

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BARBARA Y. JENKINS and DEPARTMENT OF THE NAVY,  
CIVILIAN PERSONNEL OFFICE, New Orleans, LA

*Docket No. 98-1638; Submitted on the Record;  
Issued May 18, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant met her burden of proof in establishing that she sustained a recurrence of disability, due to her November 17, 1987 employment injury, beginning August 17, 1992.

The Office of Workers' Compensation Programs accepted appellant's claim for a cervical and lumbar strain and surgery consisting of decompression and fusion in 1988 and 1989. On August 26, 1992 appellant filed a claim for a recurrence of disability, Form CA-2a, alleging that on August 10, 1992 she sustained a recurrence of disability of the November 17, 1987 employment injury and that she stopped working on August 17, 1992. Appellant stated that she had limitation of motion after the November 17, 1987 employment injury, underwent fusion and sustained severe depression. She stated that sitting and driving caused worsening of her chronic back pain with radiation down through her right foot.

On August 10, 1992 appellant returned to work as a data transcriber. Appellant stated that on August 17, 1992 her doctor took her off work through February 1993, at which time she commenced a back rehabilitation program which she completed on June 14, 1993 and returned to work as a data transcriber full time on July 14, 1993. By decision dated September 24, 1992, the Office determined that the job of data transcriber represented appellant's wage-earning capacity with her working five hours a day and by decision dated November 5, 1992, the Office adjusted her pay rate based on her wage-earning capacity. On December 30, 1992 the Office denied appellant's request for reconsideration.

On October 31, 1997 appellant filed a claim for a recurrence of disability, Form CA-2a, alleging that she sustained a recurrence of disability on August 17, 1992 due to the November 17, 1987 employment injury and that her pay stopped on March 27, 1996. She stated that she sought medical treatment from August 17, 1992 through May 1, 1997. Appellant stated that since returning to work, she had broken fusion, poor sitting tolerance, limited ability for walking and standing due to chronic pain, and muscular spasms, and swelling of inflamed tissues

in her lower back, legs and feet. She also stated that she was unable to stoop, push, pull, bend or carry due to long-standing nerve impingement and instability of her low back, decreased range of motion and depression and stress.

Appellant indicated that she sustained injuries at work on November 1, 1994 and January 5, 1996, for which she filed claims for compensation and that she was in a car accident on October 6, 1996. In her brief on appeal, appellant stated that her claim for the November 1, 1994 injury, No. 160251346, was approved, that she resumed the rehabilitation program and returned to work in February 1995. Appellant stated in her brief that her claim for the January 5, 1996 injury, No. 160275571, was denied by decision dated May 22, 1996 and her request for reconsideration was denied on July 7, 1996.<sup>1</sup> The notice of personnel action, Form SF-50-B, stated that on March 14, 1997 appellant resigned from her job due to her medical inability to perform the work.

Appellant submitted medical evidence to support her claim. In a report dated February 18, 1997, appellant's treating physician, Dr. Charles J. Banta, a Board-certified orthopedic surgeon, considered appellant's medical history, performed a physical examination and reviewed x-rays. Dr. Banta diagnosed status post laminectomy with fusion which had gone to pseudoarthrosis at the L5-S1 level and poor conditioning of the lumbar spine. He recommended that appellant undergo a myelogram with a post myelogram computerized axial tomography (CAT) scan, continue stretching and stated that chiropractic treatment would be beneficial. In a follow-up report dated February 27, 1997, Dr. Banta diagnosed stenosis and prescribed surgery for decompression and fusion at L5-S1.

In a report dated May 1, 1997, Dr. Kristie A. Gaddis, a chiropractor, diagnosed, *inter alia*, spondylolisthesis, sciatica and lumbar sprain and stated that appellant suffered considerable injury from an auto accident she sustained on October 6, 1996 and that the auto accident exacerbated her lumbar signs and symptoms to the point that she required immediate surgery to alleviate the pain.

Appellant submitted other medical evidence including medical reports from Dr. Stephen Ozanne, a Board-certified orthopedic surgeon, dated October 31 and November 11, 1996, in which he considered that appellant was in a car accident on October 6, 1996, reviewed a magnetic resonance imaging (MRI) scan showing disc herniation at L4-5 and diagnosed, in part, a lumbar spine strain with spondylolisthesis at L5-S1 a report from Dr. Hubert C. Gibson, a Board-certified internist, dated January 10, 1997, in which he considered that appellant was in a car accident and diagnosed, in part, low back mechanical back pain and a report from Dr. Marion F. Williams, a general practitioner, dated December 8, 1997 in which he diagnosed failed back surgery and acute lumbar strain. Appellant also submitted physical therapy notes dated from February through August 1996. Appellant submitted diagnostic tests including a myelogram and post myelogram CAT scan dated February 24, 1997, x-rays dated October 6 and December 27, 1996 of the cervical and lumbar spine, respectively and an MRI scan dated November 4, 1996.

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<sup>1</sup> The Office confirmed that the claim for the January 5, 1996 was denied but suggested the November 1, 1994 claim was denied as well.

By decision dated January 6, 1998, the Office denied the claim, stating the evidence of record failed to establish that the claimed recurrence was causally related to the November 17, 1987 employment injury.

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability, due to her November 17, 1987 employment injury, beginning August 17, 1992.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which she seeks compensation was causally related to her 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 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>

None of the medical evidence appellant submitted addresses a causal relationship between the accepted injury of cervical and lumbar strain and her disability commencing August 17, 1992. The medical reports of Dr. Banta dated February 18 and 27, 1997, Dr. Gaddis dated May 1, 1997, Dr. Ozanne dated October 31 and November 11, 1996 and Dr. Gibson dated October 10, 1997 document that appellant was being treated for a back problem including pseudoarthrosis, stenosis, spondylolisthesis, mechanical low back pain and a lumbar spine strain but none of them relate appellant's current disability to the accepted injury. Further, Dr. Gaddis as a chiropractor does not qualify as a physician within the meaning of the Federal Employees' Compensation Act.<sup>4</sup> The physical therapy notes appellant submitted dated from February through August 1996 are also not probative because a physical therapist does not constitute a physician within the meaning of the Act.<sup>5</sup> The diagnostic tests appellant submitted including a myelogram, post myelogram CAT scan, x-rays and MRI scan are not probative because they do not address causation. While there is other medical evidence in the record dating from the time of the alleged recurrence of disability on August 17, 1992 through 1997 which document appellant's ongoing treatment for her back, none of it addresses a causal relationship between appellant's current disability and the November 17, 1987 employment injury. Appellant has, therefore, failed to establish her claim.

The decision of the Office of Workers' Compensation Programs dated January 6, 1998 is hereby affirmed.

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

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<sup>2</sup> *Dominic M. DeScala*, 37 ECAB 369 (1986).

<sup>3</sup> *Louise G. Malloy*, 45 ECAB 613, 617 (1994).

<sup>4</sup> *See Thomas R. Horsfall*, 48 ECAB 180-81 (1996). A chiropractor cannot be considered a physician under the Act unless it is established that there is a subluxation as demonstrated by x-ray to exist.

<sup>5</sup> *See Jennifer L. Sharp*, 48 ECAB 209-10 n. 1 (1996).

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member