

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA A. WILLIAMS and DEPARTMENT OF TREASURY,
INTERNAL REVENUE SERVICE, Nashville, TN

*Docket No. 98-2316; Submitted on the Record;
Issued July 19, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that she sustained a recurrence of disability on or after February 3, 1997 causally related to her March 25, 1996 employment injury.

On March 26, 1996 appellant, then a 40-year-old revenue officer, filed a claim alleging that she sustained a traumatic injury on March 25, 1996 when she slid "down several steps." The Office of Workers' Compensation Programs accepted the claim, assigned file number A06-0650031, for right knee strain, cervical strain, right shoulder strain and lumbar strain. Appellant returned to limited-duty employment on November 1, 1996.

On February 10, 1997 appellant filed a notice of recurrence of disability alleging that on February 3, 1997 she sustained a recurrence of disability causally related to her March 25, 1996 employment injury. Appellant related that she experienced increased pain on February 3, 1997 after lifting a laptop computer. Appellant further filed a claim for continuing compensation on account of disability (Form CA-8) dated July 30, 1997 requesting compensation from March 21 to July 30, 1997.¹

By decision dated August 25, 1997, the Office denied appellant's claim on the grounds that the evidence did not establish that she had any disability on or after March 21, 1997 causally related to her March 25, 1996 employment injury.

¹ On February 11, 1997 appellant filed a traumatic injury claim (Form CA-1), alleging that she sustained an injury on February 3, 1997 when she lifted a laptop computer. By decision dated April 9, 1997, the Office denied appellant's claim, assigned file number A06-671434, on the grounds that she had not established fact of injury. In decisions dated July 9, August 28 and October 31, 1997 and March 11, 1998, the Office denied modification of its April 9, 1997 decision. The Office further denied appellant's claim for an emotional condition in decisions dated June 10 and October 30, 1997. In a decision dated July 23, 1997, the Office found that appellant was at fault in the creation of an overpayment. Appellant has appealed only the April 22, 1998 decision, in Office file number A06-650031 and thus the only issue before the Board is whether she sustained a recurrence of disability causally related to her March 25, 1996 employment injury.

By letter dated December 1, 1997, appellant requested reconsideration of the Office's denial of her claim in file number A06-0650031.²

By decision dated April 22, 1998, the Office denied modification of its August 25, 1997 decision. In the accompanying memorandum to the Director, the Office found that appellant had not established that her employment-related condition worsened such that she was disabled from her modified work beginning February 3, 1997.

The Board has duly reviewed the case record in the present appeal and finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability causally related to her March 25, 1996 employment injury.

Where an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.³

In the present case, appellant sustained right knee strain, cervical strain, right shoulder strain and lumbar strain due to a March 25, 1996 employment injury. Appellant subsequently returned to work in a limited-duty capacity. There is no evidence in the record establishing any change in the nature and extent of appellant's light-duty position as a cause of her claimed disability beginning February 1997. Appellant further has not submitted rationalized medical evidence sufficient to establish that she experienced a recurrence of disability due to her March 25, 1996 employment injury.

In a disability certificate dated February 10, 1997, Dr. Stanford A. Owens related that appellant should not work for six weeks "pending workup [and] treatment." As Dr. Owens did not render a diagnosis or a finding on causation his report is of little probative value.⁴

In a form report dated March 25, 1997, Dr. Owens diagnosed low back syndrome and thoracic outlet syndrome and checked "yes" that the condition was caused or aggravated by employment. However, the Board has held that the opinion of a physician which consists only to responding "yes" to a form question regarding to cause of appellant's condition, without any

² Appellant noted that an Office decision dated October 31, 1997 had file number A06-0650031 on the cover letter and a different file number on the accompanying memorandum to the Director. It appears from a review of the decision that the Office made a typographical error in placing file number A06-0650031 on the cover letter as the decision pertains to appellant's claim in file number A06-0671434.

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

⁴ *Linda I. Sprague*, 48 ECAB 386 (1997) (Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

explanation or rationale, has little probative value and is insufficient to establish causal relationship.⁵

In an addendum dated April 25, 1997, Dr. Owens related that the February 3, 1997 employment incident caused appellant to have “new pain in the neck [and] shoulder” and indicated that “[w]hether this is aggravation of an old injury or a new injury cannot be stated.” He diagnosed thoracic outlet syndrome. As Dr. Owens indicated that he could not relate appellant’s diagnosed condition to her prior employment injury, his report is insufficient to meet her burden of proof.

