

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA A. JACKSON and DEPARTMENT OF THE NAVY,
PATUXENT RIVER NAVAL AIR STATION, Patuxent River, MD

*Docket No. 98-619; Submitted on the Record;
Issued October 5, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof in establishing that she sustained an alleged recurrence of disability causally related to her October 7, 1992 employment injury.

The Board has given careful consideration to the issue involved, the contentions of appellant on appeal and the entire case record and finds that this case is not in posture for decision.

The facts in this case indicate that on October 7, 1992 appellant, then a 34-year-old contracts administrative monitor, sustained an employment-related right arm injury when she "overstretched" while removing a file. The Office of Workers' Compensation Programs accepted the claim for a strain of the right forearm and subsequent cervical radiculitis and right ulnar neuropathy. On February 8, 1996 appellant filed a recurrence claim, contending that she suffered a recurrence of disability that began on December 13, 1995. She stopped work on December 13, 1995 and has not returned.

By decision dated March 6, 1996, the Office denied the recurrence claim, finding that the evidence of record failed to demonstrate a causal relationship between the 1992 employment injury and the claimed condition. By decision dated November 18, 1996, an Office hearing representative affirmed the prior decision. On July 15, 1997 appellant requested reconsideration and submitted additional evidence. In a merit decision dated September 4, 1997, the Office again denied the claim, finding that the evidence submitted with appellant's reconsideration request was not sufficient to warrant modification of its prior decision. The instant appeal follows.

The most recent and relevant medical evidence includes a December 18, 1996 report from Dr. Edward Ford Shaw Wilgis, a Board-certified surgeon, which states:

"I feel that [appellant] has adhesive neuritis of the brachial plexus on the right secondary to her injury of October 1992. I feel that she developed some internal bleeding from within the nerve which resulted in scarring and she has lost the total excursion of the peripheral nerves in the brachial plexus and distally to that.

I feel her current symptoms are related to her October 1992 injury and that the scarring has persisted and causes the symptomatology.”

In a February 19, 1997 report, Dr. Stuart J. Goodman, a neurologist, stated that Dr. Wilgis more than adequately described appellant’s problems and diagnosis as being of “in adhesive neuritis of the brachial plexus on the right secondary to her injury of October 1992.” He very well described a probable bleeding from within the nerve resulting in scarring leading to her current chronic problems. I as well concur with his work restrictions. As of this writing [appellant] is to return to a light[-]duty status working 4 hours per day, 5 days per week.”

In an April 30, 1997 report, Dr. Bruce L. Beck, an orthopedic surgeon, stated that he reviewed the nerve conduction study and electromyogram (EMG) study of December 15, 1992 and the CPT studies of March 10, 1997. He stated that he believed those reports are both similar and supporting in reference to the injury to the nerves in the right side of appellant’s neck and arm which occurred on October 7, 1992.

A May 16, 1997 medical report from Dr. Beena A. Shah, a neurologist, stated that an EMG and nerve conduction study of appellant’s right upper extremity was done for a re-evaluation of her symptoms and appellant was found to have mild to moderate lower cervical roots radiculopathy, radiculopathy with chronic irritation of the paraspinal muscles. Otherwise, her neurological examination was close to normal. Based on the objective evidence of the EMG and nerve conduction study and the chronology of appellant’s symptoms, Dr. Shah stated that she believed her problems were related to the initial work-related injury in October 1992 when she overextended her right arm to reach a file. She stated that it is very well known that this kind of problem (cervical radiculopathy) has periods of flare ups and remissions of symptoms and a certain type of activity aggravates the symptoms.

A March 10, 1997 CPT study indicated mild sensory threshold abnormalities in bilateral lower cervical roots.

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 probative evidence that the recurrence of the disabling condition, for which compensation is sought is causally related to the accepted employment injury.¹ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual history, concludes that the condition is causally related to the accepted employment injury and supports that conclusion with sound medical reasoning.²

The Office has accepted that as a result of her October 7, 1992 employment injury, appellant sustained a right forearm strain, cervical radiculitis and right ulnar neuropathy. Appellant’s disability commencing December 13, 1995 is based on her chronic neck and right shoulder problems. The most recent nerve conduction and EMG studies of May 22, 1997 indicated mild sensory threshold abnormalities in bilateral lower cervical roots. While the latest

¹ *Kevin J. McGrath*, 42 ECAB 109 (1990); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

² *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

medical evidence of record contain deficiencies which are insufficient to establish entitlement, the fact that they contain deficiencies preventing appellant from discharging her burden does not mean that they must be completely disregarded by the Office. It merely means that their probative value is diminished.

