

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARY COOK and DEPARTMENT OF THE ARMY,  
SIERRA ARMY DEPOT, Herling, CA

*Docket No. 00-589; Submitted on the Record;  
Issued March 2, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant established a recurrence of disability and need for surgery October 19, 1998, causally related to her accepted September 4, 1996 employment injury.

On September 4, 1996 appellant, then a 49-year-old supply technician indicated that she injured her back, neck, hips and shoulder, when she sat down in a chair that had been lowered without her knowledge. The Office of Workers' Compensations Programs accepted the claim for acute upper back strain. Appellant returned to full duty with limited medical restrictions on September 9, 1996.

On August 25, 1998 appellant filed a recurrence of disability claim alleging that on July 7 1998 she experienced progressive pain, numbness and weakness in her neck, shoulder, arm, lower back, hip and leg, causally related to her September 4, 1996 employment injury.<sup>1</sup>

In support, appellant submitted a medical note from the Sierra Army Depot health clinic dated July 7, 1998, which indicated that appellant reported intermittent and severe pain across the lower left side of her back, left buttocks and leg. The medical note further indicated that appellant attributed her pain to a fall in December 1996.<sup>2</sup> Following an Office request for additional information, the Office received a report from Dr. William Dawson, a Board-certified neurosurgeon, dated September 22, 1998. Dr. Dawson reported that he initially saw appellant on November 21, 1996 with symptoms of neck, back, shoulder and arm pain, and continued to evaluate her from January 6 through May 29, 1997.<sup>3</sup> He stated that on May 29, 1997 appellant

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<sup>1</sup> Appellant also filed a claim for compensation on account of traumatic injury (Form CA-7), claiming lost wages due to medical evaluation commencing July 8, 1998.

<sup>2</sup> The Board notes that this medical note was later revised by medical personnel and resubmitted to indicate that appellant attributed the pain to the work injury on September 4, 1996.

<sup>3</sup> Medical records mentioned in Dr. Dawson's report from January 6 through May 29, 1997 were also submitted to the Office.

showed remarkable improvement and by February 12, 1998, appellant had no neurological deficit in her upper extremities, but continued to have spinal pain. Dr. Dawson further stated that, on July 8, 1998, he saw appellant and diagnosed progressive left hip pain and low back pain. He indicated that x-rays were subsequently taken along with a magnetic resonance imaging (MRI) scan and bone scan, which revealed that appellant had a large L3-4 facet joint cyst. Dr. Dawson also reported that a computerized tomography (CT) scan of the cervical spine showed a diffuse disc bulge at L5-S1 and examination revealed quadriceps weakness on the left and progressive pain in the low back. At the conclusion of Dr. Dawson's September 22, 1998 report, he diagnosed aggravation of cervical degenerative osteoarthritis and lumbar strain with back pain, with probable progression to degenerative changes.

Appellant also submitted individual reports from Dr. Dawson dated August 18 and September 22, 1998. In the August 18, 1998 report, Dr. Dawson indicated that appellant needed surgery to remove the degenerative cyst found at the facet joint. He also stated:

"I know this is a degenerative change and I think it is significant in that the accident caused the worsening of her low back pain. I did not do any studies originally because I thought it would clear but it never did. It got worse. I think this probably has some relationship to the original accident that was some time ago." "There is no way I can be 100 percent sure whether it came from the accident, but since her pain started with that I think that assuming it did is reasonable. Number one, she complained about the low back pain from the start of her accident and number two, there are not many osteoarthritic changes anywhere else in the spine. This is more focal in nature."

In the September 22, 1998 note, Dr. Dawson stated:

"I think [appellant] has probably had a progression of an injury that formed a facet cyst. Since she began to have low back pain at the time of her federal injury, it is going to be very hard to know what happened, but she relates all of her problems to that and is very persistent in stating that."

By decision dated October 9, 1998, the Office denied appellant's claim on the grounds that she failed to establish a recurrence of her original work injury. Appellant disagreed with the decision and requested a review of the written record.<sup>4</sup>

Appellant later submitted a report dated November 30, 1998 from Dr. Dawson, which indicated that appellant had done well after the surgery to remove the facet cyst at the L3-4 level, and would be released to light duty on December 7, 1998.<sup>5</sup> Appellant later submitted a report from Dr. Dawson dated December 14, 1998, in which appellant reported new symptoms in her neck and redevelopment of her neck problems. Dr. Dawson noted that appellant's symptoms

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<sup>4</sup> Appellant initially requested an oral hearing on November 4, 1998. Appellant later requested postponement of a scheduled hearing, which was denied, and subsequently requested a review of the written record on June 15, 1999.

<sup>5</sup> The record reflects that appellant underwent surgery on October 19, 1998, at which time a partial hemilaminectomy of the L3-4 with decompression of the left L4 root and medial facetectomy was also performed.

were originally on her left but then reported weakness and a C5-6 problem on her right after her injury.<sup>6</sup> In a report dated March 1, 1999, he reported that appellant had major spurring with cord compression at C5-6 and C6-7 and recommended an anterior cervical discectomy and fusion at C5-6 and C6-7.

