

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PATRICIA B. RICE and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Coatesville, PA

*Docket No. 98-1008; Submitted on the Record;  
Issued January 31, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability beginning February 28, 1995 causally related to her July 1, 1990 employment injury.

On July 1, 1990 appellant, then a 42-year-old nursing coordinator, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on that same date, while she was talking to an agitated patient, the patient slapped the left side of her face thereby slamming the right side of her head into a wall. Appellant alleged that she suffered swelling in the left face and right-sided neck pain. She was treated in the emergency room for a facial contusion and cervical strain and referred to Dr. Daniel L. Zimet, a Board-certified orthopedic surgeon, who diagnosed appellant as suffering from cervical strain, with C-7 radiculopathy. By letter dated August 21, 1990, the Office of Workers' Compensation Programs advised appellant that it had accepted her claim for cervical strain and paid appropriate compensation benefits.

On February 28, 1995 appellant filed a notice of recurrence of disability and claim for continuation of pay/compensation (Form CA-2a), alleging that on or about March 1, 1995, she sustained a recurrence of disability in that the prior injury never resolved. She specifically noted that she had constant debilitating headaches requiring the use of sick leave as well as constant neck pain. In support thereof, appellant filed a statement detailing the original incident and a March 1, 1995 statement by Dr. James P. Argires, a Board-certified neurosurgeon, indicating that the treatment she was now receiving was "directly related to injury sustained in July [19]90." Appellant also submitted a March 6, 1995 medical report by Dr. Argires noting cervical spondylosis, degenerative discogenic disease at C5-6 and C6-7 with occipital cephalalgia. He stated that "it appears to be that she had an aggravation of a preexisting

condition with the injury she sustained in 1990 at work.” Dr. Argires noted that appellant’s headaches were “coming from the cervical region.”<sup>1</sup>

Appellant also submitted results of a cervical myelogram by Dr. Robert Latshaw, a Board-certified radiologist, performed at the request of Dr. Argires on March 7, 1995, which found:

“Anterior extradural defects C4-5 through C6-7 most pronounced at C6-7. Associated disc space narrowing at those levels. Hypertrophic spurring at C5-6 and C6-7. Lateral nerve root sleeve defects bilaterally at C6-7 on the right at C7-T1 and on the left at C5-6.”

On April 4, 1995 the Office informed appellant that the information in her case record was insufficient to establish a recurrence of disability. The Office authorized appellant to undergo a cervical myelography and computerized tomography (CT) scanning to determine if the headaches originated in the cervical region. After performing these tests, Dr. Argires opined, in a report dated April 13, 1995, that appellant has a rather large central disc herniation, partially calcified at the C6-7 level. He further noted that he suspected that “it has undergone some calcific change as it has degenerated over the past three or four years.”

By letter dated April 20, 1995, Dr. Argires recommended surgery. Specifically, he believed that a disc at C6-7 should be removed and an anterior interbody cervical fusion be performed if instability was noted. Dr. Argires further opined that he had “no reservation in relating to you that this incident of trauma that [appellant] sustained in 1990 at the [employing establishment] is the cause of this problem.” In an attending physician’s report dated April 24, 1995, (Form CA-20) Dr. Argires officially requested approval for an anterior cervical discectomy and fusion and noted that he believed the condition was caused or aggravated by an employment injury. He referred to his April 20, 1995 report to address the issue of causal relationship.

By letter dated May 2, 1995, the Office informed appellant that she must submit objective, bridging evidence in order to prove that her current condition was a result of the work-related injury of July 1, 1990. The Office noted that the cervical myelogram and CT scan revealed spurring of a degenerative nature and disc herniation. The Office noted that disc herniation was not diagnosed at the time of the July 1, 1990 employment injury. The Office allotted appellant 15 days to submit additional medical evidence. On May 4, 1995 the Office informed Dr. Argires that it had not approved the surgery scheduled for appellant.

The record reveals that appellant was admitted into Lancaster General Hospital by Dr. Argires on May 5, 1995.

On May 5, 1995 Dr. W. Gareis, a Board-certified radiologist, reviewed a lateral cervical spine x-ray and compared it with a film taken earlier that day in the operating room. He stated

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<sup>1</sup> On April 13, 1995 appellant filed a claim for compensation on account of traumatic injury or occupational disease (Form CA-7), requesting leave buy back from April 5 to April 30, 1995.

that he could not visualize C6-7 on the lateral examination of the cervical spine and that some degenerative change was seen in the facet joints at the mid-cervical spine. By an electrocardiogram (EKG) performed on May 3, 1995, the Lancaster General Hospital's Department of Cardiology could not rule out previous posterior infarction and noted that no significant ST or T abnormalities are noted and that there was no standard tracing available for comparison.

