

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LOUISE S. THOMAS and DEPARTMENT OF THE ARMY,  
WALTER REED MEDICAL CENTER, Washington, DC

*Docket No. 01-1821; Submitted on the Record;  
Issued June 11, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,  
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability on February 10, 1996 causally related to her November 18, 1994 employment injury.

The Board has duly reviewed the case record in this appeal and finds that appellant failed to meet her burden of proof to establish that she sustained a recurrence of disability on February 10, 1996 causally related to her November 18, 1994 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.<sup>1</sup> 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.<sup>2</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>3</sup>

On July 15, 1997 appellant, then a 59-year-old food service worker, filed a claim for a back injury on November 18, 1994 when she lifted a heavy case of cabbage. On December 12, 1996 the Office of Workers' Compensation Programs accepted appellant's claim for a low back strain.

On July 20, 1999, appellant filed a claim for a recurrence of disability on February 10, 1996 that she attributed to her November 18, 1994 employment injury.

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<sup>1</sup> See *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

<sup>2</sup> See *Mary S. Brock*, 40 ECAB 461, 471 (1989); *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

<sup>3</sup> See *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

By decision dated March 6, 2000, the Office denied appellant's claim for a recurrence of disability on the grounds that the evidence was insufficient to establish a causal relationship between appellant's current back problems and her November 18, 1994 employment injury.

By letter dated January 22, 2001, appellant requested reconsideration and submitted additional evidence.

By decision dated April 13, 2001, the Office denied modification of its March 6, 2000 decision.

In a report dated June 27, 1996, Dr. Sankara R. Kothakota, an orthopedic surgeon, stated that appellant strained her back on November 18, 1994 while lifting bags of food and had been under his care since April 28, 1995. Dr. Kothakota diagnosed bilateral carpal tunnel syndrome, chronic lumbosacral strain, facet joint arthropathy of the lumbar spine and lateral epicondylitis of the right elbow. However, he did not indicate that appellant was disabled due to her lumbosacral strain or explain how all of his diagnoses were causally related to appellant's November 18, 1994 employment injury as the Office did not accept carpal tunnel syndrome. Therefore this report is not sufficient to establish that appellant sustained a recurrence of disability on February 10, 1996 causally related to her November 18, 1994 employment injury.

In a report dated June 27, 1997, Dr. Harvey C. Shapiro, an orthopedic surgeon, stated that appellant had leg pain, back pain and bilateral hand pain. Dr. Shapiro stated that in 1994 she injured her back at work, was diagnosed with carpal tunnel syndrome in 1994 and retired from her job in 1996 due to cardiac bypass surgery and was told to stop lifting. He provided findings on examination and diagnosed bilateral carpal tunnel syndrome, an L4-5 disc herniation and degenerative disc disease with lumbosacral strain pattern. Dr. Shapiro noted that her coronary bypass surgery that included bilateral vein harvesting was probably contributory to her lower leg discomfort. He recommended that she see a vascular surgeon about her leg pain "since I think that this is really due to intermittent claudication and not due to her back or other etiologies." Dr. Shapiro provided a complete and accurate factual background, findings on examination, diagnostic test results and a diagnosis based on the physical examination and indicated that appellant's disability from work was due to her cardiac condition, not her November 18, 1994 employment-related back condition. Therefore, his report is not sufficient to discharge appellant's burden of proof.

In a report dated June 23, 1998, Dr. Dongzin Hur, a physician specializing in pain management, stated that appellant injured her back in 1994 when trying to lift a heavy object at work and had experienced lower lumbar spine pain with radiation to both lower extremities. Dr. Hur stated that a magnetic resonance imaging (MRI) scan revealed a herniated disc at L4-5 and L4-5 facet arthropathy. However, he did not explain how these conditions were causally related to appellant's employment injury or opine that she was disabled. Therefore, this report is not sufficient to establish that appellant sustained a recurrence of disability on February 10, 1996 causally related to her November 18, 1994 employment injury.

In a report dated December 9, 1999, Dr. Shapiro diagnosed a disc herniation at L4-5 by history and degenerative joint disease as revealed in an MRI scan. He indicated by checking the block marked "yes" that the conditions were causally related to her employment. Dr. Shapiro

indicated that he first examined appellant on June 27, 1997. However, the Board has held that an opinion on causal relationship which consists only of checking “yes” to a form report question on whether the claimant’s disability was related to the history given is of little probative value.<sup>4</sup> Without any explanation or rationale, such a report has little probative value and is insufficient to establish causal relationship.<sup>5</sup> Therefore, this report is not sufficient to discharge appellant’s burden of proof.

In a report dated December 20, 1999, Dr. Kothakota stated that appellant had been experiencing chronic low back pain. He stated that appellant had chronic disc degeneration at L4-5 and all her lower back symptoms were related to her November 18, 1994 employment injury secondary to the disc degeneration at L4-5. However, Dr. Kothakota did not provide any medical rationale explaining how appellant’s problems were causally related to factors of her employment. Therefore, this report is not sufficient to establish that appellant sustained a recurrence of disability on February 10, 1996 causally related to her November 18, 1994 employment injury.

