

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FLORA L. CASEY and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Kansas City, MO

*Docket No. 03-713; Submitted on the Record;
Issued August 22, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that she sustained disability due to her March 19, 2002 employment injury.

On April 17, 2002 appellant, then a 75-year-old former clerk, filed a traumatic injury claim alleging that on March 19, 2002 she aggravated a preexisting subluxation in her back after carrying empty buckets across the room and lifting boxes, which caused pain in her back and shoulder. The Office of Workers' Compensation Programs accepted the claim for subluxation of the thoracic vertebra at T6/T7. Appellant returned to work on March 20, 2002; however, she immediately stopped work asserting that she was unable to perform her duties. She reportedly returned to work on June 10, 2002; however, the employing establishment terminated her because she was absent without leave (AWOL) following the work injury for an extended period.

On July 24, 2002 appellant filed a recurrence of disability claim asserting that she did not return to work until June 10, 2002 following the original injury and suffered continuous left shoulder pain since March 19, 2002. She noted that her supervisors misinterpreted her chiropractor's statement concerning the kind of work she was capable of performing as a release to go back to work; however, she asserted that his statement actually concerned her work status prior to the injury. Appellant stated that she began treatment for the thoracic injury on March 22, 2002 but, that her claim for compensation and related paperwork were not completed until April 20, 2002. She asserted that following the original injury she was unable to perform her work duties.

In a letter dated September 10, 2002, the Office advised appellant that the evidence submitted was insufficient to establish that the claimed recurrence of disability was related to her original work injury or employment factors. The Office requested a statement concerning the recurrence of her accepted condition of thoracic subluxation. The Office further requested that appellant submit a narrative medical report containing the history of the original injury as reported by her; current clinical findings including diagnostic and x-ray results; a firm diagnosis,

clinical course of treatment and the physician's opinion regarding the relationship between her ability to work and the accepted work-related condition.

Appellant submitted a termination letter from the employing establishment and a narrative statement dated September 19, 2002. She discussed the details of her employment and termination for being AWOL and the claimed symptoms, which she attributed to the original injury. Appellant stated that there had been no recurrence of the injuries suffered on March 19, 2002 but that there was a continuous absence from work, which led to her termination. She stated that this injury was an aggravation of a vertebra injury sustained in 1963 when she was dragged under a hay wagon. Appellant indicated that she had been told that she had wedging of the 6, 7 and 8 thoracic vertebra in which symptoms were relieved by adjustment to the vertebra. She indicated that she did not have severe pain in her back until the March 19, 2002 work injury. Appellant further stated that she still had severe left shoulder pain, which woke her at night, due to tendinitis and bursitis as indicated in a magnetic resonance imaging (MRI) scan. She then stated that her daily activities have been extremely limited as a result of her ongoing condition.

Appellant also submitted an April 1, 2002 report from her initial chiropractor, Dr. Carlos Bateman, who recommended work restrictions; a May 3, 2002 x-ray report of the thoracic spine; a May 31, 2002 medical report from another chiropractor, Dr. Doran Nicholson; and a work restriction slip from Dr. Bateman prescribing light duty beginning June 11, 2002. Dr. Nicholson stated that x-rays taken on May 1, 2002 showed disc wedging occurring at the T-6/T-7 level and a lateral flexion of the vertebrae. He diagnosed subluxation as determined by x-ray.

Appellant also submitted a medical report from Dr. Pamela Maben, an internist, dated July 31, 2002. Dr. Maben saw appellant with a shoulder injury in February and that appellant reportedly had an MRI scan, which showed tendonitis; however, Dr. Maben noted that she did not have the test results. She stated that appellant also had chronic back pain and sleep apnea, which she noted made it difficult for her to work. Dr. Maben noted that Dr. Bateman had treated appellant and that she had been off work from March until June for these multiple medical problems. She stated that appellant was not released to go back to work until June 19, 2003.

By decision dated October 29, 2002, the Office denied appellant's claim for a recurrence of disability.

The Board finds that appellant has failed to establish that her condition during the claimed period of disability was causally related to the accepted employment injury of March 19, 2002.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the period of claimed disability was caused by or adversely affected the employment injury. As part of this burden, she must submit rationalized medical opinion evidence based on a complete factual and medical background showing a causal relationship between her disability and the federal employment.¹

¹ See *Nicolea Bruso*, 33 ECAB 1138 (1982).

The Office accepted appellant's claim's for subluxation of the thoracic vertebra at T6/T7. She claimed disabling pain in her left shoulder and back from March 20 to June 10, 2002 due to the employment injury and thereafter, filed a recurrence of disability. The Board notes that, although appellant and the Office identified this claim as one of recurrence of disability, it actually is not, as the Office never accepted an initial period of disability after the March 19, 2002 employment injury.

The Board finds that the medical evidence submitted in support of the claim for disability, for the period March 20 to June 10, 2002, is insufficient to establish that the claimed period of disability was caused or aggravated by the accepted employment injury. The medical records most contemporaneous with the claimed period of disability fail to state that appellant was disabled from work during this period. Dr. Bateman, appellant's chiropractor, stated that appellant's condition was chronic due to osteoarthritic changes but checked yes that appellant was able to perform her regular work. He further recommended that appellant could lift no more than 20 pounds. In a medical slip dated June 10, 2002, Dr. Bateman indicated that appellant could return to work the next day with no lifting over 20 pounds. Dr. Bateman did not clearly outline any period of disability nor did he identify the cause of appellant's lifting restrictions.

Dr. Maben, appellant's internist, stated that appellant was treated by a chiropractor for her work-related injury. She reported that appellant had left shoulder and chronic back pain along with sleep apnea, which made it difficult for her to work. Dr. Maben stated that appellant had been off work since March until June for these multiple medical problems and was not released to go back until June 19, 2003. Dr. Maben did not provide a complete history of injury, did not discuss the March 19, 2002 injury or otherwise clearly explain why she attributed appellant's condition or any disability to the accepted subluxation. It appears that Dr. Maben was not the physician who found appellant disabled from work from March until June and was only relating appellant's medical history as provided to her.²

Accordingly, the Board finds that appellant did not meet her burden of proof in establishing disability causally related to the accepted March 19, 2002 employment injury in this case.

² See *Bonnie Goodman*, 50 ECAB 139 (1998).

The decision of the Office of Workers' Compensation Programs dated October 29, 2002 is hereby affirmed.

Dated, Washington, DC
August 22, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member