurgeon, diagnosed "discogenic pain" and checked the block marked "yes" indicating that the condition was caused or aggravated by employment activities. Dr. Pitty indicated that appellant was permanently totally disabled due to her chronic condition.

In a report dated November 21, 1994, Dr. Rafael J. Aguila, a general practitioner, related that appellant sustained a back injury while lifting a heavy load on November 6, 1992 and had been experiencing pain and discomfort since that time. Dr. Aguila stated his opinion that appellant's pain was the result of her employment injury. He stated, "A temporal relationship can be established from the time she injured herself and the onset of her pain and the continuation of the same."

In a report dated December 19, 1994, Dr. William H. Stuart, a Board-certified neurologist, stated that an MRI scan was normal.

¹ The Office of Workers' Compensation Programs accepted a herniated nucleus pulposus as causally related to the November 6, 1992 incident but later stated that this condition "was subsequently found not to exist" and indicated that the injury sustained was a lumbar strain.

In a report dated December 21, 1994, Dr. Stuart noted that appellant had a normal MRI scan of her lumbar area. He related that she attributed her pain to trauma but he “doubt[ed] whether that [was] the case.” Dr. Stuart referred her to Dr. Frederic C. McDuffie, a Board-certified internist specializing in rheumatology, for evaluation of possible inflammatory joint disease and/or spondyloarthropathy.

In a report dated January 11, 1995, Dr. McDuffie provided a history of appellant’s condition and noted appellant’s complaint of back pain. He provided findings on examination and stated that appellant’s history was “rather characteristic of chronic back pain precipitated by injury.” Dr. McDuffie did not provide a diagnosis.

By decision dated October 18, 1994, reissued March 7, 1995, the Office denied appellant’s claim for disability on and after January 24, 1993 on the grounds that the evidence of record failed to establish that her claimed disability or medical condition was causally related to her November 6, 1992 employment injury.

By letter dated March 6, 1995, through her representative, appellant requested an oral hearing before an Office hearing representative.

In a report dated May 10, 1995, Dr. McDuffie stated that appellant had severe fibromyalgia which he attributed to her 1992 employment injury. He stated:

“Clearly this [1992] incident triggered off her back pain which has persisted beyond the time that one might have expected the initial damage to have healed. Thus fibromyalgia is an appropriate diagnosis, namely, a chronic pain syndrome frequently triggered off by some accident or injury. In view of the length of time that she has had symptoms, and the failure to respond to treatment I think the outlook for her to return to work is low.”

In a report dated June 19, 1995, Dr. Aguila stated:

“[Appellant] has demonstrated a temporal relationship with regards to the onset of her pain and the time of injury which is consistent with the type of injury she claims to have. I however have no objective evidence in the form of diagnostic studies to back up this allegation. Previous MRI, L/S [lumbosacral spine] Series, CT [computerized tomography] studies and EMGs [electromyograms] have been negative.”

In a letter dated August 18, 1995, Dr. McDuffie noted that appellant, through her representative, had asked about the etiology of her fibromyalgia in relationship to her work and he stated, “please review my letter of May 10, [1995], in which I stated that her fibromyalgia was subsequent to picking up heavy boxes at work and that clearly this incident triggered off her back pain.”

In a letter dated March 21, 1996, Dr. McDuffie stated that appellant was totally disabled due to her continued severe pain and depression.

On September 24, 1996 a hearing was held before an Office hearing representative at which time appellant testified.

By decision dated November 19, 1996, the Office hearing representative remanded appellant's case for further development.

By letter dated December 17, 1996, along with a statement of accepted facts and copies of medical records, the Office referred appellant to Dr. John Spiegel, a Board-certified neurologist, for an examination and evaluation as to whether appellant had any condition causally related to her November 6, 1992 employment injury.

In a report dated January 7, 1996, Dr. Spiegel provided a history of appellant's condition and findings on examination which included a neurological examination which he stated was objectively normal. He stated:

"I did not find any neurological evidence at this time for any sort of objective neurological dysfunction that could be related to the events of 1992. Nevertheless, at this point, I suspect the patient does have a chronic pain syndrome, and I suspect that the treatment of this would be very difficult. She probably is disabled for most sorts of work on the basis of that and other psychiatric aspects of condition, *i.e.*, depression, rather than any sort of neurologic problem."

By decision dated January 23, 1997, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish that appellant had any disability or medical condition causally related to her November 6, 1992 employment injury.

By letter dated February 19, 1997, appellant requested reconsideration of the denial of her claim and submitted additional evidence.

In a disposition dated November 20, 1996, Dr. McDuffie stated that he first examined appellant on January 11, 1995. He stated that at that time he suspected that appellant had fibromyalgia. Dr. McDuffie stated that the symptoms of fibromyalgia were all subjective. He attributed appellant's fibromyalgia and her depression to her November 6, 1992 employment injury. Dr. McDuffie stated that the definition of fibromyalgia as defined by the American College of Rheumatology was a condition of chronic pain lasting at least six months which involved areas of both the upper and lower parts of the body and the right and left sides for which no other cause could be found. He indicated that appellant was totally disabled.

