

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY L. BRYANT and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS CANTEEN SERVICE, Washington, DC

*Docket No. 01-478; Oral Argument Held March 19, 2002;
Issued May 16, 2002*

Appearances: *Dr. Monroe Parker, Jr.*, for appellant; *Thomas G. Giblin, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has established that she sustained a recurrence of disability commencing January 4, 2000, causally related to her April 21, 1997 lumbar strain injury.

On April 21, 1997 appellant, then a 45-year-old store clerk, filed a claim for lower back injury that date which occurred when she lifted a box out of the storeroom. She stopped work immediately following the injury.

The Office of Workers' Compensation Programs accepted appellant's claim for lumbar strain.

Appellant sought medical treatment on the date of injury and continued under treatment for pain complaints; she was released to return to limited duty on June 18, 1997 for four hours per day. However, on June 23, 1997 she was involved in a nonwork-related automobile accident sustaining head and neck injuries and was unable to return to work until July 21, 1997 when she returned to part-time limited duty. Appellant gradually increased her working hours from four to six and then to eight hours per day on August 11, 1997. On April 23, 1998 her case was administratively closed.

On August 9, 1999 appellant filed a claim for recurrence of disability due to her April 21, 1997 back injury. On the claim form she indicated that the recurrence commenced on April 25, 1997 when she was still on total disability due to her April 21, 1997 injury, but when the employing establishment completed the reverse side of the claim form it indicated that, following appellant's return to full-time work, she stopped work on January 4, 2000. Appellant indicated that she was seeking medical benefits, and stated that she still saw her doctor for lower back pain and took medication.

By letter dated September 13, 1999, the Office advised appellant that the medical evidence of record was insufficient to support payment of her medical bills, and it requested that she submit rationalized medical reports relating her treatment and/or disability to the April 21, 1997 injury.

On October 7, 1999 the employing establishment forwarded to the Office copies of appellant's 1997 to 1999 medical treatment notes from Dr. Ernest L. Clements, Jr., a Board-certified orthopedic surgeon, and Dr. Edward C. Irby, a Board-certified orthopedic surgeon, an August 26, 1999 "certification slip," and August 18, 1999 discharge instructions from Henrico Doctors Hospital. The brief medical progress notes, most without specific diagnoses, discussed appellant's 1997, 1998 and 1999 treatment for chronic back and leg symptoms, sometimes noted as "lumbar strain" or "muscular strain," but did not discuss causation of these symptoms, nor address any causal relationship with her April 21, 1997 employment injury. A September 5, 1997 note indicated that appellant could continue with her regular job, eight hours per day, as did a May 10, 1999 note. The August 26, 1999 "certification slip" merely indicated that appellant would be off work on the day of treatment and could return to work as she was doing.

In a report of appellant's lumbosacral spine magnetic resonance imaging (MRI) scan, dated December 8, 1999, the radiologist identified a possible hemangioma in the L2 vertebral body and desiccated disc signals at L4-5 and L5-S1. Diagnoses were noted as including herniations and stenosis of the lower lumbar spine with marked bilateral neuroforaminal narrowing at L4-5 with suspected compression of the nerve roots.

The report of appellant's January 4, 2000 lumbar computerized tomography (CT) scan identified mild bony canal stenosis, osteoarthritis of the facet joints and a broad disc bulge at L4-5 without definite central disc herniation noted.

On January 4, 2000 appellant underwent discography at L3-4 and L4-5, which was reported as showing no marked degenerative patterns and no concordancy to her pain. Postprocedure diagnoses were noted as "[a]nterior column insufficiency and degenerative disc disease [at] L3-4 [and] L4-5."

In a January 5, 2000 medical note reviewing the discography results, Dr. Hallett H. Mathews, a Board-certified orthopedic surgeon, opined that appellant had no documented evidence of herniated discs at L3-4 or L4-5. He recommended follow-up for chronic pain.

On February 11, 2000 an Office medical adviser reviewed the case record and, in answer to Office questions, opined that there was no indication for discography or for continued medical treatment.

By decision dated March 13, 2000, the Office rejected appellant's recurrence of disability claim finding that the evidence submitted failed to establish that appellant's claimed recurrence of total disability was causally related to the April 21, 1997 lumbar soft tissue muscle strain injury.

The Board finds that appellant failed to establish that she sustained a recurrence of disability commencing January 4, 2000, causally related to her April 21, 1997 lumbar soft tissue muscular strain injury.

An individual who claims a recurrence of disability due to an accepted employment injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed are causally related to the accepted injury. 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 reasoning.¹ Causal relationship is a medical issue and can be established only by medical evidence.²

Although appellant returned to limited duty following her April 21, 1997 lumbar soft tissue muscular strain injury, she was able to successfully increase her working hours to a full day at her regular duties as early as August 11, 1997.

Appellant was advised by letter dated September 13, 1999 of her burden of proof to submit rationalized medical reports relating her treatment and/or disability to her April 21, 1997 injury, but no further rationalized medical evidence was forthcoming.

The 1997 to 1999 brief medical progress notes, submitted to the record in response to the Office's request for further medical evidence, from Drs. Clements and Irby only discuss her treatment during that time, frequently omit any mention of a definite diagnosis and do not discuss causation of the symptoms treated, nor provide any opinion as to the causal relationship between appellant's condition and symptomatology during that period and her April 21, 1997 lumbar soft tissue muscular strain injury. The medical progress notes further do not document any January 4, 2000 recurrence of total disability, as they preceded appellant's January 4, 2000 work stoppage. They are, therefore, insufficient to establish appellant's recurrence claim.

Further, the MRI, CT scan and discography reports fail to identify any injury-related organic or structural pathology, as they were reported as revealing merely chronic degenerative changes of appellant's lumbosacral spine. Dr. Mathews opined in his January 5, 2000 review of the diagnostic radiologic results that appellant had no documented evidence of herniated discs at L3-4 or L4-5. Therefore, these reports also are insufficient to establish appellant's recurrence claim.

None of the evidence submitted contained a physician's opinion, supported by medical rationale, which established that on January 4, 2000 or at any other time, appellant experienced a recurrence of total disability causally related to her April 21, 1997 lumbar soft tissue muscle strain injury. Moreover, none of the evidence supported that medical care received by appellant between August 11, 1997, when she returned to regular duty, and January 4, 2000, when she stopped work again, was due to her April 21, 1997 lumbar soft tissue muscular strain injury.³

¹ *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

² *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

³ Following the March 13, 2000 decision, and upon appeal, appellant submitted further factual and medical evidence. As this evidence was not before the Office at the time of its most recent merits decision, it cannot now be considered by the Board on this appeal. See 5 U.S.C. § 501.2(c).

Therefore, appellant has failed to meet her burden of proof to establish her recurrence claim.

Accordingly, the decision of the Office of Workers' Compensation Programs dated March 13, 2000 is hereby affirmed.

Dated, Washington, DC
May 16, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member