

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LULA T. MOORE and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Lyons, NJ

*Docket No. 02-778; Submitted on the Record;  
Issued August 21, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,  
WILLIE T.C. THOMAS

The issue is whether appellant sustained a recurrence of disability causally related to either her February 25, 1996 or September 6, 1999 work injuries.

On September 6, 1999 appellant, then a 69-year-old registered nurse, filed a notice of traumatic injury (Form CA-1), contending that, while at work, she tripped over a floor fan and fell, landing on her back and striking her lower occipital area and spinal area against the bottom of a swivel chair. By letter dated July 11, 2000, the Office of Workers' Compensation Programs accepted this claim for contusion to cervical/dorsal spine and cervical strain. Previously, appellant had filed a claim for an injury, which occurred on February 25, 1996. Although the record from this initial claim is unavailable, the evidence of record indicates, as discussed *inter alia*, that appellant was running after a patient when she tripped, struck her head on a wall and fell on her left side. Appellant retired effective January 28, 2000.

On June 25, 2000 appellant filed a notice of recurrence of disability, wherein she alleged that her current cervical and leg condition was due to her previous injuries of February 25, 1996 and September 6, 1999. She filed a second notice of recurrence on July 27, 2000, alleging that she has not been well since her September 6, 1999 injury. By letter dated August 14, 2000, the Office requested that appellant submit further information. On August 28, 2000 she filed a third notice of recurrence, alleging that her original condition had worsened.

Appellant had been treated for her September 1999 fall by Dr. Anthony I. Giardina, an osteopath. In a letter dated August 30, 2000, from RediCare centers, a nurse indicated that Dr. Giardina last saw appellant on October 27, 1999 and was unable to comment on her current condition. Attached to the letter were copies of his treatment reports from September 7 through October 27, 1999.

Appellant also submitted medical reports and notes by Dr. Stanley Zimmerman, a Board-certified internist, covering a period from June 14, 1999 to July 3, 2000. He wrote a summary of his progress notes on September 6, 2000, wherein he indicated:

“In summary, [appellant] sustained an injury in 1996 which I did not treat. She has been treated by me since October 6, 1999 for injuries sustained [on] September 6, 1999 including cervical radiculopathy with strain/spasm. There is no doubt in my opinion that this condition is a result of many years of physical work at the [employing establishment] (lifting and moving patients) acutely exacerbated by her injury of September 6, 1999 which caused the multiple disc bulges seen on [MRI] [magnetic resonance imaging] [scans]. Granted there is a degree of degenerative change and stenosis [most likely arthritic in nature]; however[,] [appellant] never complained of any neck symptoms radicular symptoms until this fall (and I have cared for [appellant] since 1984. Therefore, I feel her complaints are directly injury related.

Dr. Zimmerman referred appellant to Dr. Steven M. Reich, a Board-certified orthopedic surgeon, who in a report dated August 16, 2000, diagnosed appellant with cervical strain/sprain. In his report, Dr. Reich noted that appellant was injured on February 25, 1996 when she hit her head on a wall after running down a hall after a patient who was suicidal. He indicated that, “if the history as provided by the patient is accurate, it would seem that her symptoms were causally related to her accident of February 25, 1996.”

By decision dated November 3, 2000, the Office denied appellant’s claim for recurrence, as it found that the evidence failed to establish that the claimed recurrence was causally related to the injury of September 6, 1999. By letter dated November 22, 2000, appellant requested an oral hearing, which was held on March 7, 2001. At the hearing, appellant testified that she injured herself at work on February 25, 1996 when, while chasing a patient, her foot slipped and she hit her head against the wall, thereby injuring her head, neck and leg. She testified that the September 6, 1999 injury occurred when she tripped over a fan, fell on her back and her neck hit the spokes of the chair. Appellant indicated that she took off work for about three days and then worked until she retired in January.

Appellant also submitted the report of an imaging of the cervical spine, lumbosacral spine which was interpreted by Dr. A. Donald Meltzer, a Board-certified radiologist, as showing degenerative discogenic change at multiple levels in the cervical spine, and a Grade I spondylolisthesis at L4-5 with no definite spondyloysis. An MRI scan conducted on September 17, 2000 was interpreted by Dr. James C. Koss, a Board-certified radiologist, as showing Grade I spondylolisthesis at the L4-5 level with probably bulging annulus fibrosis.

