

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EMMA L. FRANKLIN and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Waco, TX

*Docket No. 98-781; Submitted on the Record;
Issued October 25, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained a recurrence of disability commencing September 24, 1997, causally related to her June 29, 1993 lumbar disc disease and L5-S1 lumbar discectomy.

The Office of Workers' Compensation Programs accepted that on June 29, 1993 appellant, then a 41-year-old food service worker, sustained lumbar disc disease when a cart of trays fell on her, which required a lumbar discectomy at L5-S1. Appellant returned to full-time modified light duty on February 17, 1994 but continued to receive treatment for her accepted condition through May 1997. She also had periodic absences from work due to back pain, for which she filed attending physicians' supplemental reports and Forms CA-8.

On June 12, 1997 appellant filed another traumatic injury claim alleging that on that date she slipped in some spilled food, fell backwards and injured her back and right shoulder. A new claim file was established for this injury;¹ this claim is not now before the Board on this appeal.² Appellant received continuation of pay for the June 12, 1997 injury until September 24, 1997.

On October 7, 1997 appellant filed a Form CA-8 claim for compensation commencing September 24, 1997, due to her June 29, 1993 employment injury. An accompanying October 3, 1997 attending physician's report stated a diagnosis of "low back pain," noted the date of injury as June 29, 1993 and checked "yes" to the questions of whether appellant's present condition was due to the injury for which compensation was claimed. No further explanation or elaboration was provided.

¹ OWCP Case File Number 160299057.

² See 20 C.F.R. § 501.2(c).

In support of her claim for recurrence of disability related to her 1993 injury, appellant also submitted a September 24, 1997 office note from Dr. Stephen G. Howlett, a Board-certified neurologist, which indicated that upon examination appellant revealed diffuse tenderness of her low back, which was felt to be chronic and included a diagnoses of “chronic low back pain with an acute exacerbation.” Dr. Howlett opined that “this is predominantly low back strain,” and he released appellant to return to work on September 30, 1997 with restrictions. No relationship with appellant’s 1993 injury was discussed.

By decision dated November 14, 1997, the Office rejected appellant’s recurrence claim finding that she had not demonstrated a change in the nature or extent of her injury-related condition or a change in the nature or extent of her light-duty requirements.

The Board finds that appellant has failed to establish that she sustained a recurrence of disability commencing September 24, 1997, causally related to her June 29, 1993, lumbar disc disease and L5-S1 lumbar discectomy.

An employee returning to light duty, or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability by the weight of reliable, probative and substantial evidence and to show that he or she cannot perform the light duty.³ As part of this burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.⁴

Appellant has demonstrated neither in this case. Appellant has submitted no factual evidence establishing a change in her light-duty requirements, which caused her disability recurrence and the medical evidence submitted did not establish a change in the nature or extent of her employment-related condition, lumbar disc disease, which caused disability on September 24, 1997. In the September 24, 1997 report, Dr. Howlett did not state that appellant experienced a change in her accepted condition or a recurrence of disabling “lumbar disc disease” that date, but instead he opined that appellant had experienced an acute exacerbation of “chronic low back pain” which was “predominantly low back sprain,” and Dr. Howlett failed to identify a date or time of occurrence. However, “low back pain” and “low back sprain” were not conditions accepted by the Office as being employment related. Further, no medical rationale was provided which supported that this occurrence of soft tissue muscle strain was related to appellant’s 1993 lumbar disc disease and no objective evidence was cited that established a change in the nature or extent of appellant’s lumbar disc disease.

Consequently, this report is insufficient to establish appellant’s recurrence claim.

On the October 3, 1995 attending physician’s form report Dr. Howlett noted the date of injury as June 29, 1993, but merely checked “yes” to the question of causal relation, providing no further elaboration or explanation. The Board has held, however, that when a physician’s opinion on causal relationship consists only of checking “yes” to a form question, that opinion

³ *Terry R. Hedman*, 38 ECA 222, 227 (1986).

⁴ *Id.*

has little probative value and is insufficient to establish causal relationship.⁵ Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his conclusion with sound medical reasoning. As Dr. Howlett did no more than check "yes" to a form question, his opinion on causal relationship is of little probative value and is insufficient to discharge appellant's burden of proof to establish her claimed recurrence of disability. Further, this form report did not identify any change in the nature or extent of appellant's lumbar disc disease, or identify or discuss any bridging symptomatology from appellant's 1993 injury.

As no further objective medical evidence was submitted that demonstrated a change in the nature or extent of appellant's lumbar disc disease, or provided rationale supporting causal relation, appellant has failed to establish her recurrence claim.

Accordingly, the decision of the Office of Workers' Compensation Programs dated November 14, 1997 is hereby affirmed.

Dated, Washington, D.C.
October 25, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁵ *E.g., Lillian M. Jones*, 34 ECAB 379 (1982).