

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDITH IRELAND and DEPARTMENT OF VETERANS AFFAIRS,
WHITE CITY DOMICILIARY, White City, OR

*Docket No. 01-832; Submitted on the Record;
Issued January 25, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on and after April 8, 1999 due to her June 26, 1998 employment injury.

On July 8, 1998 appellant, then a 50-year-old addiction therapist, filed a claim for compensation benefits alleging that she sustained an injury to her back, knees and right elbow when climbing a telephone pole as part of a work-related outing. The Office of Workers' Compensation Programs accepted that appellant sustained an employment-related right knee strain and right arm strain and authorized arthroscopic surgery for the right knee. Appellant did not stop work.

Accompanying appellant's claim were treatment notes from Dr. Wendy Shilling, a general practitioner, dated July 7 to September 22, 1998 and a magnetic resonance imaging (MRI) scan of the right knee dated September 15, 1998. The treatment notes from Dr. Shilling dated July 7, 1998 noted a history of appellant's work-related injury and indicated that appellant had complaints of back, knee and right elbow pain. She diagnosed appellant with low back pain consistent with lumbosacral strain and bilateral knee pain. In her note dated July 24, 1998, Dr. Shilling diagnosed appellant with right medial epicondylitis secondary to her on-the-job injury; she noted that appellant's back and knee pain was improving. Dr. Shilling's August 14, 1998 treatment note indicated appellant's back pain was improving. Appellant was diagnosed with right medial epicondylitis; right knee pain and status post fall with laceration from a nonwork-related incident. Dr. Shilling's treatment note dated September 8, 1998 addressed appellant's continued knee pain. The MRI scan of the right knee revealed degenerative changes in the knee and a intrameniscal tear. Subsequently appellant submitted various medical records from Dr. Charles Versteeg, a Board-certified orthopedic surgeon, dated December 18, 1998 to February 17, 1999, who was treating appellant for her epicondylitis and knee condition; a treatment note from Dr. Shilling dated January 7, 1999; treatment notes from Dr. Douglas B. McMahan, an osteopath dated April 8 through September 29, 1999; an MRI of the lumbar spine dated April 29, 1999; and a report from Dr. Daniel A. Saviers, Board-certified in physical medicine and rehabilitation, dated June 4, 1999. Dr. Versteeg's treatment notes indicated that he

performed arthroscopic surgery on January 14, 1999. He diagnosed appellant with synovitis with Grade I condrosis of the medial compartment of the right knee. Dr. Shilling's note indicated that appellant experienced three falls: December 10 and 23, 1998 and January 1999. She noted that on December 23, 1998 appellant fell on her buttocks and hit her head. Dr. Shilling noted that appellant experienced pain in her neck and paracervical region. She diagnosed appellant with a paracervical strain and mild concussion. Dr. McMahon's treatment note of April 8, 1999 indicated that appellant presented with low back pain with radiation to her buttocks and thigh after falling twice in December 1998. He indicated that appellant did not have back problems prior to these injuries. Dr. McMahon diagnosed appellant with lumbosacral strain with radiculopathy. His April 29, 1999 note indicated that appellant still experienced severe back pain and was diagnosed with lumbosacral strain with radiculopathy. Dr. McMahon's May 4, 1999 treatment note indicated that appellant believed her back condition was related to her original work injury of June 1998. Appellant indicated that her back condition improved; however, never resolved from the original work injury. She noted that after the falls in December 1998, her symptoms reappeared. Dr. McMahon diagnosed appellant with lumbosacral pain with radiculopathy. His treatment notes from May 25 to September 29, 1999 indicated that appellant's back injury improved considerably until she underwent an epidural injection which aggravated her condition. The MRI scan revealed mild annular bulges at L3-4 and L4-5; mild foraminal narrowing at L4-5 bilaterally; and a L5-S1 annular bulge. Dr. Saviers report dated June 4, 1999 noted that appellant complained of persistent low back pain which appellant attributed to her employment injury of June 26, 1998. He diagnosed appellant with L5-S1 disc bulge with intermittent L5 radicular symptoms and noted the lumbosacral strain was resolving.

In a letter dated September 27, 1999, appellant indicated that she had experienced persistent pain in her low back since her work-related injury of June 26, 1998. She indicated that she sought treatment from Dr. McMahon in April 1999 for her back problem.¹

By letter dated January 28, 2000, the Office requested detailed factual and medical evidence from appellant, stating that the information submitted was insufficient to establish a recurrence of injury.

In response to the Office's request, appellant submitted a report from Dr. McMahon dated February 15, 2000. Dr. McMahon noted appellant believed her back pain was related completely to her employment injury of June 26, 1998. Appellant indicated that although her back pain from the original injury did improve, it did not resolve. He noted that appellant sustained two falls in December 1998 which aggravated her condition. Dr. McMahon indicated that appellant's low back problems stem from the injury of June 26, 1998, and he based his opinion on the fact that appellant was asymptomatic prior to this injury. He further noted that he was not appellant's provider at the time of the work-related injury and would have to defer to appellant's rendition of events and to Dr. Schilling regarding whether the June 1998 work-related injury or the December 1998 falls were the major cause of appellant's condition.

¹ Although appellant failed to file a Form CA-2a, notice of recurrence of disability, the Office developed appellant's claim as a recurrence of her accepted injury of June 26, 1998.

By decision dated March 27, 2000, the Office denied appellant's claim for recurrence of disability on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or after April 8, 1999 which was causally related to the accepted employment injury sustained June 26, 1998.

Appellant requested an oral hearing before an Office hearing representative which was held August 22, 2000. At the hearing, she noted that she developed a back condition after the June 26, 1998 work injury and that in time her condition improved. Appellant testified that in December 1998 she sustained two falls and continued to have back pain. She further stated that in April 1999 she was experiencing back pain.

