

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIANNE BUCCELLATO and U.S. POSTAL SERVICE,
NEWHALL STATION, Newhall, CA

*Docket No. 99-611; Submitted on the Record;
Issued November 21, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on August 8, 1995 causally related to her December 24, 1990 employment injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant failed to meet her burden of proof to establish that she sustained a recurrence of disability on August 8, 1995 causally related to her December 24, 1990 employment injury.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which compensation is claimed is causally related to the accepted injury.¹ 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 the employment injury and supports that conclusion with sound medical rationale.² Where no such rationale is present, medical evidence is of diminished probative value.³

On December 24, 1990 appellant, then a 43-year-old letter carrier, sustained multiple contusions and a cervical sprain in the performance of duty when she slipped on ice and fell. On October 20, 1995 appellant filed a claim alleging that she sustained a recurrence of disability on August 8, 1995 which she attributed to her December 24, 1990 employment injury. By decision dated May 9, 1996, the Office of Workers' Compensation Programs denied appellant's claim.

¹ *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

² *Mary S. Brock*, 40 ECAB 461 (1989); *Nicolea Brusco*, 33 ECAB 1138 (1982).

³ *Michael Stockert*, 39 ECAB 1186 (1988).

By letter dated May 21, 1996, appellant requested an oral hearing before an Office hearing representative. On December 13, 1996 a hearing was held before an Office hearing representative at which time appellant testified. By decision dated February 13, 1997, the Office hearing representative affirmed the Office's May 9, 1996 decision. By decisions dated February 23 and October 21, 1998,⁴ the Office denied modification of its prior decisions.

In a disability certificate dated September 17, 1995, regarding appellant's visit to the emergency room on August 8, 1995 complaining of dizziness, Dr. John M. Cocco, appellant's attending physician specializing in internal medicine and pulmonary diseases, diagnosed possible vertigo and hematuria. However, he did not provide a definite diagnosis and did not indicate the cause of the condition. Therefore, this evidence does not establish that appellant sustained a recurrence of disability on August 8, 1995 causally related to her December 24, 1990 employment injury.

In a report dated October 1, 1995, Dr. Mark C. Schultz, a Board-certified neurologist and psychiatrist, related that appellant was awakened by pain in her left side and groin and went to the emergency room. He provided findings on examination and diagnosed left flank pain consistent with renal colic and a history of hematuria and proteinuria of as yet undetermined cause. As Dr. Schultz did not indicate that these conditions were causally related to appellant's December 24, 1990 employment injury, this report is not sufficient to discharge appellant's burden of proof.

In a report dated October 4, 1995, Dr. Schultz stated that he was evaluating appellant for complaints of left thigh pain, headaches and dizziness. He noted that she had a history of abdominal pain and headaches and had undergone several abdominal surgeries. Dr. Schultz noted that appellant had been involved in a serious motor vehicle accident in 1969 with a concussion, broken ribs, whiplash injury to her neck and cracked vertebrae in her back. He provided findings on examination and indicated a possible lateral femoral nerve cutaneous nerve injury. Dr. Schultz stated that appellant's symptoms were not suggestive of a lumbar spine problem. As he did not opine that appellant's condition was causally related to her 1990 employment injury, this report does not establish that appellant sustained a work-related recurrence of disability on August 8, 1995.

In a disability certificate dated October 19, 1995, Dr. Cocco related that appellant continued to have severe and disabling neck, shoulder and left lower extremity pain, and disability and he stated "there appears to be a probable relationship to neck injury sustained in December 1990." However, he did not provide a diagnosis or sufficient medical rationale explaining how appellant's conditions were causally related to her employment injury which occurred almost five years previously. Therefore, this report is not sufficient to discharge appellant's burden of proof.

⁴ The Office indicated in its October 21, 1998 decision that it was denying appellant's request for reconsideration on the grounds that the evidence she submitted in support of her request was not sufficient to warrant further merit review of her claim. However, it appears that the Office analyzed the evidence in such a way that its review actually constituted a merit review of the evidence.

In a form report dated October 26, 1995, Dr. Cocco indicated that a magnetic resonance imaging scan in October 1995 showed disc problems in the lower spine and he indicated that appellant's condition was related to her 1990 employment injury and to consistent use of her back and neck in performing her job. He indicated that appellant was totally disabled from August 16, 1995 through January 16, 1996. However, Dr. Cocco failed to provide sufficient medical rationale in support of his opinion on causal relationship and, therefore, this report is of limited probative value and is insufficient to discharge appellant's burden of proof.

