

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LATRICHIA BROWN and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Philadelphia, PA

*Docket No. 99-2064; Submitted on the Record;
Issued October 12, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability during the period September 30 to October 5, 1997.

On September 30, 1996 appellant, then a 50-year-old file clerk, filed a claim for trauma to her hands, wrists, lumbar spine and right knee sustained on September 26, 1996 when files fell on her from a shelf and she fell from a stool to the floor. The Office of Workers' Compensation Programs accepted that appellant sustained bilateral knee strains, bilateral wrist strains and a lumbar strain. Appellant received continuation of pay from September 27 to November 10, 1996, after which the Office paid her compensation for temporary total disability until she returned to work at her regular duties on March 17, 1997.

Appellant again stopped work on September 30, 1997 and returned to work on October 5, 1997 with restrictions of no lifting over five pounds and no climbing ladders. On October 8, 1997 appellant filed a claim for a recurrence of disability during the period September 30 to October 5, 1997. By decision dated December 18, 1997, the Office found that appellant was not entitled to compensation or medical benefits during the period September 30 to October 5, 1997, as the evidence failed to establish that her condition during this period was causally related to her employment injury. The Office also found that the weight of the medical evidence established that appellant had fully recovered from her September 26, 1996 employment injury.

Appellant requested a hearing, which was held before an Office hearing representative on June 25, 1998. By decision dated September 14, 1998, an Office hearing representative found that appellant did not meet her burden of proof to establish a recurrence of disability, as her physician provided no reasons to support the position that appellant was unable to work from September 30 to October 5, 1997. The Office hearing representative also found that appellant was entitled to continuing medical benefits, as the Office failed to give the required pretermination notice. By letter dated December 8, 1998, appellant requested reconsideration

and submitted additional evidence. By decision dated February 11, 1999, the Office found that the additional evidence was not sufficient to warrant modification of its prior decisions.

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.¹ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

The Board finds that the case is not in posture for a decision, due to a conflict of medical opinion. An Office referral physician, Dr. Steven Valentino, concluded in an April 9, 1997 report:

“On the basis of today’s evaluation, review of medical records and her diagnostic studies, I conclude she has recovered from her September 26, 1996 work[-]related injury and is capable of continuing to work as a file clerk for the [employing establishment] on a full time, full-duty basis without restriction. Her diagnostic studies reveal only mild age-related degenerative changes which are not associated with her injury of September 26, 1996 nor are they symptomatic.

“She is not in need of ongoing supervised medical care. She has recovered without residual.”

Appellant’s attending physician since October 1, 1996, Dr. Srinivas A-Bhumi, stated in a March 2, 1998 report that the degenerative changes of appellant’s lumbar spine, knees and hands were “age related and not due to work[-]related injuries, but her symptomatology is due to the soft tissues (muscles and ligaments) in the lumbosacral region, around the wrists and the knees bilaterally, resulting in tenderness in the lumbosacral paraspinal muscles with limitation of mobility of the lumbosacral spine, tenderness around both the wrists with impaired grip strength and tenderness around both the knees with decreased muscle strength of the quadriceps. Findings were consistently present during the initial examination as well as the follow-up reevaluations.” In this report, Dr. A-Bhumi also stated that findings on a repeat physical capacity evaluation on October 15, 1997 were the same as those on a physical capacity evaluation done on February 24, 1997 which “indicates that her condition has become static and it is unlikely that there will be any significant improvement.” He concluded, “In my opinion, within a reasonable degree of medical certainty, these injuries sustained as a result of a fall at work on September 26, 1996 have become permanent resulting in bodily dysfunction.”

The reports of Drs. Valentino and A-Bhumi conflict on the question of whether appellant continued to have residuals of her September 26, 1996 employment injury. In a report dated

¹ *John E. Blount*, 30 ECAB 1374 (1974).

² *Frances B. Evans*, 32 ECAB 60 (1980).

November 25, 1998, Dr. A-Bhumi explained his support of a recurrence of disability from September 30 to October 5, 1997 due to appellant's September 26, 1996 employment injury:

“[Appellant’s] injuries as stated in my reports are soft tissue in nature, namely strain and sprain. The symptoms are due to the soft tissue injuries and not due to the preexisting mild age-related degenerative changes. Pain resulting from these injuries that lasts longer than about six months is generally considered as chronic in nature. Chronic pain characteristically has exacerbations and remissions. [Appellant’s] pain has become chronic in nature and it is not difficult to explain the reoccurrence (sic) of symptoms on September 30, 1997 on the basis of exacerbation of chronic pain. Persistence of her pain and consequently impaired function was reflected in the functional capacity evaluations which showed a physical capacity consistent with lower sedentary work levels and residual capacity less than the job demands and also the ADL demands (activities of daily living).”

Dr. A-Bhumi's November 25, 1998 report is consistent with his report dated October 10, 1997, in which he stated that appellant's acute exacerbation of her symptoms on September 30, 1997 was job related, that it was unlikely that appellant would ever be completely pain free and that she was “prone to have periodic exacerbations and remissions of symptoms.” These reports expanded, on Dr. A-Bhumi's statement that appellant told him she had an exacerbation of her symptoms on September 30, 1997 and could not go to work.

The Board has stated that, when a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that he or she hurt too much to work, without objective signs of disability being shown, the physician has not presented a medical opinion on this issue or a basis for payment of compensation.³ However, in the present case, Dr. A-Bhumi stated that appellant had objective signs of disability, namely tenderness and loss of motion. While there must be a proven basis for the pain, pain due to an employment-related condition can be the basis for payment of compensation for disability under the Federal Employees' Compensation Act.⁴ Also, worsening of symptoms, including pain, can be an appropriate basis for payment of compensation for disability.⁵

Dr. A-Bhumi, appellant's physician, has concluded that appellant has residuals of her employment injury and that these residuals were disabling from September 30 to October 5, 1997. Dr. Valentino, the Office's referral physician, concluded that appellant had completely recovered from her employment injury with no residuals. To resolve this conflict of

³ *John L. Clark*, 32 ECAB 1618 (1981).

⁴ *See Sylvia Lucas (Richard Lucas)*, 32 ECAB 1582 (1981) (The Board found that the evidence established that the employee's symptom of angina pectoris was related to factors of his employment and that the employee was entitled to compensation for the period of disability due to the angina pectoris.)

⁵ *See Thomas N. Martinez*, 41 ECAB 1006 (1990) (The Board stated: “Even if ... only appellant's symptoms were aggravated by his employment, appellant is entitled to compensation, as it was the symptom of heel pain which necessitated treatment and use of sick leave.”)

medical opinion, the Office should, pursuant to section 8123(a) of the Act,⁶ refer appellant to an appropriate medical specialist for a reasoned medical opinion whether the residuals of appellant's September 26, 1996 employment injury resolved and whether appellant sustained a recurrence of disability from September 30 to October 5, 1997 due to this injury.

The decisions of the Office of Workers' Compensation Programs dated February 11, 1999 and September 14, 1998 are set aside and the case remanded to the Office for action consistent with this decision of the Board, to be followed by an appropriate decision.

Dated, Washington, DC
October 12, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁶ 5 U.S.C. § 8123(a) states in pertinent part "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."