

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JEAN ALEXANDER and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION HOSPITAL, Albany, NY

*Docket No. 98-928; Submitted on the Record;  
Issued January 18, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on or after October 6, 1995 causally related to her accepted employment injury.

The Board has duly reviewed the case on appeal and finds it is not in posture for decision.

Appellant, then a 33-year-old nurse, filed a claim on April 15, 1982 alleging that on that date she injured her back in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for lumbosacral strain.<sup>1</sup> Appellant filed a notice of recurrence of disability on January 17, 1996 alleging that on October 24, 1995 she sustained a recurrence of disability causally related to her April 15, 1982 employment injury. The Office denied this claim by decision dated December 6, 1996. Appellant requested an oral hearing on December 26, 1996. By decision dated October 28, 1997, the hearing representative affirmed the Office's December 6, 1996 decision.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability commencing October 24, 1995 and her April 15, 1982 employment injury.<sup>2</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and

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<sup>1</sup> Appellant filed a notice of recurrence of disability on May 11, 1982 alleging that on May 5, 1982 she sustained a recurrence of disability. Appellant filed a second notice of recurrence of disability on March 3, 1983 alleging that on February 23, 1983 she sustained a recurrence of disability causally related to her April 15, 1982 employment injury. On October 12, 1995 appellant filed a notice of recurrence of disability alleging that on October 6, 1995 she sustained a recurrence of disability causally related to an April 17, 1986 employment injury.

<sup>2</sup> *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>3</sup>

In a note dated October 6, 1995, a physician's assistant stated that appellant reported severe back pain following "quite a bit of yard work and lifting." On October 9, 1995 Dr. Frank Belardi, a Board-certified family practitioner, reviewed the October 6, 1995 note and diagnosed acute low back syndrome. He diagnosed acute back strain on October 11, 1995. On October 16, 1995 Dr. Belardi stated that appellant's low back syndrome had resolved.

In a note dated October 24, 1995, Dr. Emogene H. Bedrosian, Board-certified in emergency medicine, noted that appellant sustained a back injury in 1982 and that appellant did not believe that this injury was related to her current condition. She stated that appellant experienced severe lower back pain on October 1, 1995 with no injury noted. Dr. Bedrosian further stated that appellant performed yard work at home and that she did no lifting at work. She noted that appellant returned to work on October 17, 1995 and that on October 21, 1995 appellant experienced severe pain in the right paralumbar area. On October 26, 1995 Dr. Bedrosian diagnosed severe right flank pain.

In a report dated October 26, 1995, Dr. Scott Henson, diagnosed herniated T10-11. He stated that appellant reported low back pain since a work injury in 1982. He noted that appellant reported low back pain beginning a month previously while she was working in her yard.

Dr. Bruce I. Tranmer, a Board-certified neurologist, completed a report on November 27, 1995 and stated that appellant underwent a T11 laminectomy for removal of an old disc herniation on November 3, 1995. Dr. Henson submitted an operative report dated November 3, 1995.

In a report dated September 23, 1997, Dr. Belardi opined that appellant's spine surgery for a herniated disc was causally related to the back injury which she sustained in 1982. He stated that since 1982 appellant had multiple episodes of acute lumbosacral strain sometimes related to yard work and on other occasions to no activity. Dr. Belardi stated that the disc fragment appeared quite old and "in my opinion that causally links the disc rupture to a remote injury which occurred in 1982."

These reports contain a history of injury, diagnosis and an opinion that appellant's current condition is causally related to the accepted employment incident. While these reports are not sufficient to meet appellant's burden of proof, they do raise an uncontroverted inference of causal relation between appellant's accepted employment injury on April 15, 1982 and her alleged recurrence of disability in October 1995 and are sufficient to require the Office to undertake further development of appellant's claim.<sup>4</sup>

On remand, the Office should refer appellant, statement of accepted facts, and a list of specific questions to an appropriate Board-certified physician, to determine whether there is a

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<sup>3</sup> See *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

<sup>4</sup> *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

causal relationship between appellant's accepted condition of lumbosacral strain and her alleged recurrence of disability in October 1995.

The October 29, 1997 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for further development consistent with this opinion.

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

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member