

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARGARET A. PHILLIPS and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Covington, KY

*Docket No. 00-2595; Submitted on the Record;
Issued March 19, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a recurrence of disability on or about June 1, 1993 causally related to her December 1, 1987 employment injury.

The Board has duly reviewed the case record and finds that appellant has failed to establish that she sustained a recurrence of disability.

On June 15, 1989 appellant, then a 35-year-old tax technician, filed an occupational disease claim assigned number A6-463021 alleging that on December 1, 1987 she realized that a stress-related aggravation of her preexisting asthmatic bronchitis was caused by factors of her employment.¹

By letter dated May 9, 1990, the Office of Workers' Compensation Programs accepted appellant's claim for temporary aggravation of asthma. Appellant received appropriate compensation during the period December 1, 1987 through June 15, 1989 and returned to work.²

On June 20, 1995 appellant filed a claim alleging that she sustained a recurrence of disability on or about June 1, 1993 causally related to her December 1, 1987 employment injury.

¹ Prior to the instant claim, appellant filed a traumatic injury claim on May 2, 1989 alleging that on December 1, 1987 she experienced an aggravation of her asthmatic bronchitis. Appellant filed another traumatic injury claim on June 13, 1989 alleging that she sustained a stress-related aggravation of her asthmatic bronchitis on May 18, 1989. On September 7, 1989 appellant filed a traumatic injury claim alleging that on August 31, 1989 she experienced an asthma attack due to dust particles and/or fumes from the construction in her branch area. The Office denied this claim by decision dated January 19, 1990. On March 15, 1990 appellant filed a traumatic injury claim alleging that on March 12, 1990 she had an asthma attack while new carpet was being installed in the walkway of her branch. The Office accepted appellant's claim for an asthma attack induced by fumes.

² The record reveals that appellant was involuntarily separated from the employing establishment in 1993.

By decision dated May 18, 1999, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on or about June 1, 1993 causally related to her December 1, 1987 employment injury. In a May 17, 2000 letter, appellant, through her counsel, requested reconsideration of the Office's decision.

In a decision dated May 23, 2000, the Office denied appellant's request for modification based on a merit review of the claim.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires 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 who supports that conclusion with sound medical reasoning.³

In support of her recurrence claim, appellant submitted a January 26, 1999 report of Dr. Francis M. Collins, a Board-certified internist and her treating physician, who indicated that appellant had asthmatic bronchitis secondary Type II diabetes mellitus requiring insulin and severe hypertension. He stated that appellant's asthmatic bronchitis was aggravated by her work conditions at the employing establishment several years ago noting that numerous statements had been supplied regarding this on previous occasions. Dr. Collins further stated that basically appellant was not any different than he last reported and that appellant continued to have recurrent and severe problems with asthma although the severity and frequency were not as frequent since she was out of the work environment. Dr. Collins also stated that appellant was basically maintaining, but that she was unable to work at that point because of severe fatigue, shortness of breath with minimal exertion and problems with controlling her diabetes. He failed to provide any medical rationale explaining how or why appellant's current asthmatic condition was caused by her December 1987 employment injury. Thus, his report is insufficient to establish appellant's burden.

Dr. Collins' May 16, 2000 report, revealed a history of his treatment of appellant for chronic asthma and related conditions, including diabetes and the December 1987 employment injury. Dr. Collins disagreed with the Office's finding that his previous report was insufficient to establish a material worsening of appellant's condition and stated that appellant's medical records clearly demonstrated that from the time of her 1987 employment injury forward, her asthma-related work absences increased. Dr. Collins noted appellant's reaction to medication for her asthma condition, which caused seizures, diabetes and her need for knee and cataract surgeries. He opined that appellant was too frail to return to any meaningful employment. Dr. Collins also opined that appellant's exposure to paint fumes at the employing establishment in December 1987 and her return to the same environment with a closed ventilation system over the following years triggered both a temporary disabling condition in 1987 and a worsening of her condition from which she had not recovered. He noted that, prior to the December 1987 employment injury, appellant's asthma was under control and that she was able to perform a regular full-time job, but that, from the employment injury onward, appellant's health

³ *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1993); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

deteriorated to the extent that she was separated from her employment due to a medical disability. Dr. Collins stated that he did not know of any other events that triggered the decline in appellant's health. He concluded that based on the medical evidence and factual background as related to him regarding appellant's work history and environment, appellant was totally disabled and her disability was causally related to her 1987 employment injury. As found above, Dr. Collins failed to provide any medical rationale explaining how or why appellant's current asthmatic condition was caused by her December 1987 employment injury. Further, the Board has previously held that the opinion of a physician that a condition is causally related to an employment injury because the employee was asymptomatic before the employment injury was insufficient, without supporting medical rationale, to establish causal relationship.⁴ Therefore, Dr. Collins' report is insufficient to establish appellant's burden.

Because appellant has failed to submit any rationalized medical evidence establishing that she sustained a recurrence of disability on or about June 1, 1993 causally related to her accepted December 1, 1987 employment injury, the Board finds that appellant has not met her burden of proof.

The May 23, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 19, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996); *Thomas D. Petrylak*, 39 ECAB 276 (1987).