

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DIANE ROBINSON-NOWAK and U.S. POSTAL SERVICE,  
LINCOLN PARK STATION, Chicago, IL

*Docket No. 98-1042; Submitted on the Record;  
Issued November 24, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has established recurrences of disability on September 15, 1994 and February 27, 1995 causally related to her February 5, 1994 accepted employment injury.

On March 4, 1994 appellant, then a 45-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she pinched a nerve in her neck on February 5, 1994<sup>1</sup> when she slipped and fell in the parking lot. The Office accepted the claim for cervical strain and subluxation of spine at C4-5, L5-S1.

On September 15, 1994 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that she experienced pain in her neck and across her shoulders.<sup>2</sup> Appellant stopped work on September 19, 1994 and returned to work on September 21, 1994.

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<sup>1</sup> There is some confusion as to the correct date of appellant's injury. On the CA-1 form appellant initially wrote February 10, 1994, but changed it to February 5, 1994. In her statements, appellant indicated that she slipped and fell on February 5, 1994. In its acceptance letter, the Office of Workers' Compensation Programs notes the date of injury as February 10, 1994.

<sup>2</sup> On the claims appellant indicated that her original injury was February 10, 1994. This appears to be a typographical error as appellant indicated that she injured herself on February 5, 1994 on her CA-1 form and in two statements. The Office later accepted that appellant's injury occurred on February 5, 1994.

Dr. Raghavendra R. Veerapaneni, in an October 7, 1994 disability slip, stated that appellant had been under his care since September 19, 1994 for a severe cervical sprain which has incapacitated appellant.<sup>3</sup>

In a letter dated January 9, 1995, Dr. Michael P. Huber<sup>4</sup> stated that appellant “was in pain again due to her reoccurrence (sic) on September 19, 1994 from a previous injury sustained on February 5, 1994.”

The record contains a report from Dr. Luis Yarzagaray<sup>5</sup> in which he noted a “normal neurological examination” on February 23, 1995.

In a March 2, 1995 disability slip, Dr. Huber indicated that appellant was totally disabled for work from March 2, 1995 until further notice. He provided no opinion as to the cause of appellant’s disability.

In a March 7, 1995 electromyogram/nerve conduction velocity report, Dr. Thomas D. Sullivan,<sup>6</sup> indicated that the test revealed “no clear cut evidence of a significant axon degenerative radiculopathy lesion affecting C5, C6, C7 or C8 nerve root pathways in the left upper extremity” and recommended clinical correlation was necessary.

On April 21, 1995 appellant filed a recurrence claim alleging that she experienced constant pain in her neck and lower back.<sup>7</sup> She stopped work on February 27, 1995. Appellant indicated that she received treatments on September 19 through September 22, 1994, August 15, October 21, November 30, December 12 through December 29, 1994, February 27 and March 2, 1995 to the present.

By letter dated June 9, 1995, the Office advised appellant that it had received both of her Form CA-2a’s. The Office requested that appellant submit additional factual and medical evidence including a well-reasoned medical report from her treating physician providing whether her current condition was causally related to the February 5, 1994 employment injury.

In an attending physician’s report (Form CA-20) dated June 28, 1995, Dr. Huber diagnosed disc displacement of the cervical and lumbar spines. He checked “yes” that appellant’s condition “was caused or aggravated by an employment activity” without any explanation.

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<sup>3</sup> The record contains hospital treatment notes dated August 15, 1994 in which Dr. Veerapaneni noted that appellant stated that she had a neck injury from February and that she has had pain since the injury which has progressively gotten worse within the last week.

<sup>4</sup> An attending chiropractor.

<sup>5</sup> A Board-certified neurological surgeon.

<sup>6</sup> A Board-certified neurologist with special qualifications in child neurology and pediatrics.

<sup>7</sup> Appellant subsequently filed a claim for a schedule award on June 15, 1995.

In a report dated July 14, 1995, Dr. Alan G. Shepard<sup>8</sup> stated that he saw appellant on November 21, 1994 due to her “complaints of a pulling and burning sensation in the shoulders bilaterally” and he noted that appellant’s symptoms had begun after a fall on the ice in February 1994. A physical examination revealed “no upper motor neuron signs, but I recall she did have some discomfort with neck range of motion.” Dr. Shepard opined that appellant’s repetitive lifting and reaching “may have caused her cervical strain to recur and worsen.”