On May 5, 1995 an anterior inner body cervical fusion C6-7 with discectomy was performed by Dr. Argires. He discharged appellant on May 6, 1995 with a diagnosis of cervical disc herniation with hypertrophic ridging at C6-7 and neural compression.

By decision dated June 5, 1995, the Office denied appellant's claim for a recurrence of disability, finding that the evidence of record failed to establish that the claimed recurrence of disability was related to the employment injury of July 1, 1990.

After the issuance of this decision, other medical evidence was submitted, including a postoperative report by Dr. Argires dated June 5, 1995, wherein he noted that appellant's prognosis was excellent.

In a medical report dated April 24, 1996, Dr. Argires recounted the facts and circumstances surrounding the July 1, 1990 employment injury. He opined: "It is clear that due to the injury she sustained in 1990 at the [employing establishment], she had an aggravation of the preexisting condition." Dr. Argires further opined that it was clear that the surgery performed on May 6, 1995 for a herniated cervical disc was the treatment required to correct the employment injury that occurred in July 1990. He further noted that the diagnosis originally made was incorrect and that if a magnetic resonance imaging (MRI) scan had been performed shortly after the injury, "then the disc herniation may well have been visualized and objectively found by that technology" and that the diagnosis would have been correct at that time.

An application for reconsideration dated June 3, 1996 was submitted by appellant.

By affidavit dated June 3, 1996, appellant stated that she did not suffer any additional injury to her neck and/or back between the employment injury of July 1, 1990 and the May 6, 1995 date of surgery for her herniated disc.

By decision dated January 5, 1998, the Office denied appellant's claim for an alleged recurrence of disability. The Office conducted a full merit review of the case. The Office found that there was no medical evidence of record which bridged the time period from July 3, 1990 until the alleged recurrence on February 28, 1995 except the May 24, 1994 MRI scan, that although Dr. Argires and appellant alleged that appellant's condition was misdiagnosed, there was no medical evidence to indicate that appellant began suffering from the headaches and that the argument that appellant had suffered continuous symptoms was not supported by the medical evidence of record.

The Board finds that appellant did not meet her burden of proof in establishing that she sustained a recurrence of disability on or after February 28, 1995 causally related to her July 1, 1990 employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial, reliable and probative evidence, that the subsequent disability for which she claims compensation is causally related to the accepted injury.<sup>2</sup> As part of this burden, appellant must furnish 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 employment factors and supports that conclusion with sound medical reasoning.<sup>3</sup>

As the Office never accepted appellant's disc herniation as employment related, appellant has the burden to establish that her disc herniation was related to the accepted employment-related cervical strain. Appellant relied on the opinion of Dr. Argires to show that her alleged recurrence of disability was due to her July 1, 1990 accepted employment injury. However, despite numerous requests to do so, Dr. Argires never fully explained the rationale for his opinion as to why the July 1, 1990 employment injury resulted in a "rather large central disc herniation, partially calcified at the C6-7 level," yet was not detected for almost five years after the accepted injury. Furthermore, as the Office correctly noted, there is no "bridging evidence" which would relate the disc herniation to the employment injury. Dr. Argires makes no mention of any "bridging evidence." That is, he does not explain how, over five years following the accepted cervical strain, it was exacerbated by appellant's employment factors to result in a disc herniation and "debilitating headaches." Moreover, in his report of April 24, 1996, Dr. Argires offered no explanation as to why he believed appellant was misdiagnosed when she sustained the employment injury in 1990 and that the resulting surgery on May 6, 1996 was to correct the injury sustained in 1990, namely a herniated disc. The Board has long held that medical opinions not containing rationale or causal relation are entitled to little probative value and are generally insufficient to meet appellant's burden of proof.<sup>4</sup> Accordingly, his opinion is not sufficiently rationalized to establish that appellant's diagnosed condition is causally related to the July 1, 1990 employment injury.

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<sup>2</sup> *Jose Hernandez*, 47 ECAB 288, 293-94, (1996).

<sup>3</sup> *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996)

<sup>4</sup> *Carolyn F. Allen*, 47 ECAB 240 (1995).

Accordingly, the decision of the Office of Workers' Compensation Programs dated January 5, 1998 is affirmed.

Dated, Washington, D.C.  
January 31, 2000

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member