In a disability certificate dated January 15, 1996, Dr. Schultz indicated that appellant was totally disabled until approximately March 1, 1996 due to a condition that occurred on October 4, 1995.⁵ However, the incident on October 4, 1995 was appellant's hospitalization for nonwork-related conditions. Therefore, this evidence does not establish a work-related recurrence of disability on August 8, 1995.

In a disability certificate dated March 18, 1996, Dr. Schultz diagnosed a herniated disc, neuralgia, and cervical sprain and indicated that appellant was disabled until approximately April 30, 1996. However, he failed to explain how the conditions of a herniated disc and neuralgia were causally related to the 1990 employment injury. Therefore, this evidence is not sufficient to discharge appellant's burden of proof.

In a letter dated May 30, 1996, Dr. Schultz stated that appellant was under his care for cervical and lumbar myositis and a lateral femoral cutaneous nerve syndrome. He indicated that she was totally disabled pending reevaluation in late June following treatment with medication and physical therapy. However, Dr. Schultz did not provide any medical rationale explaining how these conditions were causally related to appellant's December 24, 1990 employment injury and this letter is, therefore, not sufficient to discharge appellant's burden of proof.

In a report dated February 2, 1998, Dr. Robert N. Brown, a Board-certified orthopedic surgeon and Office referral physician, provided a history of appellant's condition, a summary of the medical evidence and test results, and detailed findings on examination and diagnosed postconcussion syndrome and post-traumatic cephalgia, chronic residuals of myofascial ligamentous sprain/strain, cervical spine and parascapular musculature and lumbar spine which he attributed to appellant's December 24, 1990 employment injury. He opined that appellant could work with restrictions. However, he did not provide sufficient medical rationale explaining how appellant's conditions were causally related to her December 24, 1990 employment injury. Therefore, his opinion on causal relationship is of limited probative value and is insufficient to discharge appellant's burden of proof.

In a report dated March 5, 1998, Dr. Brown stated his opinion that appellant's disability was causally related to her December 24, 1990 employment injury because she was asymptomatic prior to her 1990 employment injury and because there was no other explanation for her disability. However, the Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is

⁵ As noted above, appellant was hospitalized on this date for possible renal problems.

insufficient, without supporting rationale, to establish causal relationship.⁶ Therefore, this report is not sufficient to discharge appellant's burden of proof.

In a report dated April 14, 1998, Dr. John V. Watkins, a Board-certified anesthesiologist, provided a history of appellant's condition and stated:

“[Appellant's] primary concern is regarding documentation of this current disability as related to a specific injury dated December 24, 1990. It is established in [appellant's] history that she had been previously asymptomatic to that date. Since her nonsyncopal fall in December 1990 she has developed the gradual onset of upper and lower back symptoms and this left lower extremity meralgia paresthetica with neuralgic symptoms. Her concern is cause and effect relationship between this injury and her subsequent development of this complex regional pain syndrome.

“Reflex sympathetic dystrophy/complex regional pain syndromes are well established in the literature to take periods of time to fully develop between seemingly innocuous trauma. It is not unusual for [appellant] to have now developed this syndrome of pain secondary to her remote injury in this period of time from 1990 to currently 1998. As previously is stated, a cause and effect relationship does exist, that prior to this documented injury [appellant] was asymptomatic. Despite her injury she returned to work after 1990 for a period of time following which she became totally disabled in 1993. She continues to manifest neuralgic pain symptoms consistent with the above diagnosis for which I believe may have been caused by the injury she sustained on December 24, 1990.”

However, Dr. Watkins' opinion is couched in speculative terms in that he stated appellant's neuralgic pain symptoms “may” have been caused by the December 24, 1990 employment injury. Also, as noted above, an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to establish causal relationship. As Dr. Watkins provided insufficient medical rationale explaining how appellant's pain symptoms were causally related to her employment injury, this report is not sufficient to establish that appellant sustained a recurrence of disability on August 8, 1995 causally related to her December 24, 1990 employment injury.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.⁷ Appellant failed to submit rationalized medical evidence

⁶ *Thomas D. Petrylak*, 39 ECAB 276 (1987).

⁷ *See Walter D. Morehead*, 31 ECAB 188 (1986).

establishing that her claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied her claim for compensation.

The October 21 and February 23, 1998 decision of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
November 21, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member