

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDITH SCURLOCK-LEWIS and DEPARTMENT OF VETERANS
AFFAIRS, VETERANS ADMINISTRATION WEST SIDE HOSPITAL,
Chicago, IL

*Docket No. 98-812; Submitted on the Record;
Issued October 20, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish that she sustained a recurrence of disability on December 11, 1996 causally related to her accepted July 20, 1994 employment injury.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained a recurrence of disability on December 11, 1996 causally related to her accepted July 20, 1994 employment injury.

On July 20, 1994 appellant, then a 42-year-old respiratory therapist, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a right hand and thumb injury when she jumped off an elevator that had fallen to help a patient get off the elevator.

By letter dated August 31, 1994, the Office of Workers' Compensation Programs accepted appellant's claim for a fractured right wrist.

On January 22, 1997 appellant filed a claim (Form CA-2a) alleging that she sustained a recurrence of disability on December 11, 1996. Appellant's claim was accompanied by medical evidence.

By letter dated February 20, 1997, the Office advised appellant to submit medical evidence supportive of her recurrence claim. Appellant submitted medical evidence in response to the Office's letter.

In an April 4, 1997 decision, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on December 11, 1996 causally related to her July 20, 1994 employment injury. By letters dated April 10 and 25, 1997, appellant, through her counsel, requested reconsideration of the Office's decision.

By decision dated June 13, 1997, the Office denied appellant's request for reconsideration without a merit review of the claim on the grounds that appellant neither raised substantive legal questions nor submitted new and relevant evidence. In a June 18, 1997 letter, appellant, through her counsel, requested reconsideration of the Office's decision accompanied by medical evidence.

By decision dated August 28, 1997, the Office denied appellant's request for modification based on a merit review of the claim. In a December 12, 1997 letter, appellant requested reconsideration of the Office's decision.

In its December 29, 1997 decision, the Office denied appellant's request for reconsideration without a merit review on the grounds that appellant neither raised substantive legal questions nor submitted new and relevant evidence.

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 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.¹

In this case, appellant has not submitted rationalized medical evidence establishing that her current right upper extremity condition was caused by the accepted July 20, 1994 employment injury. In support of her recurrence claim, appellant submitted the treatment notes of Dr. Samuel J. Chmell, a Board-certified orthopedic surgeon, covering the period May 10, 1995 through January 15, 1997 concerning her right upper extremity condition. His treatment notes are insufficient to establish appellant's burden because they failed to address a causal relationship between appellant's right upper extremity condition and the July 20, 1994 employment injury.

In further support of her recurrence claim, appellant submitted a January 6, 1997 bone scan report of Dr. Carlos Bekerman, who is Board-certified in nuclear medicine, revealing an abnormal examination. He described a triple phase examination of appellant's right wrist. Dr. Bekerman opined that the findings "could" indicate changes secondary to the previous trauma and should be correlated with the past medical history as well as radiographic findings. He diagnosed degenerative changes of the left radioulnar joint versus trauma and placed a question mark by this diagnosis. Dr. Bekerman further diagnosed "possible" degenerative disease of the lower spine. The Board has held that medical opinions which are speculative are of limited probative value.² Inasmuch as Dr. Bekerman's report is speculative regarding appellant's diagnoses and a causal relationship between the diagnosed conditions and appellant's July 20, 1994 employment injury, it is insufficient to establish appellant's burden.

¹ *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1993); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

² *See Jennifer Beville*, 33 ECAB 1970 (1982); *Leonard J. O'Keefe*, 14 ECAB 42 (1962).

Appellant also submitted Dr. Chmell's May 29, 1997 medical report. In this medical report, he provided a history of his treatment of appellant's condition and a history given by appellant regarding her condition. Dr. Chmell indicated his findings on physical and objective examinations and a diagnosis of multiple tendinitis with repetitive motion trauma. He opined that appellant's original injury was diagnosed as a fracture of the right carpal scaphoid with immobilization and that subsequent repetitive motion trauma multiple tendinitis had ensued. Dr. Chmell failed to explain how or why appellant's current condition was caused by the July 20, 1994 employment injury. Therefore, his medical report is insufficient to establish appellant's burden.

Because appellant has failed to submit rationalized medical evidence establishing that her current right upper extremity condition was causally related to her accepted July 20, 1994 employment injury, the Board finds that appellant has not satisfied her burden of proof.

The December 29, August 28, June 13 and April 4, 1997 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
October 20, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member