

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEVERLY BAKER and DEPARTMENT OF VETERANS AFFAIRS,
EDWARD HINES, JR. VETERANS ADMINISTRATION HOSPITAL, Hines, IL

*Docket No. 99-649; Submitted on the Record;
Issued January 25, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has met her burden of proof to establish that she sustained a recurrence of disability on January 7, 1997 causally related to her March 5, 1994 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 on January 7, 1997 causally related to her March 5, 1994 employment injury.

On March 10, 1994 appellant, then a 52-year-old registered nurse, filed a traumatic injury claim (Form CA-1) alleging that on March 5, 1994 she injured her back while lifting a patient out of bed. She stopped work on March 31, 1994.

By letter dated May 16, 1994, the Office of Workers' Compensation Programs accepted appellant's claim for a lumbar sprain. Subsequently, the Office expanded the acceptance of appellant's claim to include a herniated disc at L4-5.

By letter dated February 1, 1996, the employing establishment offered appellant the light-duty position of medical clerk. On February 23, 1996 appellant accepted the offered position with the approval of Dr. Matthew J. Ross, a neurosurgeon and her treating physician.

On March 18, 1996 appellant returned to light-duty work as a medical clerk for eight hours per day four days per week with physical restrictions.

By decision dated June 3, 1996, the Office found that the position of medical clerk fairly and reasonably represented appellant's wage-earning capacity.¹

On January 17, 1997 appellant filed a claim (Form CA-2a) alleging that she sustained a recurrence of disability on January 7, 1997. Her claim was accompanied by factual and medical evidence.

By decision dated April 17, 1997, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on January 7, 1997. In a letter dated June 4, 1997, appellant requested reconsideration of the Office's decision accompanied by factual and medical evidence.

In a December 19, 1997 decision, an Office hearing representative affirmed the Office's April 17, 1997 decision. In an August 26, 1998 letter, appellant requested reconsideration of the Office's decision accompanied by factual and medical evidence.

By decision dated September 15, 1998, the Office denied appellant's August 26, 1998 request for modification based on a merit review.

An employee returning to light duty or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability by the weight of substantial, reliable and probative evidence and to show that he or she cannot perform the light duty.² As part of her burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.³

In the present case, appellant has neither shown a change in the nature and extent of her injury-related condition or a change in the nature and extent of the light-duty requirements. The record shows that following the March 5, 1994 employment-related lumbar sprain and herniated disc at L4-5, appellant returned to work in a light-duty capacity with certain physical restrictions. The record does not establish, nor does appellant allege, that the claimed recurrence of total disability was caused by a change in the nature or extent of the limited-duty job requirements.

In support of her recurrence claim, appellant submitted form medical reports from physicians whose signatures are illegible indicating that she had chronic low back pain, mild lumbar radiculopathy and lumbar strain. Appellant also submitted medical treatment notes dated March 19, 1996 regarding her back pain from a physician whose signature is illegible. These

¹ In an August 31, 1996 letter, appellant appealed the Office's June 3, 1996 decision to the Board. In an accompanying letter dated June 7, 1996 appellant contended that the Office incorrectly computed the amount of her compensation check for the period March 18 through April 27, 1996 after she returned to modified duty. By decision dated August 14, 1998, the Board affirmed the Office's June 3, 1996 decision. In so doing, the Board found that the Office correctly computed appellant's compensation check for the period March 18 through April 27, 1996.

² *Terry R. Hedman*, 38 ECA 222, 227 (1986).

³ *Id.*

reports and treatment notes, however, failed to address a causal relationship between appellant's current back condition and her March 5, 1994 employment injury.

In further support of her claim, appellant submitted a January 7 and June 23, 1997 attending physician's supplemental reports (Form CA-20a) from Dr. Ross indicating the date of her employment injury, a diagnosis of chronic low back pain from a lumbosacral strain and a L4-5 disc herniation. Dr. Ross also indicated that appellant should decrease her work hours to four hours per day. He did not address whether appellant sustained a change in her condition causally related to her March 5, 1994 employment injury.

Appellant also submitted a January 23, 1997 medical report of Dr. Henry C. Echiverri, a Board-certified neurologist, indicating a history of her March 5, 1994 employment injury and medical treatment. Dr. Echiverri also indicated his findings on physical examination. He diagnosed chronic low back pain with lumbar disc disease, which was nonsurgical. Dr. Echiverri suspected that a couple of things were at play, including severe myofascial pain syndrome and a significant amount of muscle deconditioning. He did not address whether appellant's back condition was caused by her employment injury.

