

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDITH R. LYON and DEPARTMENT OF THE NAVY,
NAVAL AVIATION DEPOT, Cherry Point, NC

*Docket No. 99-1187; Submitted on the Record;
Issued October 27, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury on August 26, 1994.

The Board has duly reviewed the case on appeal and finds that appellant has failed to meet her burden of proof in establishing that she sustained a lumbosacral strain on August 26, 1994.

Appellant, an aircraft mechanic apprentice, filed a claim on December 18, 1985 alleging that on December 12, 1985 she sustained a low back injury in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for low back strain. Appellant filed a notice of recurrence of disability on May 1, 1995 alleging a recurrence of disability on August 26, 1994 causally related to her accepted employment injury. Appellant stated that she was using a torque wrench and experienced intense pain in her back. By decision dated January 3, 1996, the Office denied appellant's claim for recurrence of disability finding that she had sustained a new injury.

Appellant filed a claim on January 29, 1996 alleging that on August 26, 1994 she sustained a back injury while using a torque wrench in the performance of duty. By decision dated April 4, 1996, the Office denied appellant's claim finding that she failed to submit the necessary medical evidence to establish a causal relationship between her accepted employment incident and her diagnosed condition. Appellant requested an oral hearing and by decision dated November 10, 1998, the hearing representative affirmed the Office's April 4, 1996 decision.

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office must determine whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the

employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.¹

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.²

In this case, appellant submitted a note dated August 29, 1994 from Dr. Edward T. King, Board-certified in preventative medicine, who noted appellant's 1986 employment injury as a herniated disc. He noted that appellant described pain in the low back area, which started on August 26, 1994. Dr. King stated that appellant tried over-the-counter medication, which was not helpful. He stated that she was using a large torque wrench on August 26, 1994. He provided the findings of no radiating pain, full range of motion and loss of lordosis. He diagnosed lumbosacral strain.

This note is not sufficient to meet appellant's burden of proof as Dr. King did not offer any medical reasoning in explaining how appellant's use of the torque wrench resulted in her diagnosed condition of lumbosacral strain and did not offer any explanation of the relationship between the current diagnosed condition and her previous back injury.

In a report dated August 7, 1995, Dr. Ira M. Hardy, II, a Board-certified neurosurgeon, noted that appellant's myelogram revealed double density disc protrusion at L5-6. He recommended surgery and stated: "I have advised [appellant] that the degeneration in the disc as well as the disc space collapse with the anterior osteophyte formation indicates this process has been going on for a long time and could very well be related to her injury of December 12, 1985." This report is not sufficient to meet appellant's burden of proof in establishing a causal relationship between her current condition and her 1994 employment injury. Dr. Hardy attributed appellant's disc protrusion to her 1985 employment injury.

Dr. Hardy completed a report on September 15, 1998 and noted appellant's history of injury on December 12, 1985 and August 26, 1994. He stated that appellant required laminectomies on both sides at L4-5 for treatment of spinal stenosis secondary to an old hard protruded disc. Dr. Hardy stated, "It is my opinion that the protrusion occurred on August 26, 1994 and it was this protrusion that ultimately resulted in bilateral L5-6 laminectomies and foraminotomies from the development of spinal stenosis as a result of that injury."

¹ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

² *James Mack*, 43 ECAB 321 (1991).

Although Dr. Hardy's September 15, 1998 report attributed appellant's back condition to her more recent employment incident, he did not offer any explanation for the discrepancies between this report and the August 7, 1995 report attributing appellant's condition to her December 12, 1985 employment injury.

As appellant has failed to submit the necessary rationalized medical opinion evidence which includes a history of injury and detailed reasoning in support of the current diagnosis and the relationship between appellant's 1994 employment incident, she has failed to meet her burden of proof and the Office properly denied her claim.

The November 10, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 27, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member