In a disability slip dated August 4, 1995, Dr. Huber released appellant to limited-duty work for four hours per day.

By decision dated August 7, 1995, the Office found the medical evidence of record insufficient to establish that the claimed disability was causally related to the February 5, 1994 employment injury.

By letter dated August 14, 1995 and received by the Office on September 8, 1995, appellant requested reconsideration of the August 7, 1995 decision and submitted medical and factual evidence in support of her request.

In a letter dated September 2, 1995, Dr. Huber stated that appellant’s cervical and lumbar disc herniations were due to her February 5, 1994 employment injury which is supported by a magnetic resonance imaging (MRI) scan. He opined that appellant’s “lumbar pain increased when she returned to work. The action of lifting or pulling a cart probably worsened the lumbar disc problem.” Dr. Huber further stated that appellant should be on light-duty work.

In a disability slip dated September 6, 1995, Dr. Huber indicated that appellant could only perform light duty four hours per day with restrictions.

On December 21, 1995 the Office referred appellant, together with a statement of accepted facts and medical records to Dr. Leonard R. Smith<sup>9</sup> for a second opinion.

In a report dated January 12, 1996, Dr. Smith, based upon a review of the medical records, history of the employment injury, objective evidence and a physical examination, opined that appellant’s treatment for a L3-4 disc herniation was probably nonwork related and occurred after March 1995. Dr. Smith noted that there was “evidence of severe degenerative disc disease at multiple levels in the lumbar spine long antedating the incident in question.” As to the diagnosis of cervical strain/sprain, he opined that appellant had recovered as there was “no evidence of any subluxation or disc herniation in the cervical spine.”

By decision dated February 2, 1996, the Office denied modification of the August 7, 1995 decision.

By letter dated May 23, 1996, appellant requested reconsideration of the Office’s denial of her recurrence claims and submitted a November 30, 1995 report from Dr. Raghu R. Singh

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<sup>8</sup> An attending Board-certified neurologist.

<sup>9</sup> A Board-certified orthopedic surgeon.

recommending a lumbar laminectomy, a report of the December 19, 1995 surgery, March 15, 1996 x-ray report, April 17, 1996 myelogram and computerized tomography in support of her claim.

In a disability slip dated June 6, 1996, Dr. Singh indicated that appellant was disabled from April 25, 1996 until further notice due to an anterior cervical fusion scheduled for July 8, 1996.

By decision dated August 14, 1996, the Office denied appellant's request for reconsideration of the denial of her recurrence claims. The Office found that the evidence submitted by appellant failed to provide any medical rationale linking her disability with her accepted employment injury and that the weight of the evidence remained with the report of Dr. Smith.

In a letter dated January 13, 1997, appellant requested reconsideration and submitted a November 30, 1995 letter from Dr. Singh, a January 10, 1996 x-ray report, a September 13, 1996 letter from Dr. Huber, physical therapy notes and unsigned medical progress notes for the period November 30, 1995 to November 26, 1996 in support of her claim.

By decision dated April 21, 1997, the Office denied appellant's request for reconsideration on the basis that the evidence was insufficient to warrant modification.

By letter dated October 16, 1997, appellant's counsel requested reconsideration and submitted medical evidence including a September 18, 1997 report from Dr. Singh, April 15, 1996 and January 16, 1997 MRI scans, a December 19, 1995 operative report by Dr. Singh, a December 18, 1995 computerized axial tomography (CAT) scan of the lumbar spine, a March 15, 1996 report by Dr. Singh, an April 17, 1996 cervical myelogram and report, an August 4, 1997 surgical report, June 26, 1997, July 12, 1996 and July 19, 1996 CAT scans of the cervical spine, October 8, 1996 and August 4, 1997 x-rays of the cervical spine, a June 26, 1997 surgical report by Dr. Singh, a June 26, 1997 lumbar CAT scan, an August 28, 1997 operative report and a July 24, 1997 report by Dr. Mary Jo Curran<sup>10</sup> in support of her request.