In a report dated March 18, 2001, Dr. George T. Bennett, a chiropractor, reviewed appellant's records, conducted an examination and concluded:

"[Appellant] presents with permanent injuries resulting from damage to the supporting spinal structures of the cervical and lumbar spines and injury to the lumbar spine itself. The injuries were due to the fall on September 6, 1999 superimposed on prior injuries from a 1996 fall that had largely resolved but left her spine in a weakened state. These injuries have and will continue to result in nerve irritation for years to come."

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"I feel that [appellant's] current pain is from exacerbation to disc pathology in her neck and back as well as aggravation of the delicate spondylolisthesis, which may even have been caused by the fall."

In a March 26, 2001 opinion by Dr. Edward Soriano, an osteopath, opined:

"It is my opinion that [appellant] has a history of underlying cervical lumbar disc degeneration which had previously been asymptomatic. It is also my opinion, within a reasonable degree of medical certainty, that [appellant] sustained significant exacerbation of her condition with resultant components of radiculopathy as a direct result of her injuries. Therefore, there is a direct causal relationship between her current disability and [appellant's] original injuries in 1996 and 1999." It is also my opinion that [appellant] is physically unable to perform the normal duties of her occupation."

By decision dated April 30, 2001, the hearing representative affirmed the November 3, 2000 order but modified it to reflect that the claim for compensation for the cervical, lumbar and left leg conditions subsequent to January 28, 2000 was denied on the basis that the claimant had failed to submit probative medical evidence establishing that her medical conditions were causally related to either the February 25, 1996 or September 6, 1999 work injuries.

By letter dated August 16, 2001, appellant requested reconsideration of the decision of the hearing representative. In support thereof, she submitted a medical report dated July 23, 2001 by Dr. Reich, wherein he reiterated that, if the history provided by appellant was accurate, "it would seem that her symptoms were causally related to and exacerbated by the accidents of 1996 and 1999." Dr. Reich also submitted medical notes and reports on appellant's treatment for pain in her left lower leg resulting from the 1996 incident. In addition, appellant also submitted copies of diagnostic test results beginning with an x-ray on February 27, 1996 and concluding with an x-ray of the left shoulder performed on July 18, 2001.

By decision dated November 14, 2001, the Office denied appellant's request for reconsideration, finding that the new evidence did not warrant modification of its previous decision.

The Board finds that this case is not in posture for decision.

When an employee claims a recurrence of disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed recurrence of disability is causally related to the accepted injury. As part of this burden, appellant must furnish 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 and supports that conclusion with sound medical reasoning.<sup>1</sup> An award of compensation may not be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causation.<sup>2</sup> However, proceedings under the Federal Employees' Compensation Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>3</sup>

In the instant case, Dr. Zimmerman indicated that appellant's cervical radiculopathy with strain and spasm was exacerbated by her injury on September 6, 1999. Dr. Reich indicated that, if appellant's history were accurate, "it would seem that her symptoms were causally related to her accident of February 25, 1996." Dr. Soriano opined that appellant's underlying cervical lumbar disc degeneration, which had previously been asymptomatic, was exacerbated as a direct result of her work injuries in 1996 and 1999. The Office, in its decision, rejected these opinions, finding that they were not rationalized. The Office indicated concerns with whether the doctors had an accurate understanding of appellant's work history or prior medical history. The Office also indicated that these opinions did not provide a well-rationalized opinion supporting a relationship between the work injuries and appellant's condition. However, the Board finds that although the medical reports of record may not be sufficiently rationalized to discharge appellant's burden of proof that her recurrence of disability was causally related to her 1996 and 1999 work injuries, these reports raise an uncontroverted inference of causal relationship sufficient to require further development of the record by the Office.<sup>4</sup>

Upon remand, the office should further develop the medical evidence as necessary. After such further development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

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<sup>1</sup> *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996).

<sup>2</sup> *Id.*

<sup>3</sup> *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

The decisions of the Office of Workers' Compensation Program dated November 14 and April 30, 2001 are hereby set aside and the case is remanded for further development in accordance with this decision.

Dated, Washington, DC  
August 21, 2002

Michael J. Walsh  
Chairman

Alec J. Koromilas  
Member

Willie T.C. Thomas  
Alternate Member