

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANE SOLOFORA and DEPARTMENT OF AGRICULTURE,
FORREST SERVICE, Portland OR

*Docket No. 02-654; Submitted on the Record;
Issued September 26, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant sustained a recurrence of disability due to her work-related injuries of March 26, 1993 or February 7, 1994; and (2) whether appellant has residual disability related to those accepted claims.

On April 22, 1993 appellant, then a 38-year-old firefighter, filed a notice of traumatic injury and claim for compensation (Form CA-1), alleging that she sustained headaches, neck and back pain and injuries to her right wrist and right leg when she was involved in a March 26, 1993 motor vehicle accident while in the performance of her duties.

An emergency room report indicated that appellant presented with right hand discomfort, a small glass cut and achiness in the lateral right neck, right hand and right knee with minimal swelling. X-rays were negative for fractures and she was reported as neurologically intact.

Appellant's medical history included a work-related injury in 1991 and degenerative disc disease.

In an April 14, 1993 report, Dr. Darrell T. Weinman, an orthopedic surgeon, examined appellant and reviewed her medical history. He diagnosed cervical and lumbosacral sprain, contusion of the right wrist and contusion of the proximal right tibia, all resulting from the motor vehicle accident. Dr. Weinman also diagnosed degenerative joint disease and lumbosacral sprain lumbar spine, preexisting the accident of March 26, 1993.

An April 23, 1993 report from Anna Holmes, a licensed professional counselor, indicated that she had seen appellant for psychological counseling on referral from a Dr. Jim Shames. Ms. Holmes treated appellant for symptoms consistent with panic disorder and post-traumatic stress disorder related to the automobile accident.

In a June 4, 1993 decision, the Office of Workers' Compensation Programs accepted appellant's claim for contusions of the right hand and knee.

In a September 15, 1993 decision, the Office expanded appellant's injuries to include cervical, thoracic and lumbar subluxation.

In an October 26, 1993 report, Dr. Stanley G. Ricks, a chiropractor, wrote:

“[Appellant] has been treated in our office for thoracocervical sprain/strain syndrome with subluxation of C1-2, C6-7 and T-4, a lumbosacral sprain/strain syndrome with a right extension neuralgia with subluxation of L4-5. This condition is the result of an accident on March 26, 1993.

“X-ray examination April 6, 1993 confirmed the above subluxation and we also noted disc degeneration at T7-8 and disc degeneration at L3-4 and L-5 accompanied by spondylitic changes.

“[Appellant] was unable to do any work from the time of her accident, March 26, 1993 until July 5, 1993. She was released to light work activities July 6, 1993 and released for regular work [on] September 4, 1993.”

On February 9, 1994 appellant filed a claim alleging that, on February 7, 1994, while walking down a creek, she fell on two large rocks hitting both her right and left knees and twisting her back.

The claim was accepted for lumbar sprain and bilateral knee contusions and was combined with the claim filed for the March 26, 1993 injury.¹

In a March 10, 1994 report, Dr. Darrell Weinman after reviewing a magnetic resonance imaging (MRI), diagnosed early degenerative changes with desiccation of the L3-4, L4-5 and L5-S1 discs. He reported minor annular bulges at these levels without focal prolapsed, minimal bulging of the annulus at the L2-3 level without central or foraminal stenosis and mild narrowing of the canal on a congenital basis without frank stenosis seen from the low L3 level to the S1 level. Dr. Weinman ruled out a left-sided herniated nucleus pulposus.

In a March 17, 1994 report, Dr. Weinman wrote that appellant continued to experience lumbosacral and cervical sprain from the March 26, 1993 accident with continuing chronic symptomology with the right wrist and tibia contusions resolved. He said that she was adamant that she could not do her job because of intermittent pain, which made it almost impossible for her to walk. Dr. Weinman added that she was walking without a limp at the time of the examination.

X-rays taken on March 31, 1994 revealed no sign of either old or acute traumatic bone difficulties. The impression was of degenerated discs at L5-S1 associated with end plate sclerosis and marginal spurring.

In a July 12, 1994 report, Dr. Thomas Purtzer wrote that appellant was bothered by severe back pain and some right-leg pain. He stated: “She has had a negative work-up

¹ The master claim number for the combined claims is 13-1013857.

consisting of a negative MRI. Appellant has been treated with physical therapy, which has been quite helpful. My current working diagnosis is severe lumbar strain after a fall at work.”

In a July 29, 1994 report, Dr. Peter Grant conducted an electromyogram and wrote that he could delineate no specific neurophysiologic abnormalities to correlate with her difficulties. He diagnosed chronic post-traumatic myofascial low back and right lower extremity pain syndrome. There was no right lumbosacral radiculopathy, plexopathy or other neurophysiologic abnormality identified by EDX testing.