In a letter dated September 18, 1997, Dr. Singh noted findings from his treatment of appellant from December 18, 1995 to September 4, 1997, including that appellant was involved in an automobile accident on October 23, 1996. He opined that appellant's cervical and lumbar radiculopathies were due to her accepted February 5, 1994 employment injury.

In a July 14, 1997 report, Dr. Curran diagnosed status post cervical fusion, possible facet joint pain and possible cervical radiculitis.

By decision dated November 14, 1997, the Office denied appellant's request for reconsideration on the basis that the evidence was insufficient to warrant modification.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and

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<sup>10</sup> Board-certified in anesthesiology and pain management.

probative evidence that the disability, for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>11</sup>

In this case, appellant has not submitted rationalized medical evidence addressing whether her condition was caused by the February 4, 1994 employment injury. None of the medical reports submitted by appellant contain an opinion supported by medical rationale linking appellant's disability to her accepted employment injury. Dr. Veerapaneni in his October 7, 1994 disability slip notes that appellant was incapacitated due to a severe cervical sprain without noting whether it was causally related to her February 5, 1994 injury. Dr. Curran diagnosed cervical fusion, possible facet joint pain and possible cervical radiculitis without relating this to appellant's February 5, 1994 employment injury. Both Dr. Veerapaneni's disability slip and Dr. Curran's July 14, 1997 report are insufficient to establish appellant's burden because they fail to discuss whether and how the diagnosed condition was caused by appellant's February 5, 1994 employment injury.<sup>12</sup>

Similarly, Dr. Huber's report is insufficient to meet appellant's burden of establishing a causal relationship between her September 15, 1994 recurrence of disability and her accepted February 5, 1994 employment injury. While Dr. Huber in his January 9, 1995 letter opines that appellant's pain on September 19, 1994 was due to her February 5, 1994 injury he provides no rationale to support this opinion. Dr. Huber's June 28, 1995 attending physician's report of checking "yes" that appellant's disability was due to her employment is also insufficient to meet appellant's burden without any explanation or rationale for the conclusion reached, Dr. Huber's reports are insufficient to establish causal relationship.<sup>13</sup>

In a report dated July 14, 1995, Dr. Shepard opined that appellant's employment activities "may have caused her cervical strain to recur and worsen." However, this opinion is speculative and inconclusive in nature and thus of diminished probative value.<sup>14</sup> While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, neither can such an opinion be speculative or equivocal. The opinion should be one of reasonable medical certainty.<sup>15</sup>

In his report dated September 2, 1995, Dr. Huber opined that appellant's cervical and lumbar disc herniations were due to her February 5, 1994 employment injury. He also indicated that appellant's "lumbar pain increased when returned to work. The action of lifting or pulling a

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<sup>11</sup> *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1993); *Robert H. St. Onge*, 43 ECAB 169 (1992).

<sup>12</sup> *Daniel Deparini*, 44 ECAB 657, 659 (1993).

<sup>13</sup> *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

<sup>14</sup> *Connie Johns*, 44 ECAB 560 (1993).

<sup>15</sup> *Norman E. Underwood*, 43 ECAB 719 (1992).

cart probably worsened the lumbar disc problem.” Dr. Huber’s opinion that appellant’s employment activities “probably worsened” her lumbar disc problem is speculative. Thus, his opinion is insufficient to meet appellant’s burden that her disability is due to her employment injury.

As noted above, part of appellant’s burden of proof includes the submission of reasoned medical opinion evidence, which addresses whether the claimed disability is causally related to the employment injury. Although the Office advised appellant of the type of medical evidence needed to establish her claim for a recurrence of disability, appellant failed to submit medical evidence responsive to the Office’s request. Accordingly, the Board finds that appellant has not established that she sustained a recurrence of disability commencing on September 15, 1994 and February 27, 1995 causally related to her accepted February 5, 1994 employment injury.

The decisions of the Office of Workers’ Compensation Programs dated November 14 and April 21, 1997 are hereby affirmed.

Dated, Washington, D.C.  
November 24, 1999

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member