

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARTHA J. MOORE and U.S. POSTAL SERVICE,
GRACELAND ANNEX, Chicago, IL

*Docket No. 03-1644; Submitted on the Record;
Issued August 21, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that she sustained a recurrence of disability on September 26, 1998 causally related to her October 31, 1997 employment injury.

On October 26, 1995 appellant, then a 46-year-old mail carrier, filed a claim for an injury occurring on October 24, 1995 when a door fell and hit her head. The Office of Workers' Compensation Programs accepted her claim for cervical and head contusions, a cervical strain and postconcussion syndrome. Appellant stopped work on October 25, 1995 and returned to limited-duty employment in November 1995.

On November 14, 1997 appellant filed a claim for a recurrence of disability on October 31, 1997 causally related to her October 24, 1995 employment injury. By decision dated February 19, 1998, the Office denied her claim on the grounds that the evidence was insufficient to establish that she sustained a recurrence of disability on October 31, 1997 due to her October 24, 1995 employment injury. In a decision dated July 29, 1998, a hearing representative set aside the Office's February 19, 1998 decision and remanded the case for development as a claim for a traumatic injury occurring on October 31, 1997. After further development, the Office accepted that appellant sustained a lumbosacral strain and minor facet arthropathy at L3-4 with left leg radiculopathy as a result of an October 31, 1997 employment injury. Appellant returned to work in November 1997.

On October 6, 1998 appellant filed claims for continuing compensation on the account of disability (Form CA-8), requesting compensation from September 26, 1998 to January 20, 1999. By decision dated February 2, 1999, the Office denied her claim on the grounds that the evidence did not establish that she was disabled from September 16, 1998 to January 20, 1999 causally related to her accepted employment injury. In decisions dated June 17, 1999, January 24 and August 11, 2000, May 10 and November 30, 2001 and August 14, 2002, the Office denied modification of its February 2, 1999 decision.

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability on or after September 16, 1998 causally related to her accepted employment injury.

Where an employee, who is disabled from the job that he or she held when injured, on the account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.¹

In this case, appellant sustained a lumbosacral strain and minor facet arthropathy at L3-4 due to an October 31, 1997 employment injury. At the time of her injury, she was working limited duty. Appellant returned to work following her injury in November 1997. There is no evidence in the record establishing any change in the nature and extent of her light-duty position as the cause of her claimed disability after September 26, 1998.

In support of her claim, appellant submitted form reports dated September 29, 1998 through April 6, 1999 from Dr. Saul Haskell, a Board-certified orthopedic surgeon and her attending physician, who diagnosed a lumbosacral sprain and arthritis with minor facet arthropathy at L3 and L4 with pain radiating down the left leg and checked “yes” that the condition was caused or aggravated by employment or the history of injury provided. However, when a physician’s opinion supporting causal relationship consists only of checking “yes” to a form question, that opinion has little probative value and is insufficient to establish a causal relationship.² While Dr. Haskell, in his September 29, 1998 form report, indicated as a rationale for his checkmark that “[appellant] states [that] she was lifting and bending and reaching above her head for hours,” it appears that this causation finding is based on appellant’s belief rather than the physician’s independent opinion and, therefore, is of little probative value.³

In a report dated November 24, 1998, Dr. Haskell discussed appellant’s complaints of low back pain. He noted that a magnetic resonance imaging (MRI) scan of appellant’s lumbosacral spine was normal. Dr. Haskell stated, “[appellant’s] symptoms are consistent with mild facet arthropathy. She feels that her symptoms are exacerbated when she reaches up or bends to lift.” As Dr. Haskell did not address the cause of appellant’s diagnosed condition, his opinion is of diminished probative value.⁴

¹ *Terry R. Hedman*, 38 ECAB 222 (1986).

² *Gary J. Watling*, 52 ECAB 278 (2001).

³ *Earl David Seale*, 49 ECAB 152 (1997).

⁴ *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of diminished probative value on the issue of causal relationship).

Dr. Haskell, in a report dated February 18, 1999, related:

“[Appellant’s] MRI [scan] of the lumbosacral spine reveals *mild* facet arthropathy. Muscle strength is 5/5. Her sensory exam[ination] is intact. [Appellant’s] symptoms are exacerbated when she reaches up or bends to lift.” (Emphasis in the original.)

Dr. Haskell diagnosed sciatica, chronic low back pain, mild facet arthropathy at L3-4 and radiculopathy. He noted that he would decide when appellant could resume work following additional pain treatment. However, Dr. Haskell did not address the relevant issue in this case, which is whether appellant sustained an employment-related recurrence of disability beginning on September 26, 1998 or provide any rationale for his opinion that she was disabled.⁵ Thus, his report is insufficient to meet appellant’s burden of proof.