In addition, appellant submitted a February 17, 1997 work-capacity evaluation musculoskeletal conditions (Form OWCP-5c) from Dr. Ross providing her physical restrictions and opinion that she could only work four hours per day. Dr. Ross did not address whether appellant's current back condition was caused by her March 5, 1994 employment injury.

Similarly, Dr. Echiverri's January 23, 1997 prescription ordering magnetic resonance imaging (MRI) scan and his February 26, 1997 physical therapy note did not address the causal relationship between appellant's current back condition and employment injury.

Appellant submitted treatment notes from physical therapists covering the period February 1 through April 8, 1997. The Board finds that the treatment notes of appellant's physical therapists are of no probative value inasmuch as a physical therapist is not a physician under the Federal Employees' Compensation Act and therefore is not competent to give a medical opinion.⁴ Similarly, a note from an April 8, 1997 treatment note from a registered nurse whose signature is illegible is of no probative value inasmuch as a registered nurse is not competent to give a medical opinion.⁵

A January 31, 1997 MRI scan from Dr. Paul Goldberg, a Board-certified radiologist, finding stable bulges of the L4-5 and L5-S1 discs. Dr. Goldberg did not address the causal relationship between appellant's condition and her March 5, 1994 employment injury.

In a February 26, 1997 medical report, Dr. Echiverri stated that appellant had chronic low back pain with significant myofascial pain syndrome and deconditioning. He noted appellant's physical therapy treatment and stated that overall he saw a pattern of improvement.

⁴ 5 U.S.C. § 8101(2); *see also* *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jane A. White*, 34 ECAB 515 (1983).

⁵ 5 U.S.C. § 8101(2); *see also* *Joseph N. Fassi*, 42 ECAB 677 (1991).

Dr. Echiverri concluded that he would continue to limit appellant's work hours to four per day. He did not address whether appellant's condition was caused by her March 5, 1994 employment injury.

In his June 2, 1997 medical report, Dr. Echiverri opined that more likely than not appellant had a permanent condition relating to the diagnoses of L4-5 disc bulge, L5-S1 disc bulge and symptomatic radiculopathy on the left side. The Board has held that while the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,⁶ neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.⁷ Inasmuch as Dr. Echiverri did not provide any medical rationale to support his opinion regarding the cause of appellant's condition, his report is of limited probative value.

The record contains medical treatment notes covering the period February 11, 1997 through June 9, 1998. These notes failed to address whether appellant's current back condition was caused by her March 5, 1994 employment injury.

Dr. Echiverri's February 2, 1998 report revealed that he treated appellant for L4-5 disc herniation with lumbar radiculopathy and chronic lumbar strain. He stated that appellant has had persistent back pain with recurrent exacerbation. Dr. Echiverri noted that appellant was unable to work beyond four hours and that she should continue this work restriction indefinitely. He did not address the causal relationship between appellant's condition and her March 5, 1994 employment injury.

Dr. Echiverri's May 13, 1998 prescription recommended physical therapy. Dr. Echiverri's June 9, 1998 prescription indicated a referral to Dr. Gunnar Andersson, a Board-certified orthopedic surgeon. Neither of Dr. Echiverri's prescriptions addressed whether appellant's current back condition was caused by her March 5, 1994 employment injury.

Dr. Echiverri's June 15, 1998 medical report indicated that appellant should undergo a somatosensory evoked potential study. His July 10, 1998 report regarding the results of a somatosensory evoke potential study indicated a mild abnormality, a possibility of an L5 root or plexus dysfunction on the left side. Dr. Echiverri did not address whether appellant's current condition was caused by her March 5, 1994 employment injury.

Similarly, Dr. Andersson's August 11, 1998 Form CA-20a noting the date of appellant's employment injury, a diagnosis of sciatica and appellant's restriction of working four hours per

⁶ See *Kenneth J. Deerman*, 34 ECAB 641 (1983).

⁷ *Phillip J. Deroo*, 39 ECAB 1294 (1988); *Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

day did not address whether appellant's current condition was caused by her March 5, 1994 employment injury.

Inasmuch as appellant has failed to submit rationalized medical evidence establishing that her current back condition was caused by her March 5, 1994 employment injury, the Board finds that she has failed to satisfy her burden of proof.⁸

The September 15, 1998 and December 19, 1997 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
January 25, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

⁸ The Board notes that on appeal appellant has submitted new evidence. However, the Board 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).