

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELLEN M. LEE and DEPARTMENT OF HEALTH & HUMAN SERVICES,
SOCIAL SECURITY ADMINISTRATION, Fairfield, CA

*Docket No. 00-1327; Submitted on the Record;
Issued April 12, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability between June 23 and July 22, 1998 due to her March 1, 1985 employment injury.

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.¹ 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 the employment injury and supports that conclusion with sound medical rationale.² Where no such rationale is present, medical evidence is of diminished probative value.³

On March 1, 1985 appellant, then a 38-year-old claims authorizer, sustained strains and sprains of her left hip and low back.⁴ The evidence reveals that she sustained injury when she stumbled, but that she did not fall to the ground. Appellant reported that she was walking across the floor at work and caught the heel of her shoe between the tiles of the floor such that she was "thrown in [an] abnormal position." The Office of Workers' Compensation Programs later accepted that appellant sustained a strain/sprain to the left hip and low back and an adjustment

¹ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

² *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

³ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁴ The Office of Workers' Compensation Programs later accepted that appellant's low back strain was chronic in nature.

disorder with depressed mood due to her employment injury. Appellant received appropriate compensation for periods of disability.

Appellant claimed that she sustained a recurrence of disability between June 23 and July 22, 1998 due to her March 1, 1985 employment injury.⁵ By decision dated February 3, 1999, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of disability between June 23 and July 22, 1998 due to her March 1, 1985 employment injury. By decisions dated June 10 and October 4, 1999, the Office affirmed its February 3, 1999 decision.

The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained a recurrence of disability between June 23 and July 22, 1998 due to her March 1, 1985 employment injury.

In a report dated August 31, 1998, Dr. Edward C. Hughes, Jr., an attending Board-certified orthopedic surgeon, indicated that appellant reported she experienced an aggravation of her March 1, 1985 employment injury and had not fully recovered from that injury. Dr. Hughes noted that appellant was last examined on June 25, 1998 and stated:

“There are no particular factors which caused the recurrence as this patient has ongoing degenerative disc disease and aggravation is difficult or impossible to predict. The patient's initial condition is prone to recurrence.”

In a report dated February 24, 1999, Dr. Hughes noted that appellant experienced pain in her low back with pain radiating down her left leg and indicated, “The patient's medical condition continues to be the ongoing aggravation of her work-related injury to her low back which occurred on March 1, 1985.” He indicated:

“Your office not accepting degenerative disc disease as a diagnosis is incongruous as the initial injury being fifteen years ago and most likely a herniated disc has not degenerated to the point that it is called a degenerative disc and although the herniation was not surgically challenged the ongoing symptoms have been the persistent collapse of the disc space and worsening of the foraminal stenosis that occurs with this condition.”

Dr. Hughes discussed the effect of appellant's breast surgery⁶ on her back condition and stated, “Therefore, I would accept her disability from June 23 to July 22, [1998] as medically connected to her work-related injury, an aggravation of her injury, which has been more or less a constant symptom throughout the years.”

⁵ Appellant stopped work on June 23, 1998 and returned to her regular work at the employing establishment on July 23, 1998.

⁶ Appellant underwent breast surgery in early to mid 1998.

In a report dated June 24, 1999, Dr. Hughes indicated that appellant required surgery and stated:

“[Appellant] has been under my care for several years for the treatment of degenerative disc disease of the lower back. It is quite evident that the date of injury, March 1, 1985, when the patient related back pain occurring from an injury at work, is definitely related to degenerative disc disease and it is I believe a disparity in thinking to cancel this patient’s benefits because of [an] alleged nontraumatic diagnosis.

“This patient has aggravation of discogenic disease which is caused by her fall and has continuing low back pain.”

The Board notes that the reports of Dr. Hughes are of limited probative value on the relevant issue of the present case in that they did not provide adequate medical rationale in support of his conclusion on causal relationship.⁷ Dr. Hughes indicated that appellant sustained disability after June 23, 1998 due to her March 1, 1985 employment injury, but he did not adequately explain how the accepted injury, strains and sprains of her left hip and low back,⁸ could cause disability more than 13 years later. Nor did Dr. Hughes explain how appellant was able to work for many years after the March 1, 1985 injury. He indicated that appellant sustained degenerative disc disease due to her March 1, 1985 injury, but appellant’s claim has only been accepted for a soft tissue injury and Dr. Hughes has not explained the process through which appellant could have sustained such an employment-related degenerative disc condition.

Dr. Hughes did not provide any detailed description of the March 1, 1985 employment injury and, in fact, he inaccurately indicated that appellant fell on March 1, 1985.⁹ The record clearly indicates that appellant stumbled on March 1, 1985 but did not fall to the ground. Therefore, Dr. Hughes’ opinion is not based on a complete and accurate factual and medical history.¹⁰ A review of the record reveals that appellant did not exhibit any notable signs of degenerative disc disease in her back for well over a year after her March 1, 1985 injury. Therefore, medical rationale is especially necessary to support Dr. Hughes’ opinion that appellant sustained degenerative disc disease due to the March 1, 1985 employment injury and disability after June 23, 1998. However, Dr. Hughes did not provide such medical rationale; nor did he explain why appellant’s continuing problems would not solely be due to the natural progression of her nonwork-related degenerative disc disease.

⁷ 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).

⁸ The Office later accepted the condition of chronic low back strain.

⁹ For example, in a report dated March 7, 1995, Dr. Hughes indicated that appellant’s degenerative disc disease “originated” from her March 1, 1985 injury when she “caught her heel, tripped and fell.”

¹⁰ See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

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.¹¹ Appellant failed to submit rationalized medical evidence establishing that her claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied her claim for compensation.

The October 4, June 10 and February 3, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
April 12, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

¹¹ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).