

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JILL DIRIENZO and FEDERAL AVIATION ADMINISTRATION,  
AIR TRAFFIC CONTROL CENTER, Ronkonkoma, NY

*Docket No. 99-32; Submitted on the Record;  
Issued April 18, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on November 5, 1996 causally related to her accepted employment injuries.

On June 8, 1995 appellant, then a 30-year-old air traffic controller, filed a notice of traumatic injury alleging injury on that date when she slipped on wet stairs in the course of her federal employment. The Office of Workers' Compensation Programs accepted the claim for multiple contusions and appellant received compensation for total temporary disability. She returned to work in a limited-duty, sedentary position on January 8, 1996. On November 18, 1996 appellant filed a notice of a recurrence of disability beginning November 5, 1996.

In support of her claim for a recurrence of disability, appellant submitted reports dated November 6 and December 16, 1996 and January 4 and January 17, 1997 from Dr. Jennifer Choi, her treating physician and a Board-certified orthopedic surgeon, who diagnosed a cervical strain and discogenic low back pain. She checked "yes" to indicate that appellant's condition was due to the injury for which compensation was claimed and to indicate that she was totally disabled for her usual work.

On November 14, 1996 Dr. Thomas J. Dowling, an attending physician and a Board-certified orthopedic surgeon, reported that appellant was 14 weeks pregnant and that she was now unable to perform her light duties due to increasing symptoms in her neck and back. On examination, he found paraspinal tenderness in the cervical and lumbar areas, posteriorly. Dr. Dowling also noted protection with regards to abnormal spinal rhythm in both the neck and lower back. He diagnosed discogenic pain in the lower back and probably in the neck. Dr. Dowling stated that appellant needed to undergo cervical and lumbar discograms to confirm his diagnoses.

By decision dated February 18, 1997, the Office rejected appellant's claim finding the evidence failed to demonstrate a causal relationship between the injury and the claimed condition or disability.

Appellant subsequently submitted a January 13, 1997 report from Dr. Dowling. He again recorded symptoms of neck and back pain, with some radicular component of the left lower extremity and into the buttock area. Dr. Dowling stated that appellant's symptoms were consistent with a discogenic source of pain with regard to both the neck and lower back. He indicated that the symptoms had progressed so that appellant could not perform light duty. Dr. Dowling noted paraspinal tenderness and a restricted range of motion in both the cervical areas consistent with discogenic pain. He noted that appellant had been previously diagnosed with myofascial-type pain, which would be linked to the discogenic source of pain.

On January 17, February 16, March 2 and March 16, 1997, Dr. Dowling repeated his diagnoses of discogenic neck syndrome and discogenic low back pain and he checked "yes" to indicate that the condition was due to the injury for which compensation was claimed and that appellant was totally disabled. On June 26, 1997 he again diagnosed cervical and lumbar discogenic pain syndrome and stated that appellant had a total physical impairment. On October 1, 1997 Dr. Dowling noted that appellant continued to complain of symptoms, but that she returned to light duty. On December 9, 1997 he again diagnosed cervical discogenic pain syndrome and lumbar discogenic pain syndrome. Dr. Dowling stated that appellant's symptoms of neck and low back pain were directly related to her injury of June 8, 1995 because she was asymptomatic prior to the injury. He further noted that the symptoms appellant presented on November 5, 1996 were identical to the symptoms she exhibited following her original injury and that, therefore, there was a causal relationship between appellant's condition on November 5, 1996 and her accepted employment injury. On December 11, 1997 Dr. Dowling noted that physical therapy provided relief for appellant's muscle spasm, but that she still complained of neck pain with occipital headache. He also noted that appellant had a muscle spasm related to the temporomandibular joint. Dr. Dowling attributed appellant's symptoms to both her cervical problems and her temporomandibular joint.

Appellant also submitted an undated report from Dr. Leonard B. Goldstein, a dentist, who indicated that he had treated appellant since October 23, 1995 for severe headaches, jaw tightening, pain when chewing and visual disturbances. He noted the history of injury and his findings rendered at his examination on October 23, 1995. Dr. Goldstein indicated that at that time he diagnosed bilateral trauma to the head and neck, capsulites of the temporomandibular joint, cephalgia, right side anterior disc replacement, facial/cervical myosites and myalgia, dizziness, muscle spasm and headaches/fascial pain stemming from the June 8, 1995 injury. He then reviewed the treatment appellant received and noted that appellant suffered a continuous recurrence of her initial symptoms of severe head, neck and back pain. Dr. Goldstein indicated that he examined appellant on June 23, 1997 and diagnosed bilateral capsulitis, bilateral cephalgia, anterior disc displacement without reduction, fascial/cervical myositis, bilateral myalgia and dizziness. He indicated that the disability on November 5, 1996 was causally related to the June 8, 1995 injury because appellant's symptoms remained unchanged since her original injury. Dr. Goldstein indicated that appellant remained restricted from work due to persistent pain and dizziness.

On January 22, 1998 appellant's representative requested reconsideration.

By decision dated June 6, 1998, the Office reviewed the merits of the case and found that the evidence was not sufficient to warrant modification of its prior decision. In an accompanying memorandum, the Office indicated that appellant failed to provide a rationalized medical opinion supported by objective evidence establishing that appellant suffered a recurrence of disability on November 5, 1996 causally related to her accepted injury of June 8, 1995.

The Board finds that this case is not in posture for decision.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.<sup>1</sup> The burden of showing a change in the nature and extent of the injury-related condition includes the necessity of furnishing medical evidence from a 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>2</sup> Causal relationship is a medical issue and can be established only by medical evidence.<sup>3</sup> However, proceedings under the Federal Employees' Compensation Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>4</sup>

In the present case, appellant submitted medical opinion evidence from Drs. Choi, Dowling and Goldstein supporting her assertion that she sustained a recurrence of disability on November 5, 1996. Dr. Choi, appellant's treating physician and a Board-certified orthopedic surgeon, submitted reports dated November 6 and December 16, 1996, January 4 and January 17, 1997 in which she checked "yes" to indicate that appellant was now totally disabled due to a cervical strain and discogenic low back pain resulting from her accepted employment injury. Dr. Dowling, an attending physician and a Board-certified surgeon, also indicated that appellant suffered a recurrence of disability on November 5, 1996 because she was exhibiting the same symptoms she did following her accepted injury and these symptoms were previously absent. Dr. Goldstein, a dentist, also concluded that appellant suffered a recurrence of disability because she continued to exhibit symptoms stemming from her June 8, 1995 injury. Although

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<sup>1</sup> See *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Stuart K. Stanton*, 40 ECAB 859, 864 (1989); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>2</sup> *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983).

<sup>3</sup> *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

<sup>4</sup> *William J. Cantrell*, 34 ECAB 1223 (1983).

the reports of Drs. Choi, Dowling and Goldstein are not sufficiently rationalized to discharge appellant's burden of proving that she sustained a recurrence of disability causally related to her accepted employment injury, they raise an uncontroverted inference of causal relationship sufficient to require further development of the record by the Office.<sup>5</sup> Additionally, the Board notes that in this case, the record contains no contrary medical opinion.

Upon remand the Office should further develop the medical evidence as necessary. After such further development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

Consequently, the decision of the Office of Workers' Compensation Programs dated June 6, 1998 is hereby set aside and the case is remanded for further development in accordance with this decision.

Dated, Washington, D.C.  
April 18, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).