Appellant also submitted a report from Dr. Jay Morgan, a Board-certified neurosurgeon, dated March 6, 1999, in which he reported that appellant had neck pain, bilateral arm pain and finger involvement, which she reportedly experienced for more than two years. He related that appellant initially injured her back when she fell from a chair in 1996 and had never been pain free as far as her neck was concerned. Dr. Morgan diagnosed cervical spondylosis with radiculopathy and also recommended that appellant undergo a cervical discectomy procedure.

On March 12, 1999 an Office hearing representative referred the medical file to an Office medical adviser and inquired whether the recommended surgery should be authorized. In a memorandum dated March 24, 1999, the Office medical adviser replied that the medical evidence did not support that appellant's cervical spine degenerative problems were associated with the work-accepted injury. The Office medical adviser indicated that a November 6, 1996 MRI scan of record demonstrated degenerated and narrowed C5-6 and C6-7 discs and a subsequent MRI scan done on January 27, 1999 showed no significant changes. Therefore, the Office medical adviser stated: "It is very probable that the cervical spine degenerative changes were present before the work-related and accepted injury occurred." He concluded that the proposed surgery should not be authorized.

On April 9, 1999 the Office furnished appellant with the Office medical adviser's findings and requested that her physician address the issues raised therein. The Office further informed appellant that the requested surgery would not be authorized at that time. The Office never received a response to its April 9, 1999 inquiry. Instead, the Office received a report dated June 2, 1999 from Dr. Morgan, who discussed appellant's symptoms and surgery scheduled for June 3, 1999 and later, postoperative reports dated June 29 and July 20, 1999, which indicated that surgery had been performed.

By decision dated September 1, 1999, the Office hearing representative affirmed the October 9, 1998 decision on the grounds that appellant failed to establish a causal relationship between the claimed disabling condition in July 1998 and need for surgery October 19, 1998 and the accepted employment injury. The Office hearing representative noted that appellant returned to full duty on September 9, 1996 after her back strain had resolved, and that there were no further references to appellant's low back condition in her medical record until February 12, 1998. The Office hearing representative also noted that Dr. Dawson, in his February 12, 1998 report stated that appellant had low back and hip pain; however, he did not connect her condition in July 1998 to the work injury in 1996. The Office hearing representative further noted that, in a report dated September 22, 1998, Dr. Dawson related appellant's low back condition and facet cyst which was surgically removed on October 19, 1998 to the

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<sup>6</sup> The Board notes that appellant also filed a recurrence of disability claim on December 21, 1998. As no final decision has been made by the Office on this claim, it is not now before the Board on this appeal; *see* 20 C.F.R. § 501.2(c).

employment injury, however, his opinion was based solely on appellant's statements and not objective clinical or medically-documented findings. The Office hearing representative therefore affirmed the prior decision, finding that appellant failed to establish her burden of proof.

The Board finds that appellant failed to establish that she sustained a recurrence of disability and need for surgery October 19, 1998, causally related to her September 4, 1996 accepted employment injury.

Where appellant claims a recurrence of disability to an accepted employment-related injury, she has the burden of establishing by the weight of the reliable probative evidence that the recurrence of the condition for which she seeks compensation is causally related to the accepted employment injury.<sup>7</sup> As part of this burden, appellant must submit rationalized medical opinion evidence based on a complete and accurate factual and medical background showing a causal relationship between the current condition and the accepted employment injury.

In the instant case, no rationalized medical opinion was submitted to support the causal relationship between appellant's claimed disability commencing July 7, 1998 and subsequent surgery on October 19, 1998, and her September 4, 1996 employment injury. The only discussion of a relationship between appellant's low back condition and need for surgery to remove the facet cyst was found in Dr. Dawson's reports dated August 18 and September 22, 1998. Dr. Dawson indicated in these reports that appellant's employment injury caused a worsening of her low back pain because appellant had related her pain to the September 4, 1996 injury and had not claimed to have experienced these symptoms before. Dr. Dawson also indicated that appellant's employment injury caused the facet joint cyst to develop because he had not found many osteoarthritic changes anywhere else in the spine. His reports, however, are of limited probative value on the relevant issue of the present case, in that they do not contain adequate medical rationale in support of its conclusion on causal relationship.<sup>8</sup> Dr. Dawson did not explain the medical process through which appellant would have sustained a recurrence of disability of the September 4, 1996 injury, which had resolved two years prior or how the work injury could have caused the cyst diagnosed two years after the injury.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.<sup>9</sup> Appellant failed to submit rationalized medical evidence establishing that her claimed recurrence of disability and need for surgery were causally related

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<sup>7</sup> See *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

<sup>8</sup> See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

<sup>9</sup> See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

to the accepted employment injury and, therefore, the Office properly denied her claim for compensation.

The decision of the Office of Workers' Compensation Programs dated September 1, 1999 is hereby affirmed.

Dated, Washington, DC  
March 2, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Member