

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOROTHY LONG and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Battle Creek, MI

*Docket No. 00-793; Submitted on the Record;
Issued February 6, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish that she sustained a recurrence of disability beginning July 28, 1997 causally related to her March 1, 1996 employment injury.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained a recurrence of disability beginning July 28, 1997 causally related to her March 1, 1996 employment injury.

On July 16, 1996 appellant, then a 51-year-old psychiatric licensed practical nurse, filed a traumatic injury claim (Form CA-1) alleging that on March 1, 1996 she injured her left shoulder when she was hit by a door.

By letter dated December 5, 1996, the Office of Workers' Compensation Programs accepted appellant's claim for C5 cervical radiculopathy and subsequent surgery performed on June 13, 1996.

Appellant returned to limited-duty work on December 11, 1996. On January 27, 1997 appellant returned to full-duty work with certain physical restrictions.¹

On August 7, 1997 appellant filed a claim (Form CA-2a) alleging that she sustained a recurrence of disability on July 28, 1997 accompanied by factual and medical evidence. Appellant stopped work on July 28, 1997.

By decision dated November 6, 1997, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability beginning July 28, 1997 causally related to her March 1, 1996 employment injury. On November 5, 1998 appellant through her

¹ Appellant was placed off work effective August 12, 1997.

counsel, requested reconsideration of the Office's decision accompanied by factual and medical evidence.

In a November 24, 1998 decision, the Office denied appellant's request for modification based on a merit review.²

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. This burden includes the necessity of furnishing medical evidence from a qualified 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.³

In this case, appellant has not submitted rationalized medical evidence establishing that her current shoulder and neck pain was caused by the accepted March 1, 1996 employment injury. In support of her recurrence claim, appellant submitted a July 28, 1997 emergency room treatment report from a physician whose signature is illegible. This report revealed that appellant was placed on light duty with certain physical restrictions. This report does not satisfy appellant's burden because it did not address whether appellant's current condition was caused by her March 1, 1996 employment injury.

In further support of her recurrence claim, appellant submitted an August 4, 1997 disability certificate of Dr. Terry A. Davis, an osteopath, revealing that she had been under his care for shoulder pain during the period August 4 to 5, 1997. Appellant also submitted Dr. Davis' August 12, 1997 disability certificate indicating that she was under his care for shoulder and neck pain during the period August 12 through September 2, 1997. Dr. Davis' disability certificates are insufficient to establish appellant's burden because they failed to indicate a diagnosis and to discuss whether or how the diagnosed condition was caused by appellant's March 1, 1996 employment-related injury.⁴

² The Board notes that subsequent to the Office's November 24, 1998 decision, the Office received factual and medical evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision. See *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1). The Board further notes that its scope of review is limited to those final decisions issued within one year prior to the filing of the appeal. 20 C.F.R. §§ 501.2(c), 501.3(d)(2). Inasmuch as appellant filed her notice of appeal on November 23, 1999 the only decision before the Board is that dated November 24, 1998. Thus, the Office's March 30, 2000 decision, denying appellant's claim for an emotional condition is not before the Board. See *Douglas E. Billings*, 41 ECAB 880, 893 (1990) (finding that the Office had jurisdiction to issue a decision on a matter unrelated to the issue on appeal before the Board).

³ *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1993); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁴ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

Appellant also submitted treatment notes covering the period July 2 through September 4, 1997 concerning her left arm and shoulder and neck pain. These notes were not signed by a physician and, therefore, they do not constitute probative medical evidence.⁵

In addition, appellant submitted Dr. Davis' undated attending physician's report (Form CA-20). Dr. Davis' report provided a history of appellant's neck and shoulder injuries, and a diagnosis of chronic neck and arm pain and anxiety. Dr. Davis indicated that appellant's conditions were caused or aggravated by an employment activity by placing a checkmark in the box marked "yes." He stated that appellant began to hurt while lifting an object at work. 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 disability was related to the history is of diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁶ Dr. Davis merely stated how appellant sustained her injury; he did not provide any medical rationale explaining how or why appellant's conditions were caused by the March 1, 1996 employment injury. Further, the Board notes that appellant's claim has not been accepted for anxiety.