By decision dated May 8, 1997, the Office denied modification of its January 23, 1997 decision.

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained any medical condition or disability on or after January 24, 1993 causally related to her November 6, 1992 employment-related back injury.

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.² Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that he sustained an injury in the performance

² *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

of duty and that his disability was caused or aggravated by his employment.³ As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.⁴ The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁵ Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.⁶

In this case, the Office initially accepted that appellant sustained a herniated disc at L5. On November 6, 1992 when she picked up a 20-pound bag of dog food. However, the Office later stated that the medical evidence indicated that the injury was a lumbar strain rather than a herniated nucleus pulposus. A medical report dated January 23, 1993, indicated that an MRI scan demonstrated no herniated nucleus pulposus or other abnormality.

In a medical report dated December 16, 1993, Dr. Pitty diagnosed "discogenic pain" and checked the block marked "yes" indicating that the condition was caused or aggravated by appellant's employment. He indicated that appellant was permanently totally disabled. However, "discogenic pain" is not a medical diagnosis. Furthermore, the Board has held that an opinion on causal relationship which consists only of checking "yes" to a form report question on whether the claimant's disability was related to the history given is of little probative value.⁷ Without any explanation or rationale, such a report has little probative value and is insufficient to establish causal relationship.⁸ Therefore, this report is not sufficient to discharge appellant's burden of proof.

In a report dated November 21, 1994, Dr. Aguila related that appellant sustained a back injury while lifting a heavy load on November 6, 1992 and had been experiencing pain and discomfort since then. He stated his opinion that appellant's pain was the result of her employment injury. However, Dr. Aguila did not provide a definite diagnosis of appellant's condition and he did not provide sufficient medical rationale explaining how appellant's condition was causally related to her 1992 employment injury when she lifted a 20-pound bag of dog food. Therefore, this report does not establish that appellant sustained a medical condition or disability causally related to her 1992 employment injury.

In a report dated December 21, 1994, Dr. Stuart noted that appellant had a normal MRI of her lumbar area. He related that she attributed her pain to trauma but he "doubt[ed] whether that [was] the case." As Dr. Stuart did not diagnose any medical condition and did not opine that her back problem was causally related to her 1992 employment injury, this report does not discharge appellant's burden of proof.

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

⁴ *Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

⁵ *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

⁶ *Joseph T. Gulla*, *supra* note 4.

⁷ *Donald W. Long*, 41 ECAB 142, 146 (1989).

⁸ *Id.*

In a report dated May 10, 1995, Dr. McDuffie stated that appellant had severe fibromyalgia which he attributed to her 1992 employment injury. He stated:

“Clearly this [1992] incident triggered off her back pain which has persisted beyond the time that one might have expected the initial damage to have healed. Thus fibromyalgia is an appropriate diagnosis, namely, a chronic pain syndrome frequently triggered off by some accident or injury.”

However, Dr. McDuffie provided insufficient medical rationale, based upon a complete and accurate factual background, explaining how appellant’s pain was causally related to her 1992 employment-related back condition. He stated generally that the condition of fibromyalgia was frequently triggered by an accident but failed to provide a sufficient explanation as to how appellant’s pain was caused by the incident in 1992 when she picked up a 20-pound bag of dog food. Such explanation is particularly important in light of the fact that all of appellant’s objective studies were negative. Therefore, this report is not sufficient to establish that appellant sustained a medical condition of disability commencing in 1993 causally related to the 1992 employment injury.

In a report dated June 19, 1995, Dr. Aguila stated that appellant had demonstrated a temporal relationship between her pain and her 1992 employment injury but that he had no objective evidence in the form of diagnostic studies to support causal relationship. He noted that all objective testing had been negative. As Dr. Aguila did not provide a rationalized medical opinion explaining how appellant’s back condition in 1993 was causally related to her 1992 employment injury, this report does not discharge her burden of proof.

In a report dated January 7, 1996, Dr. Spiegel provided a history of appellant’s condition and findings on examination which included a neurological examination which he stated was objectively normal. He stated that he did not find any objective neurological evidence of any neurological dysfunction that could be related to the events of 1992. Therefore, this report does not support appellant’s claim for an employment-related condition on and after January 24, 1993.

In a deposition dated November 20, 1996, Dr. McDuffie stated that he first examined appellant on January 11, 1995 at which time he suspected that appellant had fibromyalgia. He stated that the symptoms of fibromyalgia were all subjective. Dr. McDuffie attributed appellant’s fibromyalgia and her depression⁹ to her November 6, 1992 employment injury. He stated that fibromyalgia was a condition of chronic pain lasting at least six months which involved both the upper and lower parts of the body and the right and left sides for which no other cause could be found. Dr. McDuffie indicated that appellant was totally disabled. However, he failed to provide sufficient explanation as to how appellant’s fibromyalgia condition was causally related to the incident on November 6, 1992 when she lifted a 20-pound bag of dog food. Therefore, this report is not sufficient to discharge appellant’s burden of proof.

⁹ The Board notes that depression is not an accepted condition in this case.

The decisions of the Office of Workers' Compensation Programs dated May 8 and January 23, 1997 are affirmed.

Dated, Washington, D.C.
November 4, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member