

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELIZABETH KOCAK and DEPARTMENT OF VETERANS AFFAIRS,
PITTSBURGH VETERANS ADMINISTRATION MEDICAL CENTER, Pittsburgh, PA

*Docket No. 00-2273; Submitted on the Record;
Issued August 22, 2001*

DECISION and ORDER

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

The issue is whether appellant has met her burden of proof in establishing that she had a recurrence of disability after October 21, 1998 causally related to her October 29, 1996 employment injury.

On October 29, 1996 appellant, then a 54-year-old nursing assistant, was assisting in lifting a patient when she felt a snap in her back and developed pain in her lower back. She stopped working that day and returned to work on November 4, 1996. The Office of Workers' Compensation Programs accepted appellant's claim for back sprain.

On September 22, 1998 appellant filed a claim for compensation for the period beginning November 5, 1998. She indicated that she would be using sick leave and annual leave for the period October 19 through November 5, 1998 and would return to work on April 21, 1999.

In a January 6, 1999 decision, the Office denied appellant's claim for recurrence of disability on the grounds that the evidence of record failed to establish that the claimed recurrence was causally related to the October 29, 1996 employment injury. Appellant's attorney requested a hearing before an Office hearing representative which was conducted on September 29, 1999. In a March 21, 2000 decision, the Office hearing representative found that appellant had not submitted any detailed rationalized medical evidence to support that her claim for recurrence of disability was causally related to the accepted employment injury.

The Board finds that appellant has not met her burden of proof in establishing that her recurrence of disability was causally related to the October 29, 1996 employment injury.

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. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.¹

Appellant submitted voluminous medical records describing treatments she received for cardiac problems, neck pain and back pain. However, only a few reports addressed the issue of the relationship between appellant's employment injury and her subsequent recurrence of disability. In a January 6, 1999 report, Dr. Rahila Khwaja, a Board-certified internist, stated that he had been treating appellant for her low back condition since October 30, 1996. He noted that appellant returned to full duty by January 1, 1997 but her low back symptoms persisted. X-rays showed degenerative changes superimposed on mild degenerative arthritis as the cause of her low back condition. Dr. Khwaja commented that the lower back pain never truly disappeared. He reported appellant underwent lumbar decompression and a fusion of L4 and L5 on October 21, 1998.

In a February 2, 1999 report, Dr. Jon A. Levy, an orthopedic surgeon, indicated that he saw appellant initially on June 29, 1998 for lumbar pain, lumbar radiculopathy, cervical pain and cervical radiculopathy, which she related to repetitive bending and lifting at work. He stated that x-rays and a magnetic resonance imaging (MRI) scan showed significant foraminal narrowing and a neural compressive lesion. He reported that a lumbar MRI scan showed Grade I spondylolisthesis on L4-L5 with high-grade spinal stenosis. He noted appellant's lumbar decompression and fusion in October 1998 and indicated she underwent additional surgery on January 26, 1999 for C5-C6 anterior cervical discectomy and fusion. Dr. Levy concluded, based on the history given him, that appellant's lumbar and cervical pathology were directly related to the injury she sustained at work.²

In a May 24, 1999 deposition, Dr. Levy reviewed appellant's medical history and his treatment of her back and cervical conditions. He commented that appellant had several work injuries to her back and neck. He repeated the diagnosis of cervical radiculopathy from foraminal stenosis at C5-C6 and spondylolisthesis of the lumbar spine at L4-L5. Dr. Levy indicated that there was a direct correlation between appellant's preexisting conditions which were aggravated by her work-related injuries.

While Dr. Levy related appellant's back and neck conditions to her employment and employment injuries, he gave no rationale in support of his opinion. He did not explain how the October 29, 1996 employment injury caused appellant's disability after her October 21, 1998 back surgery or caused or aggravated her condition that led to the back surgery. His reports therefore have little probative value and are insufficient to satisfy appellant's burden of proof.

¹ *Dominic M. DeScala*, 37 ECAB 369 (1986).

² The Office hearing representative referred to, and quoted from, a February 16, 1999 report from Dr. Levy. The record submitted on appeal does not contain a report of that date from Dr. Levy.

The decision of the Office of Workers' Compensation Programs, dated March 21, 2000, is hereby affirmed.

Dated, Washington, DC
August 22, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member