

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LORITA C. ODD and DEPARTMENT OF DEFENSE, DEFENSE
COMMISSARY AGENCY, McGUIRE AIR FORCE, BASE, NJ

*Docket No. 00-195; Submitted on the Record;
Issued February 9, 2001*

DECISION and ORDER

Before BRADLEY T. KNOTT, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant met her burden of proof in establishing that she sustained a recurrence of disability, beginning August 14, 1997, due to her August 30, 1996 employment injury.

The Board has given careful consideration to the issue involved, the contentions of the parties on appeal and the entire case record. The Board finds that the January 27, 1999 decision of the Office of Workers' Compensation Programs' hearing representative is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.¹

By letter dated March 24, 1999, appellant requested reconsideration of the Office's decision and submitted a discharge summary dated November 24, 1997 and a letter dated January 26, 1998 from appellant's treating physician, Dr. Jerome M. Cotler, a Board-certified orthopedic surgeon. In the November 24, 1997 discharge summary, Dr. Cotler diagnosed spinal stenosis, noting that appellant had a long history of spinal stenosis at the L4 level and underwent spinal fusion at L4 with femoral ring allograft. He described appellant's postoperative treatment. In his January 26, 1998 letter, Dr. Cotler stated that he believed "within reasonable medical certainty" that the August 30, 1996 trauma exacerbated her condition. Appellant also submitted two discharge reports dated February 27 and May 13, 1998 diagnosing degenerative joint disease of her right and left hips, indicating that she underwent arthroplasties on both hips and describing her postoperative treatment.

By decision dated July 16, 1999, the Office denied appellant's request for modification.

¹ Appellant did not present any evidence containing a rationalized medical opinion explaining how her current physical condition resulted from her August 15, 1997 recurrence of disability or her August 30, 1996 employment injury. See *Doris J. Wright*, 49 ECAB 230, 239 (1997).

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.² When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty.³

As part of this burden, the employee must show a change in the nature and extent of the light-duty job requirements or a change in the nature and extent of the injury-related condition.⁴ 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 reasoning.⁵ An award of compensation may not be made on the basis of surmise, conjecture, or speculation or an appellant's unsupported belief of causal relation.⁶

The medical evidence appellant submitted in support of her request for reconsideration does not establish the requisite causal connection between appellant's recurrence of disability commencing August 15, 1997 and appellant's August 30, 1996 employment injury. The discharge reports dated November 24, 1997, and February 27 and May 13, 1998 which related appellant's postoperative treatment of her spinal stenosis and hips condition, do not describe appellant's work injuries or address causation and therefore are not probative.

Dr. Cotler's January 26, 1998 letter in which he opined that the August 30, 1996 "trauma" exacerbated appellant's back condition does not satisfy any criteria for establishing causation as he did not provide a history of injury, did not describe any factors of employment, and did not identify appellant's specific condition. Further, Dr. Cotler did not provide a rationalized medical opinion explaining how appellant's current condition resulted from the August 15, 1997 recurrence of disability or the August 30, 1996 employment injury or both. His opinion is therefore not probative.⁷

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

³ *George DePasquale*, 39 ECAB 295, 304; *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁴ *Id.*

⁵ *See Nicolea Brusio*, 33 ECAB 1138 (1982).

⁶ *See William S. Wright*, 45 ECAB 498, 503 (1994).

⁷ *See Linda I. Sprague*, 48 ECAB 386, 390 n. 11 (1997); *David M. Ibarra*, 48 ECAB 218, 219 (1996).

The decisions of the Office of Workers' Compensation Programs dated July 16 and January 27, 1999 are hereby affirmed.

Dated, Washington, DC
February 9, 2001

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member