A September 11, 1997 report from Linda L. Wood, on Dr. Davis' letterhead indicated that appellant had been under her care since July 30, 1997 for left arm pain, anxiety and depression. A September 18, 1997 report from Lucinda Hansen, M.A., L.L.P., indicated appellant's participation in a partial hospitalization program beginning September 19, 1997. The record does not establish that either Ms. Wood or Ms. Hansen is a physician, therefore, their reports do not constitute probative medical evidence.⁷

Similarly, a note of the same date from a physician whose signature is illegible, which revealed that appellant had been on disability and that she would continue to be on disability until October 31, 1997 failed to address whether appellant's current condition was caused by her March 1, 1996 employment injury.

A July 12, 1997 disability certificate from Howard S. Wharton, a physician who specializes in emergency medicine, indicated that appellant was incapacitated from work due to depression and radiculopathy. A July 1, 1997 disability certificate provided that appellant was unable to work due to shoulder pain. Dr. Davis' February 24, 1997 disability certificate revealed that appellant was unable to work due to depression and shoulder pain. These disability certificates failed to discuss whether or how the diagnosed conditions were caused by appellant's March 1, 1996 employment-related injury.⁸ Further, as previously noted, appellant's claim has not been accepted for depression.

⁵ See 5 U.S.C. § 8102(2); *Joseph N. Fassi*, 42 ECAB 677, 679 (1991).

⁶ *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

⁷ See 5 U.S.C. § 8102(2); *Joseph N. Fassi*, *supra* note 5.

⁸ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

Dr. Davis' July 29, 1997 report revealed that appellant could return to work on July 31, 1997 with certain physical restrictions. Dr. Davis did not address whether appellant's current condition was caused by the March 1, 1996 employment injury.

In an October 30, 1997 medical report, Dr. L. Humberto Covarrubias, a Board-certified psychiatrist, stated that appellant was under his care for major depression, which was recurrent and severe without psychosis. He further stated that appellant was unable to work at that time and she was expected to return to work in January 1998. Dr. Covarrubias' November 11, 1997 discharge summary report provided a diagnosis of major depression, recurrent, severe without psychosis on Axis I, no diagnosis on Axis II, insulin-dependent diabetes mellitus, hypertension, gastritis, status post neck surgery, some abnormalities on the electrocardiogram with right bundle branch block and hypertension on Axis III, and difficulties in the occupational, financial and social areas on Axis IV. In an undated medical report, Dr. Covarrubias reiterated the diagnoses as set forth in his November 11, 1997 discharge summary report and included a diagnosis of global assessment functioning of 50 on Axis V. Dr. Covarrubias stated that appellant had been unable to function at work, that her activities at home had been negatively affected and that she was unable to meet her personal care expectations. He further stated that appellant's medical condition of depression had become static as she struggled with other aspects of her medical health. Dr. Covarrubias also stated that exacerbation of depression was a response to stress or at times with no identified precipitant was a natural course of major depression of the recurrent type. He concluded that appellant had been restricted from work because her depression interfered with her ability to respond to the demands of personal interaction. Dr. Covarrubias failed to address whether any of appellant's conditions were caused by her March 1, 1996 employment injury.

Finally, appellant submitted a December 16, 1997 medical report from Dr. David A. Muzlakovich, a psychiatrist. In this report, Dr. Muzlakovich provided a history of appellant's March 1, 1996 employment injury, medical treatment and social background. He provided his findings on physical examination. Dr. Muzlakovich diagnosed chronic left upper extremity pain syndrome status post reported cervical fusion in 1996 with underlying coronary artery disease, diabetes with previous documented peripheral neuropathy and clinical depression. He stated that it was impossible on that single occasion in spite of his best efforts to get a firm handle on appellant's case. Dr. Muzlakovich further stated that he did not have any medical records to evaluate appellant fully. He then opined that it seemed appropriate that appellant had been granted a disability status and that she seemed unable for a variety of medical reasons to maintain gainful employment at that time. Regarding causality of the left upper extremity problem, Dr. Muzlakovich stated that there seemed to be a medical history consistent with a work-related injury to the left shoulder and neck and this ultimately resulted in a cervical spine procedure. He further stated that appellant continued to be impaired with regard to the use of the left upper extremity. Dr. Muzlakovich opined that this precluded appellant from returning to regular full employment as a licensed practical nurse. He further opined that the other underlying diseases that she suffered with most notably diabetes and depression negatively impacted appellant's recovery. Dr. Muzlakovich did not address whether appellant's impairment of the left upper extremity was caused by the March 1, 1996 employment injury.

Because appellant has failed to submit a well-reasoned medical opinion explaining that her disability for work on July 28, 1997 was causally related to her March 1, 1996 employment injury, the Board finds that she has not satisfied her burden of proof.

The November 24, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
February 6, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member