In a report dated July 8, 1997, Dr. Owens found appellant indefinitely disabled from employment. In a report dated September 17, 1997, he diagnosed cervical and probable lumbar radiculopathy, disuse syndrome with muscle atrophy, rotator tendinitis of the shoulder and tendinitis of the hip. Dr. Owens noted that he could not “address motivational or psychological contributions” and opined that appellant’s complaints were aggravated by lifting in February 1997. He stated, “It is my opinion that causes of her original complaints [are] still at play. Further injury aggravates any pain injury.” Dr. Owens opined that he could do nothing further for appellant. He, however, did not specifically discuss appellant’s March 1996 employment injury or explain how, with reference to the specific facts of the instant case, the injury continued to cause disability from employment. Thus, his opinion is insufficiently rationalized to meet appellant’s burden of proof.⁶

In a report dated July 30, 1997, Dr. Robert Fortier-Bensen, a Board-certified anesthesiologist, noted that Dr. Owen had referred appellant to him after finding “that she had a lot of low back pain with some radicular symptoms towards her leg as well as some symptoms of neck pain. We reconfirmed this. In addition, the right triceps deep tendon reflex was quite diminished on two separate examination. We felt that she had a cervical neuralgia with some radicular symptoms of the arm.” Dr. Fortier-Bensen recommended epidural injections. As he did not comment on the cause of appellant’s condition, his opinion is of diminished probative value.

⁵ *Robert J. Krstyen*, 44 ECAB 227 (1992).

⁶ *Jacquelyn L. Oliver*, 48 ECAB 232 (1996) (Medical conclusions unsupported by rationale are of diminished probative value).

In a letter to the Office dated September 8, 1997, Dr. Fortier-Bensen discussed appellant's March 25, 1996 employment injury. He related:

“Currently, my diagnosis at this time is that [appellant] has cervical neuralgia and possibly discogenic pain, either causing both the neck and back pain. To back up this diagnosis she has a weak tricep deep tendon reflex noted on three occasions on her visits and because of this we are not quite sure whether this is possibly part of discogenic pain. She, additionally, has referred pain down both shoulder blades which would be consistent with the scleroatomes of such discogenic type pain. She also has low back pain and right leg pain with some weakness and atrophy of the right compared to the left. Because of these clinical findings and symptoms, we feel as though she has underlying degenerative changes and disc disease and that these we feel, whether preexistent before the injury, certainly could have been exacerbated or could have been caused by the injury which [appellant] notes occurred on March 25, 1996. We do not know about the new injury sustained on February 3, 1997.... It is a possibility that both injuries are related to degenerative disc disease, with the possibility that the second injury has worsened her present injury, as we have seen, in our experience, in discogenic type pain.”

Dr. Fortier-Bensen's opinion that appellant's March 25, 1996 employment injury “could have aggravated” her preexisting degenerative disc disease is speculative in nature and thus insufficient to meet her burden of proof.⁷

In a report dated October 6, 1997, Dr. Fortier-Bensen diagnosed cervical neuralgia to rule out discogenic versus myofascial pain and lumbar neuralgia with radicular symptoms. As he did not address the cause of appellant's condition, the relevant issue in the present case, his report is of little probative value.

In an office visit note dated November 5, 1997, Dr. Fortier-Bensen related:

“There appears to be a lot of confusion as to whether the 1996 or 1997 injury caused all this. We decided, for whatever reasons, to go ahead and help her with establishment of this. However, because we have not seen [appellant] previous to this, it is difficult for us to give a full opinion about this. She may need to talk to her previous doctors about the relationship of the two injuries.”

As Dr. Fortier-Bensen related that he could not provide a “full opinion” regarding whether the 1996 employment injury caused appellant's current condition, his opinion does not support her claim for an employment-related recurrence of disability.

