

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLA TURNER and DEPARTMENT OF JUSTICE,
IMMIGRATION & NATURALIZATION SERVICE, New York, NY

*Docket No. 00-2074; Submitted on the Record;
Issued May 9, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on December 13, 1998 causally related to her 1992 employment injury.

Appellant, a 53-year-old information officer, filed a claim on February 24, 1994 alleging that she injured her knees in the performance of duty due to repetitive climbing.¹ The Office accepted appellant's claim for bilateral tears of the medial menisci and arthroscopy of both knees. Appellant returned to light-duty work on January 12, 1996. On April 13, 1999 appellant filed a notice of recurrence of disability alleging that on December 13, 1999 her knee gave way causing her to fall down a flight of stairs at home. By decision dated August 18, 1999, the Office denied appellant's claim. Appellant requested reconsideration on February 3, 2000 and by decision dated March 17, 2000, the Office denied modification of its August 18, 1999 decision.

The Board finds that appellant has failed to meet her burden of proof in establishing a recurrence of disability.

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. Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability commencing December 13, 1999 and her 1992 employment injury.²

¹ Although appellant filed a claim for traumatic injury, the Office of Workers' Compensation Programs properly developed appellant's claim as an occupational disease as she alleged that her condition was due to employment duties over a period of time greater than one workday or work shift.

² *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

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 employment factors and supports that conclusion with sound medical reasoning.³

In a report dated June 13, 1999, Dr. Eustace A. Huggins, a Board-certified family practitioner, noted that on December 30, 1998 appellant fell down three stairs at home injuring her knees and arms. Appellant was also experiencing headaches. Dr. Huggins noted that appellant attributed her fall to her high blood pressure and stated that her headaches were due to either high blood pressure or head injury from her fall. He diagnosed chronic knee pain. Dr. Huggins did not provide an opinion regarding appellant's disability for work and did not offer an opinion on the causal relationship between her accepted knee condition and her fall.

Dr. Huggins completed a report on November 5, 1999 and again provided a history of his treatment of appellant. He stated that appellant was still out of work on December 30, 1998 due to a fall on December 13, 1998. Dr. Huggins stated that appellant fell 15 steps and struck her head. He reported that appellant was experiencing terrible headaches as well as pain in her knees with crepitation. Dr. Huggins stated that the chronic knee pain and chronic headaches were related to work injuries. He stated: "In view of [appellant's] chronic disability with chronic pain in both knees and given the history of injuries sustained on the job back in 1992 one could conclude without hesitation that those injuries do play a part in the reinjury she sustained in December 1998." Dr. Huggins stated that appellant was totally disabled.

The history of injury in December 1998 is not consistent in Dr. Huggins' reports. He initially attributed appellant's fall to high blood pressure and then altered the number of steps, the injuries sustained and the cause of the fall in his subsequent report. Therefore, Dr. Huggins' reports are not based on a proper factual background. Furthermore, although Dr. Huggins provided an opinion on causal relationship and found that appellant was totally disabled, he did not provide sufficient medical reasoning in support of either of these opinions.

Appellant submitted a report dated October 22, 1999 from Dr. Laxmidhar Diwan, a Board-certified orthopedic surgeon, who noted appellant's history of injury and treatment history. He stated that appellant was likely to experience pain, limitation of motion, swelling and crepitations of both of her knees from time to time. Dr. Diwan stated that appellant had developed arthritic changes. This report does not establish a change in the nature or extent of appellant's employment-related condition nor does it establish that appellant is totally disabled.

Appellant has not submitted sufficient rationalized medical opinion evidence to establish a causal relationship between her accepted employment injuries and her alleged recurrence of disability on December 30, 1998.

³ See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

The March 17, 2000 and August 18, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
May 9, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member