

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY A. REAVES and DEPARTMENT OF VETERANS AFFAIRS,
CARL VINSON VETERANS ADMINISTRATION MEDICAL CENTER,
Dublin, GA

*Docket No. 00-2451; Submitted on the Record;
Issued July 24, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she had a recurrence of disability causally related to her August 7, 1995 employment injury.

On August 7, 1995 appellant, then a 45-year-old licensed practical nurse, was helping to pull a patient up in bed when she developed pain in the left mid-back region and in the thigh of the left leg. The Office of Workers' Compensation Programs accepted her claim for lumbar strain. On December 29, 1995 appellant filed a claim for compensation for the period December 18 through 29, 1995. In a June 13, 1996 decision, the Office denied her claim on the grounds that she failed to submit sufficient, adequate medical evidence to establish temporary total disability for work for the period she claimed.

On March 6, 2000 appellant filed a claim for recurrence of disability. She stated that she had been unable to push, pull or lift anything over 20 pounds. Appellant commented that she had pain 24 hours a day since the employment injury and that the effects were getting worse day by day. She claimed her back, left leg and left hip had lost strength. The employing establishment indicated that she had not lost time from work.

Appellant submitted numerous duty status reports and office and dispensary notes. Included in the evidence submitted was an October 15, 1995 report from Dr. Somsak Ratanasit, a Board-certified radiologist, who stated that a computerized tomography (CT) scan of the lumbar spine showed bulging discs at L3-4, L4-5 and L5-S1, thickening of ligamentum flavum at L4-5 and L5-S1 and degenerative joint disease of the facet joints L4-5 and L5-S1. In a January 28, 1999 duty status report, Dr. A.M. Kothari, a neurologist, stated that appellant had chronic low back pain due to degenerative joint disease of the lumbosacral spine.

Appellant also submitted a March 30, 1999 report from Dr. George S. Stefanis, a Board-certified neurosurgeon, who indicated that appellant, while lifting a patient in bed, felt a popping sensation in her back. He reported appellant had tenderness in the midline between the

L4 vertebra and the sacrum. Dr. Stefanis noted the sensory examination was normal. He indicated that appellant had degenerative changes on her 1996 magnetic resonance imaging (MRI) scan with no significant encroachment or disc herniation.¹

In a June 2, 1999 report, Dr. Dwayne L. Clay, a surgeon, stated that appellant had a history of radicular and low back pain. He commented that appellant was currently having an exacerbation of symptoms with radicular symptoms along the L4 dermatome. Dr. Clay suggested that this finding might be consistent with appellant's bulging disc causing chemical radiculitis. In regard to the 1995 lumbar strain, he stated that he believed the strain had not resolved and that appellant currently had an exacerbation of pain and discomfort. In a November 19, 1999 duty status report, Dr. Clay stated that pulling a patient up in bed resulted in a herniated nucleus pulposus.

In a June 13, 2000 decision, the Office denied appellant's claim for a recurrence of disability on the grounds that she had not submitted medical evidence to establish that her recurrence was causally related to her August 7, 1995 employment injury.

The Board finds that appellant had not met her burden of proof in establishing that she had a recurrence of disability due to her August 7, 1995 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.²

In the medical evidence submitted by appellant, only Dr. Clay addressed the issue of the causal relationship between the August 7, 1995 employment injury and the alleged recurrence of disability. He only stated, however, that he believed the lumbar strain had not resolved. Dr. Clay did not provide any explanation on how a lumbar strain would cause a recurrence of disability almost four years later. His report therefore is speculative, equivocal and lacking in any rationale in support of his conclusion on causal relation. It is insufficient to establish that the employment injury caused a recurrence of disability four years later.

Dr. Clay subsequently stated that appellant's action in pulling a patient up in bed caused a herniated disc. However, none of the earlier reports of record, particularly the MRI scan and the CT scan, gave a diagnosis of a herniated disc. He did not provide any rationale to show how the employment injury would have caused a herniated disc, particularly one that had not been diagnosed until four years after the employment injury. This report, therefore, has diminished probative value. Appellant has not met her burden of proof in establishing that she had a recurrence of disability due to the August 7, 1995 employment injury.

¹ An August 28, 1996 report, which was not signed by a physician, indicated that an MRI scan showed mild degenerative facet joint arthropathy at all levels, degenerative disc changes at L3-4, L4-5 and L5-S1 and diffuse disc bulging at the same levels with mild to moderate spinal stenosis, prominent degenerative spurring and bony hypertrophic changes.

² *Dominic M. DeScala*, 37 ECAB 369 (1986).

The decision of the Office of Workers' Compensation Programs dated June 13, 2000 is hereby affirmed.

Dated, Washington, DC
July 24, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member