In a report dated August 7, 1997, Dr. Harry A. Danielson, a neurosurgeon, related that Dr. Fortier-Bensen had referred appellant to him for complaints of back and neck pain. He

⁷ *Jennifer L. Sharp*, 48 ECAB 209 (1996) (Medical opinions which are speculative or equivocal in character have little probative value).

recommended objective testing and found appellant temporarily totally disabled. In form reports dated August 12 and 25, 1997, Dr. Danielson deferred diagnosis pending the result of a magnetic resonance imaging (MRI) study. In a report dated September 15, 1997, he discussed appellant's history of injuries and noted that he had examined her on August 7, 1997 at which time "there was symptom magnification and a hysterical response to portions of the examination making it difficult to assess [appellant]." Dr. Danielson recommended objective testing prior to rendering further findings. As he deferred rendering a diagnosis pending the results of objective testing and did not address the cause of appellant's condition, these reports are insufficient to meet appellant's burden of proof.⁸

In an office visit note dated October 30, 1997, Dr. Danielson stated that he had reviewed the films of appellant's October 28, 1997 lumbar and cervical MRI. He described the results as follows:

"On her [l]umbar MRI, the canal is wide and the nerve canals are all patent and wide open. Her lumbar spine look totally normal. She also has a wide canal in her cervical spine and is fortunate to have that. She complaints of stiffness in her right leg and said that it goes out on her. I cannot explain this. She also underwent an EMG [electromyogram]-[n]erve [c]onduction [s]tudy which showed right L4 radiculopathy and a right carpal tunnel syndrome. I do not see a disc herniation in her neck or low back and there is no evidence of pressure upon the nerves."

Dr. Danielson recommended exercise and a work hardening program. In an office visit note dated January 15, 1998, he related that he "tried to explain to [appellant] that her diagnostic studies are normal and I do not see the basis for her complaints." As Dr. Danielson did not find appellant disabled due to her March 1996 employment injury, his report does not support her claim.

In a report dated February 3, 1998, Dr. Danielson stated that he had mistakenly indicated in his report dated August 7, 1997 that appellant had reinjured herself on February 3, 1997. He related, "[Appellant] reports that she in fact did not reinjure herself as she was already symptomatic with neck and back pain before the incident which was related to her injury on or about March 25, 1996 when she slipped down some stairs.... The incident on August 7, 1997⁹ just exacerbated the pain she had been having all along and should not be treated as a separate accident or injury." In an office visit note dated February 17, 1998, Dr. Danielson reiterated that the incident on February 3, 1997 was not a separate injury. However, Dr. Danielson's reports are not sufficient to establish appellant's claim for a recurrence of disability as he did not render a diagnosis or attribute a specific period of disability to the March 25, 1996 employment injury. Further, Dr. Danielson appeared to merely relate appellant's version of events rather than providing his own opinion, supported by medical rationale, regarding the relationship between

⁸ In a work restriction evaluation dated July 17, 1997, Dr. Danielson found that appellant could work for eight hours per day with no restrictions.

⁹ It appears that August 7, 1997 is a typographical error and that Dr. Danielson meant to indicate February 3, 1997 as the date of the exacerbation of pain.

an increase in pain and her original employment injury. Thus, Dr. Danielson's opinion is of diminished probative value.¹⁰

In a report dated January 13, 1998, Dr. David B. Clause related that appellant had a history of employment injuries in March 1996 and February 1997. He diagnosed right-sided pain of uncertain etiology. In a report dated January 23, 1998, Dr. Clause noted his findings were unchanged and that appellant "demonstrated exaggerated symptomatology when going through a physical exam[ination]." As he did not attribute a diagnosed condition or disability to appellant's accepted employment injury, his reports are insufficient to meet her burden of proof.

An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is causal relationship between her claimed condition and her employment.¹¹ To establish causal relationship, appellant must submit a physician's report, in which the physician reviews the employment factors identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination of appellant and her medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to discharge her burden of proof.

¹⁰ See *Lucrecia M. Nielsen*, 42 ECAB 583 (1991) (To be of probative value to an employee's claim, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value).

¹¹ *Donald W. Long*, 41 ECAB 142 (1989).

The decisions of the Office of Workers' Compensation Programs dated April 22, 1998 and August 25, 1997 are hereby affirmed.

Dated, Washington, D.C.
July 19, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member