

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEANNE BRAGG and DEPARTMENT OF AGRICULTURE,
AGRICULTURAL MARKETING SERVICE, Weslaco, TX

*Docket No. 01-1684; Submitted on the Record;
Issued March 4, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability causally related to an accepted May 31, 1990 employment injury.

On June 1, 1990 appellant, then a 51-year-old agricultural inspector, filed a notice of traumatic injury, claiming that on May 31, 1990 she fell from a truck while inspecting fruit and injured her back and left knee. She returned to work on June 11, 1990. The Office of Workers' Compensation Programs accepted appellant's claim on May 23, 1991 for back sprain and left knee sprain.

On November 29, 1999 appellant filed a claim for recurrence of disability beginning on November 10, 1999. She claimed that she continued to suffer from back pain with numbness in her left thigh and that the pain had become intolerable. In support of her claim, appellant submitted medical evidence including a December 1, 1999 report from Dr. Lowell F. Clark, a Board-certified internist. He discussed appellant's May 31, 1990 work injury and stated:

"I feel that [appellant's] health has been impaired due to this injury. She now has [x]-ray evidence of compression fracture of T-12 with mild spinal stenosis at L4-5 relating to a circumferential bulging of the annulus fibrosis and bilateral facet joint arthropathy.

"This has resulted in her having chronic low back pain and left thigh and leg pain. When she walks only 50 feet, she complains of severe pain in her back and left thigh numbness and weakness in her legs. She is unable to stand for prolonged periods and is unable to sit without moving to find a comfortable position."

Dr. Clark also mentioned evidence of osteoporosis and opined that appellant was permanently disabled. Appellant submitted an MRI report dated October 7, 1999 in which Dr. Mark D. Jacobson, a Board-certified diagnostic radiologist, diagnosed appellant with mild

anterior wedge compression of T12, Schmorl's node involving superior end plate of L1 and mild spinal stenosis at L4-5.

On June 23, 2000 the Office received an undated report from Dr. Clark in which he stated:

“From my records, it is impossible to directly associate [appellant's] low back pain to an accident which occurred on May 31, 1990. Her present low back pain may well be related to an instability in the back caused by a possible fracture noted in her T-12 vertebrae. Of note, that fracture could well be an insufficiency fracture related to her proved osteoporosis. However, if the vertebral fracture did occur at the time of her accident, it may well be directly related to her current condition.”

By decision dated July 5, 2000, the Office denied appellant's claim as the evidence of record failed to establish causal relationship between the claimed recurrence and the November 10, 1999 accepted work injury.

Appellant submitted a transcript of a November 14, 2000 deposition of Dr. Clark. When asked whether appellant's current condition was related to her May 1990 accident, Dr. Clark stated that he thought it was “definitely related to it.” When asked why, he stated:

“She [has] had no other injuries, she had evidence of disc disease and other things and I have no other causative event that might have caused these changes and that her symptoms in the early 90's were fairly similar to the symptoms that she [is] currently having in her low back in a similar area. As I say, the changes we see in the disc now may have gradually worsened. But more than likely, the initial injury is what caused most of the changes we [are] now seeing in her lower back.”

Appellant requested an oral hearing which was held on January 5, 2001.

By decision dated March 1, 2001, the hearing representative affirmed the July 5, 2000 decision.

The Board finds that appellant has not met her burden of proof to establish that her condition is causally related to the accepted employment injury in 1990.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disabilities for which she claims compensation are causally related to the accepted injury.¹ 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,

¹ *Jose Hernandez*, 47 ECAB 288 (1996).

concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

In this case, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between the accepted back sprain condition and her condition on and after November 10, 1999. Appellant provided medical evidence from Dr. Clark in support of her claim for recurrence. In his December 1, 1999 report, Dr. Clark opined that appellant's health has been "impaired" due to the 1990 injury but did not explain how or why her current back condition was caused or contributed to by the accepted back sprain. He also noted a compression fracture of T-12 with spinal stenosis at levels L4-5 and stated that this has resulted in chronic low back pain. Dr. Clark did not explain how appellant's new diagnoses were related to the back sprain injury. He also acknowledged, in his June 23, 2000 report, that it was "impossible" to directly associate appellant's low back pain to the May 31, 1990 incident. Dr. Clark did indicate that appellant's current low back pain may be caused by the fracture in the T12 vertebrae, which the Board notes is not a condition accepted by the Office. He then stated that, if the vertebral fracture did occur at the time of appellant's accident, that it may be directly related to her current condition. The Board again notes that appellant's condition was only accepted for back strain. Appellant's current condition as it relates to a vertebral fracture has not been established as due to the accepted injury of May 31, 1990.

In the transcript of the deposition taken on November 14, 2000, Dr. Clark opined that appellant's current condition was "definitely" related to her accepted work injury because there was "no other causative event that might have caused these changes" and that "more than likely" the initial injury is what caused most of the current changes in appellant's lower back. Dr. Clark's statements are speculative and are insufficient to establish causal relationship.

Dr. Clark did not provide a rationalized medical report establishing a causal relationship between appellant's current condition and her accepted back sprain. He also attributed appellant's lower back condition to new diagnoses not accepted by the Office as a result of the May 1990 injury. Dr. Clark then admitted that it was "impossible" to directly relate appellant's low back pain to the May 1990 accident. He modified his opinion in the deposition by stating that appellant's current condition was related to the accepted work injury. Dr. Clark's opinions are speculative and inconsistent and are not supported by medical rationale necessary to establish causal relationship. The Board has long held that medical opinions not containing rationale on causal relationship are entitled to little probative value and are generally insufficient to meet appellant's burden of proof.³

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained a recurrence of disability on November 10, 1999 causally related to her May 31, 1990 accepted injury.

² *Id.*

³ *Carolyn F. Allen*, 47 ECAB 240 (1995).

The March 1, 2001 and July 5, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
March 4, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member