In a report dated June 6, 2000, Dr. Shapiro stated that on June 27, 1997 appellant indicated that she was disabled due to her cardiac bypass surgery. He stated that she related no causal history to a work-related event, occurrence or pattern and “[c]onsequently, the opinions expressed are based on this interview. Of late, she is now indicating changes in her impressions.” Dr. Shapiro stated that he was not appellant’s initial treating orthopedist and Dr. Kothakota could provide additional information regarding the cause of appellant’s condition. He indicated that she related no causal history of a work-related event, occurrence or pattern. Therefore, this report does not support appellant’s claim for a work-related recurrence of disability.

In a report dated August 21, 2000, Dr. Hampton J. Jackson, Jr., an orthopedic surgeon, stated that appellant had experienced pain in her hands since her November 18, 1994 employment injury. He indicated that his report concerned appellant’s hands and not her back condition. Dr. Jackson diagnosed “bilateral carpal tunnel syndrome related to incident of November 18, 1994.”

In a report dated November 27, 2000, Dr. Jackson stated that his review of the medical records indicated that appellant was off work for three weeks following the November 18, 1994 employment injury, performed light-duty work for one month before returning to regular work but had persistent back pain. He noted that appellant was treated by Dr. Kothakota in 1995 for a back and hand condition and he opined in September 1996 that appellant had a permanent partial impairment of the lower back. Dr. Jackson stated that an MRI scan showed evidence of a disc injury with nerve root compression and an electromyogram (EMG) which confirmed an L5-S1

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<sup>4</sup> See *Debra S. King*, 44 ECAB 203, 210 (1992); *Donald W. Long*, 41 ECAB 142, 146 (1989).

<sup>5</sup> *Id.*

radiculopathy which was all compatible with appellant's complaints since her November 18, 1994 employment injury. He stated:

"I evaluated [appellant] on ... August 21, 2000 and ... November 27, 2000, the findings in the lower back. The findings in the lower extremities are the same and indeed the findings are indicative of the same condition which Dr. [Kothakota] gave a permanent impairment for on September 27, 1996. A chronic lumbar spondylosis with radiculopathy as well as a confirmed L5-S1 radiculopathy on the left. The condition for which I am evaluating her presently is indeed causally related to the episode of lifting 50 pounds of cabbage on November 18, 1994.

"Since November 18, 1994 [appellant's] back has worsened to the present state. It is my opinion presently that [appellant] is not and could not continue her previous job of heavy lifting and the like after 1996. She explained to me that there were no light duties in [the employing establishment] in 1996 and therefore it is my opinion that indeed her inability to do the lifting and job description is related to this injury of November 18, 1994. She has continued to wear the brace prescribed ... since December 1994. She has continued on analgesics and muscle relaxants and is to avoid any lifting, pushing, pulling and work activities."

In a report dated January 2, 2001, Dr. Jackson stated that appellant still had symptoms in both hands, her lower back and lower extremities. He stated:

"Once again my investigations indicate that [appellant] has a bilateral carpal tunnel syndrome that is related to the injury of November 18, 1994 as well as lumbar disc injury and lumbar radiculopathy also related to the injury of November 18, 1994. The combination of these work-related conditions renders [appellant] unable to do standing, walking, bending, pushing, pulling, lifting and prolonged sitting. Therefore being unable to do these activities [made] her unfit for gainful employment. The records have been quite clear with her complaints of back and hand injuries, with the follow up studies which confirm the nature of the back and hand injuries as stated above.

"What [appellant] described as left hip injury is actually the left pelvis and lower back. These were the start of her symptoms directly related to her injury on November 18, 1994 in which she still complains about those symptoms being primarily left sided, but again are all related to the lumbar disc injury she sustained on November 18, 1994."

The reports from Dr. Jackson provide a history of appellant lifting a heavy box of cabbage on November 18, 1994. He provides diagnoses of carpal tunnel syndrome, lumbar spondylosis and L5-S1 radiculopathy. However, these conditions have not been accepted by the Office as work related and Dr. Jackson has provided insufficient medical rationale explaining how these conditions are related to appellant's job or 1994 employment injury. Therefore, Dr. Jackson's reports are not sufficient to establish that appellant had a recurrence of disability on February 10, 1996 causally related to her November 18, 1994 employment 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>6</sup> Appellant failed to submit rationalized medical evidence establishing that her claimed recurrence of disability is causally related to the accepted employment related low back strain and, therefore, the Office properly denied her claim for compensation.

The decision of the Office of Workers' Compensation Programs dated April 13, 2001 is affirmed.

Dated, Washington, DC  
June 11, 2002

Michael J. Walsh  
Chairman

Alec J. Koromilas  
Member

Michael E. Groom  
Alternate Member

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<sup>6</sup> See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1979).