In this case, Dr. Wilgis related appellant's current condition to her October 1992 injury by rationalizing that she developed internal bleeding from within the nerve and the resultant scarring persisted and is the cause of appellant's current symptomatology. Although he provided a reasoned explanation as to how the October 7, 1992 work incident could have caused a shoulder and cervical musculoskeletal problem which might account for appellant's disability for work approximately three years post injury, he couched his entire opinion in terms of "I feel" without providing any objective evidence to support his theory on internal bleeding within the nerve resulting in scarring. Dr. Goodman merely agreed with Dr. Wilgis' diagnosis and theory stating that "he very well described a probable bleeding from within the nerve resulting in scarring and leading to her current chronic problems." Dr. Shah also related appellant's problems to the October 1992 employment injury, but she also couched her opinion in terms of "I believe" and "it is very well known that." Although Dr. Shah referred to EMG and nerve conduction studies, it is unclear from her medical report as to whether she based her opinion on the 1992 or 1997 studies.³ Based on the objective evidence of the EMG and nerve conduction study and chronology of appellant's symptoms, Dr. Shah stated that she believed appellant's problems were causally related to the October 1992 incident and that "it is well known" that cervical radiculopathy has periods of flare ups and remissions of symptoms and certain activity aggravates the symptoms. Dr. Shah, however, did not offer medical rationale in support of such opinion specifically relating to appellant's situation.

The terms utilized by Drs. Wilgis, Goodman and Shah to support a causal relationship (*i.e.*, "I feel," "probable," "I believe," and "it is very well known that") diminish the probative value of the medical reports and the opinions rendered as they lack evidence to support these "feelings" or "probabilities." The Board notes that the absence of supporting objective evidence is not fatal to appellant's case if causal relationship could be established through other types of medical findings, such as the 1997 EMG and the nerve conduction study. Absence of a known etiology for a condition does not relieve appellant of the burden of establishing a causal relationship by the weight of the evidence, which includes affirmative medical opinion evidence based on the material facts with supporting rationale.⁴

Thus, although the reports of Drs. Wilgis, Goodman and Shah are not sufficient to meet appellant's burden of proof in establishing that on December 13, 1995 she sustained a

³ The record reflects that the 1992 tests showed no evidence of cervical radiculopathy or brachial plexopathy, but the 1997 tests, according to Dr. Shah in her May 16, 1997 report, showed evidence of mild to moderate lower cervical roots radiculopathy, radiculopathy with chronic irritation of the paraspinal muscles.

⁴ *Judith A. Peot*, 46 ECAB 1036 (1995).

recurrence of disability causally related to her October 7, 1992 employment injury, these opinions are sufficient to require further development of the record.⁵ It is well established that proceedings under the Federal Employees' Compensation Act⁶ are not adversarial in nature⁷ and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁸ On remand, the Office should refer appellant along with an updated statement of accepted facts to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether appellant's chronic neck and right shoulder problems are causally related to the October 7, 1992 employment injury. The Office should request that the physician express an opinion with rationale as to whether the initial work incident caused a shoulder and cervical musculoskeletal problem which rendered appellant disabled for work over three years after the date of injury. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decisions of the Office of Workers' Compensation Programs dated September 4, 1997 is hereby set aside and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, D.C.
October 5, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member

⁵ See *John J. Carlone*, 41 ECAB 354 (1989). The Board notes although the case record contains a second opinion evaluation by Dr. Orest Hurko, a Board-certified neurosurgeon, on January 22, 1996 this report stated that review of the extensive studies done in the past as well as her physical examination did not indicate a neurological basis for her continued symptoms. Although Dr. Hurko noted that he would get flexion-extension views of appellant's cervical spine to rule out any instability as a basis for her symptoms, the record does not reflect that this was done. In light of the fact that the 1997 EMG nerve conduction study showed a change in appellant's condition and Dr. Hurko did not render an opinion on causal relationship, his opinion is insufficient to create a medical conflict in the evidence.

⁶ 5 U.S.C. §§ 8101-8193.

⁷ See, e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

⁸ See *Dorothy L. Sidwell*, 36 ECAB 699 (1985).