Appellant submitted a report from Dr. Larry J. Maukonen, a specialist in neurology, dated April 13, 2000; and various treatment notes from Dr. Paul Sternenberg, a specialist in orthopedics, dated May 18 to August 17, 2000. Dr. Maukonen indicated that he was treating appellant for right elbow pain. He diagnosed appellant with right medial epicondylitis with secondary tardy ulnar palsy at the elbow. Dr. Sternenberg noted treating appellant for epicondylitis of her elbow.

By decision dated October 4, 2000, the Office hearing representative denied appellant's claim on the grounds that appellant failed to provide sufficient medical evidence to establish that she was partially disabled during the claimed period.

On October 27, 2000 appellant, through her attorney, requested reconsideration of the decision dated October 4, 2000. She submitted physical therapy notes.

In a decision dated November 6, 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence of record was insufficient to warrant modification of the prior decision.

The Board finds that the evidence fails to establish that appellant sustained a recurrence of disability on or after April 8, 1999 as a result of her June 26, 1998 employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.² This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury. Moreover, the physician's conclusion must be supported by sound medical reasoning.³

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁴ In this regard, medical evidence

² *Robert H. St. Onge*, 43 ECAB 1169 (1992).

³ *See Robert H. St. Onge*, *supra* note 2.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.⁵ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁶

The Office accepted that appellant sustained a right arm strain and right knee strain and authorized surgery for a medial epicondyle tendon repair and arthroscopic surgery for her right knee. However, the medical record lacks a well-reasoned narrative from appellant's physician relating appellant's claimed recurrent condition, beginning April 8, 1999 to the June 26, 1998 employment injury.

Dr. McMahon's treatment note of April 8, 1999 indicated that appellant presented with low back pain with radiation to her buttocks and thigh after falling twice in December 1998. He diagnosed appellant with lumbosacral strain with radiculopathy. Dr. McMahon's April 29, 1999 treatment note indicated that appellant still experienced severe back pain and was diagnosed with lumbosacral strain and radiculopathy. The medical records submitted most contemporaneously with the alleged recurrence of injury, specifically, Dr. McMahon's notes dated April 8 and 29, 1999 fail to mention appellant's work-related injury of June 26, 1998, but attribute appellant's condition to the falls she sustained in 1998. The Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence.⁷

Dr. McMahon's February 15, 2000 treatment note indicated that appellant sustained two falls in December 1998 which aggravated her condition. He noted that "it appears the patient's low back problems stem from the injury of June 26, 1998, as prior to that she had no back problems." Dr. McMahon related appellant's current back condition to the employment injury, however, his only rationale for doing so was that appellant had no back problems prior to the employment injury. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to support a causal relationship.⁸ Dr. McMahon further noted "I must, however, defer to Dr. Schilling and to the emergency room physician as I was not her provider at the time ... [a]gain I have to defer to her history and to Dr. Schilling regarding which of the causes, *i.e.*, June 1998 vs December 1998 (falls), was the major cause of her current condition." The Board notes that without any further explanation or rationale for the conclusion reached, such report is insufficient to establish a causal relationship.⁹ Instead, Dr. Schilling

⁵ For the importance of bridging information in establishing a claim for a recurrence of disability, see *Robert H. St. Onge*, *supra* note 2; *Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Richard McBride*, 37 ECAB 748 (1986).

⁶ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁷ See *Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971) (where the Board found a physician's opinion to be of diminished probative value where the physician's opinion in support of causal relationship was based on a history of injury that was not corroborated by the contemporaneous medical history contained in the case record).

⁸ *Kimper Lee*, 45 ECAB 565 (1994).

⁹ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

couched his opinion in speculative terms and he did not reference any particular employment factors as causing appellant's condition.¹⁰ Therefore, this report is insufficient to meet appellant's burden of proof.

Additionally, none of Dr. McMahon's reports provide "bridging evidence" which would relate the back injury to the accepted employment injuries. He makes no mention of "bridging evidence." That is, Dr. McMahon does not explain, how, after over two years following the accepted right arm strain and right knee strain, it was exacerbated by appellant's employment factors to result in a back condition. The Office never accepted that appellant sustained a back injury as a result of her June 26, 1998 work injury and there is no medical evidence to support such a conclusion.¹¹ The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.¹²

Dr. Saviers report dated June 4, 1999 noted that appellant complained of persistent low back pain which was related to her employment injury of June 26, 1998. He diagnosed appellant with L5-S1 disc bulge with intermittent L5 radicular symptoms and noted the lumbosacral strain was resolving. However, Dr. Saviers neither indicated knowledge that appellant sustained three falls in December 1998 and January 1999 nor did he address how these incidents might have affected appellant's condition in April 1999.¹³ The Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship. Therefore, this report is insufficient to meet appellant's burden of proof.

Other medical reports submitted by appellant did not specifically address causal relationship between her accepted condition and her claimed recurrence of disability or conditions.

For these reasons, appellant has not met her burden of proof in establishing that she sustained a recurrence of disability or a medical condition beginning April 8, 1999 causally related to her accepted June 26, 1998 employment injury.

¹⁰ See *Leonard J. O'Keefe*, 14 ECAB 42, 28 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

¹¹ See *Arthur N. Meyers*, *supra* note 8.

¹² See *Theron J. Barham*, 34 ECAB 1070 (1983).

¹³ See *Cowan Mullins*, 8 ECAB 155, 158 (1955).

The November 6, 2000 decision of the Office of Worker' Compensation Programs is affirmed.

Dated, Washington, DC
January 25, 2002

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member