

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHELLE LIGHTSEY and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Brooklyn, NY

*Docket No. 99-2439; Submitted on the Record;
Issued October 25, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on December 25, 1994 causally related to her December 8, 1994 employment injury.

The Board has duly reviewed appellant's case on appeal and finds that she failed to meet her burden of proof in establishing a recurrence of disability on December 25, 1994 causally related to her December 8, 1994 employment injury.

On December 23, 1994 appellant, a nursing assistant, filed a claim alleging that on December 8, 1994 she sustained a back injury helping a patient.¹ On October 11, 1996 the Office accepted her claim for lumbar strain with disability through December 18, 1994. Appellant filed a notice of recurrence of disability on December 10, 1996 alleging on December 25, 1994 she sustained a recurrence of disability causally related to her December 8, 1994 employment injury. By decision dated April 30, 1998, the Office denied her claim for recurrence of disability on December 25, 1994 causally related to her December 8, 1994 employment injury. Appellant, through her attorney requested reconsideration on April 21,

¹ Appellant filed a claim on August 5, 1983 alleging that she injured her back in the performance of duty. The Office of Workers' Compensation Programs accepted her claim for low back strain on January 14, 1994. Appellant filed a claim for recurrence of disability on February 14, 1994 causally related to her August 5, 1993 employment injury. She returned to full duty on October 29, 1994. On April 2, 1995 appellant filed a notice of recurrence of disability alleging that on December 25, 1994 she sustained a recurrence of total disability causally related to her August 5, 1983 employment injury. By decision dated August 22, 1995, the Office denied her claim for recurrence of disability on December 26, 1994. Appellant requested reconsideration of this decision on September 12, 1995. By decision dated December 8, 1995, the Office declined to reopen her claim for review of the merits on the grounds that she had experienced a new injury on December 8, 1994. As the Office issued these decisions more than one year prior to appellant's appeal to the Board on July 19, 1999, the Board will not consider these decisions on appeal. 20 C.F.R. § 501.3(d)(2).

1999. By decision dated June 22, 1999, the Office denied modification of its April 30, 1998 decision.

Appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence, a causal relationship between her recurrence of disability commencing December 25, 1994 and her December 8, 1994 employment injury.² 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.³

In this case, appellant filed her claim on December 23, 1994 alleging that she sustained an injury on December 8, 1994. She stopped work on that date. A medical note indicated that appellant could return to work on December 19, 1994. The employing establishment submitted statements from her supervisor that on December 25, 1994 appellant stated she felt feverish and reported to the emergency room. Appellant's supervisor stated that appellant reported "fever and chills" or the "flu" and did not work from December 26, 1994 through January 31, 1995.

Dr. Marvin Becker, a Board-certified internist, completed a form report on April 19, 1995 diagnosing back pain and herniated disc. Dr. Becker stated that appellant was totally disabled and listed her date of injury as December 8, 1994. He indicated with a checkmark "yes" that appellant's condition was due to the injury for which compensation was claimed. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁴

In a report dated April 25, 1995, Dr. Becker diagnosed herniated disc and stated that appellant had been under his care since December 8, 1994. He stated that she was totally disabled. This report is not sufficient to meet appellant's burden of proof as Dr. Beck did not describe appellant's accepted employment injury and did not provide a clear opinion on the causal relationship between her employment injury and her continuing disability. The medical opinion and rationale is necessary given that there is no medical evidence addressing appellant's disability for work from December 18, 1994 until Dr. Becker's April 19, 1995 form report.

Dr. Becker submitted a report dated October 6, 1995 diagnosing an injury on August 5, 1993 which had become chronic. He stated that appellant was totally disabled. This report does not attribute appellant's condition or disability to her December 8, 1994 employment injury and cannot establish a recurrence of disability due to that injury.

Dr. Leonard Langman, a neurologist, completed a report on May 7, 1996 and diagnosed lumbar radiculopathy. He stated that he first examined appellant on March 5, 1996.