In a progress note dated August 3, 1994, Dr. Weinman noted that electrodiagnostic studies of appellant’s legs were negative and she was released to full-time work. No restrictions were indicated.

On September 16, 1998 appellant fell again while fighting a fire and twisted her knee. That claim is separate from the current claim. It appears from the record that appellant had her right knee surgically repaired on June 8, 1999 as a result of the fall.

In a February 7, 2000 report, Dr. Mark Peterson diagnosed left sciatica with MRI evidence of an L4-5 herniated disc. Due to the severity and duration of her symptoms he felt she was a candidate for a microlumbar discectomy of L4-5 on the left.

The back surgery was performed on February 23, 2000.

On March 10, 2000 appellant filed a notice of recurrence of disability and claim for continuation of pay and compensation (Form CA-2a). In her claim, appellant listed November 26, 1991 as the date of the original injury, March 26, 1993 as the date of the recurrence. In the section of the claim provided to explain how the recurrence accrued, appellant listed and briefly described four separate injuries she sustained. The dates of the injuries were November 26, 1991, March 26, 1993, February 7, 1994 and September 16, 1998.

In an April 14, 2000 letter, the Office defined a recurrence of disability for appellant and provided her with a form to be completed by her physician.

The form was returned signed by Dr. Peterson and date stamped by the Office as received on May 15, 2000. Dr. Peterson indicated that appellant described her history as back and leg pain from an injury at work. Results from x-rays and lab work indicated a large disc bulge or rupture at L4-5. He diagnosed lumbar disc herniation and recommended surgery.

In a May 8, 2000 letter, Dr. Peterson wrote:

“[Appellant] presented to me on February 7, 2000 ... with complaints of left sciatica. She offered a previous history of chronic and intermittent back pain with episodes of right sciatica. Her left-sided symptoms began in June 1999. I am aware of no specific trauma or accident, which precipitated her symptoms on or around May or June 1999. Appellant’s [MRI] studies demonstrated disc desiccation from L3-S1 with posterolateral disc herniation at L4-5 to the left, consistent with her symptoms of left-sided sciatica. [She] underwent a successful microlumbar surgery on February 23, 2000....

“Based on the history offered to me by [appellant], I feel her lumbar disc herniation occurred as a result of the idiopathic degenerative process affected the L4-5 disc. Unless additional history is available that I am unaware of, I feel the cause of her L4-5 disc herniation is an idiopathic degenerative disease.”

In a June 6, 2000 decision, the Office denied appellant’s claim.

In a November 2, 2000 letter, appellant requested reconsideration. No new medical evidence or new legal arguments were raised.

In a November 30, 2000 decision, the Office denied appellant’s reconsideration request.

In a March 7, 2001 letter, appellant, through her representative, requested reconsideration of claims 130971422 (date-of-injury November 26, 1991), 131013857 (date-of-injury March 23, 1993) 131038771 (date-of-injury February 7, 1994, that was combined with 131013857). In support of the request, appellant submitted a February 22, 2001 report from Dr. James Van Horne, who discussed appellant’s medical history and his treatment of her right knee. There is no mention of the herniated disc or how the accepted conditions resulting from the March 26, 1993 and February 7, 1994 injuries caused or contributed to her right knee or back condition.

In a November 8, 2001 decision, the Office denied modification of its June 6, 2000 decision.²

The Board finds that appellant has not established that she sustained a recurrence of disability or has residual disability casually related to her accepted injuries of March 26, 1993 and February 7, 1994.

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.³ 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.⁴ Where no such rationale is present, medical evidence is of diminished probative value.⁵

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

² The Board notes the file also contains a May 3, 2001 decision, related to claim No. A13-971422 but that claim is not before the Board. Appellant’s specifically appealed the June 7 and November 8, 2000 decisions that are claim No. A13-1013857.

³ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

⁴ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁵ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.⁶ Appellant failed to submit rationalized medical evidence establishing that her claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied her claim for compensation.

The June 7, 2000 decision that appellant is appealing denied a recurrence due to back injuries sustained on March 26, 1993 and February 7, 1994. The medical evidence she submitted in support of her request consisted of a May 8, 2000 letter from Dr. Peterson, who attributed her back problems to the “idiopathic degenerative process,” not to either of the accepted work-related conditions.

Appellant also submitted a February 22, 2001 report for Dr. Van Horne, but this report only discusses appellant’s knee condition. His report does not mention appellant’s accepted injuries nor does it discuss her back condition the focus of the June 7, 2000 decision being appealed.

The Board finds appellant has not met her burden of proof to establish that she sustained a recurrence or that she has any residual disability causally related to the accepted injuries on March 26, 1993 or February 7, 1994.

The decisions of the Office of Workers’ Compensation Programs dated June 7 and November 30, 2000 and November 8, 2001 are hereby affirmed.

Dated, Washington, DC
September 26, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁶ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).