² *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

³ *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁴ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

Dr. Langman stated that appellant fell on December 8, 1994 while working and injured her back. He stated, "The above is directly related to injuries sustained on the above date. She is totally disabled as a result at this time." Although this report includes an opinion on the causal relationship between appellant's disability and her December 8, 1994 employment injury, Dr. Langman does not provide an accurate history of injury, noting a fall rather than aid to a patient, and does not provide any medical reasoning in support of his conclusion.

Dr. Langman completed a report on November 15, 1996 again reporting a fall on December 9, 1994 and noting appellant's August 4, 1993 employment injury. He diagnosed lumbar radiculopathy. Dr. Langman stated, "The above diagnosis is directly related to the injury of December 8, 1994 as a reoccurrence of a prior injury to the same area on August 4, 1993." This report has the same defects as the November 15, 1996 report and seems to attribute appellant's disability to her August 4, 1993 employment injury.

On December 6, 1996 Dr. Becker completed a report noting that appellant injured her neck and back on August 5, 1993 and that she returned to full duty on October 5, 1994. He noted appellant's December 8, 1994 employment injury and stated that she returned to work on December 22, 1994 and stopped on December 25, 1994. Dr. Becker diagnosed lumbar radiculopathy and found that appellant was totally disabled. He stated, "The above diagnosis is directly related to the injury of December 8, 1994 as a reoccurrence of a prior injury to the same areas on August 4, 1993." Although Dr. Becker offered an opinion on the causal relationship between appellant's current condition and her December 8, 1994 employment injury, he failed to provide any medical reasoning in support of his opinion. This report is insufficient to meet appellant's burden of proof.

Appellant submitted a series of form reports from Dr. Langman dated from May 1, 1997 through December 22, 1997. These reports are insufficient to meet appellant's burden of proof as Dr. Langman did not provide any medical reasoning to support his opinion of causal relationship. As noted previously, a checkmark "yes," alone, is not sufficient to meet appellant's burden of proof.

Dr. Langman completed a note on June 4, 1997 and stated that he treated appellant for lumbar radiculopathy as a result of a work-related injury on December 8, 1994. He stated on December 24, 1994 appellant sustained a worsening of his condition "as a result of further stress of her lower back while working with patients." Dr. Langman stated that appellant was totally disabled. He previously indicated that he first examined appellant on March 5, 1996. Dr. Langman does not offer any explanation of how or why he believes that appellant sustained a worsening of her condition on December 24, 1994 and why appellant did not stop work until December 25, 1994 after complaining of cold symptoms. Without a detailed explanation of how and why he reached these conclusions, given appellant's lack of medical treatment between December 18 and April 19, 1995, when Dr. Becker examined appellant, Dr. Langman's statements are not sufficient to meet appellant's burden of proof.

On November 15, 1997 Dr. Langman completed a note indicating that he examined appellant on March 5, 1996 and that she reported a fall on December 8, 1994. He noted appellant's August 4, 1993 employment injury. Dr. Langman diagnosed lumbar radiculopathy and stated that appellant was totally disabled. He stated, "The above diagnosis is directly related

to the injury of December 8, 1994 as a reoccurrence of a prior injury to the same areas on August 4, 1993.” This report is not sufficient to meet appellant’s burden of proof as Dr. Langman did not provide an accurate history of injury, and did not provide medical rationale explaining how and why appellant’s current condition and disability is causally related to her accepted employment injuries.

Appellant has failed to meet her burden of proof in establishing disability on or after December 19, 1994 causally related to her employment as she has failed to submit the necessary medical evidence bridging the return to work and the initial treatment report on April 19, 1995 and explaining why and how appellant’s December 9, 1994 employment injury caused the diagnosed condition of lumbar radiculopathy and the resulting periods of total disability. Without this medical evidence, appellant has not established her claim for recurrence of disability on or after December 25, 1994.

The June 22, 1999 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 25, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member