In a report dated January 29, 1999, Dr. Haskell indicated that he did not know whether appellant’s arthritis was due to her October 24, 1995 employment injury because he did not begin treating her until 1997. He related:

“In addition, medical records consistently show examination[s], especially neurologic deficit, to be completely normal. The amount of facet arthropathy diagnosed was listed as minimal. [Appellant] claims [that] she feels her symptoms are exacerbated when she reaches or lifts, though this is not confirmed on examination. Generally [appellant’s] treatment is all based on subjective complaints. There have been minimal or no objective findings.”

Dr. Haskell opined that appellant could work with “frequent or strenuous lifting or bending.” He further noted that the disability certificates “were all filled out in answer to [appellant’s] subjective complaints of pain and, as mentioned above, there have been little or no objective findings.” Dr. Haskell did not find that appellant sustained a recurrence of disability beginning September 1998; therefore, his report does not support appellant’s claim. He also indicated that he did not know whether appellant’s diagnosed condition of arthritis was employment related. Further, Dr. Haskell noted that the objective findings on examination did not explain appellant’s subjective complaints of pain. A medical report based on subjective complaints of symptoms unsupported by objective physical findings of disability is of diminished probative value.⁶

In a report dated August 25, 1999, Dr. Haskell related that appellant was unable to work due to her subjective complaints of pain “not explained by the objective findings. I have no explanation as to why the severity of the pain persists in view of minimal objective findings.” He noted that appellant related that her symptoms began after she was hit by a door in the course of her employment but, that he did not begin treating appellant until two years later. Dr. Haskell indicated:

⁵ *Vicky L. Hannis*, 48 ECAB 538 (1997) (medical conclusions unsupported by rationale are of diminished probative value).

⁶ *John L. Clark*, 32 ECAB 1618 (1981).

“As stated above, I am unable to present opinions regarding the expected duration of total or partial disability, of any other contributing factors whether work related or otherwise and any rationale as to the medical connection of the severity of [appellant’s] symptoms and the actual objective findings. Her reason for disability is the complaint of subjective pain of such severity as to prevent her from working.”

Dr. Haskell attributed appellant’s disability to her subjective complaints of pain rather than any objective findings of disability and, thus, his opinion is insufficient to meet her burden of proof.⁷

In a report dated March 26, 2002, Dr. Haskell noted that he had not examined appellant since 1998. He found that a review of records showed that appellant had “significant subjective back pain, diagnosed on various tests as minor facet arthropathy and mild lower lumbar radiculopathy. These conditions could cause significant restriction of her ability to perform certain types of gainful employment.” He referred to his work forms from September to November 1998 stating that appellant was unable to work September to December 1998.⁸ However, when a physician’s statement regarding an employee’s ability to work consists only of a repetition of the employee’s complaints that he or she hurt too much to work, without objective signs of disability, the physician has not presented a medical opinion on the issue or a basis for payment of compensation.⁹

In a report dated December 2, 1997, Dr. Frank Kniffen, a Board-certified anesthesiologist, noted appellant’s complaints of back pain since an employment injury two years earlier. He recommended possible facet blocks. In a report dated May 6, 1999, Dr. Kniffen noted that he had provided a series of epidural blocks for appellant. As Dr. Kniffen did not address the causation, these reports are of little probative value.¹⁰

⁷ *Id.*

⁸ Appellant also submitted numerous disability certificates from Dr. Haskell, however, as these notes do not address causation they are of little probative value.

⁹ *Barry C. Peterson*, 52 ECAB 120 (2000).

¹⁰ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

In a report dated March 12, 2001, Dr. Kniffen discussed appellant's history of work injuries in 1995 and 1997. He stated:

“There is some question about the sequence and relatedness of [appellant's] work injuries from 1995 and 1997. It is my opinion from the medical notes [that] I have seen and the evaluation and treatment provided by me, that there was injury sustained to her low back in 1995. This could definitely have contributed to [appellant's] injury in 1997, with the worsening of her low back symptoms.”

Dr. Kniffen's finding that appellant's 1995 back injury “could have contributed” to her 1997 injury is not relevant to the issue at hand, which is whether appellant sustained a recurrence of disability beginning September 26, 1998 due to her October 1997 employment injury. Additionally, his finding that appellant's 1995 injury “could have” worsened her back condition is equivocal in nature and lacking adequate medical rationale and, thus, is of little probative value.¹¹

In a follow-up report dated August 20, 2001, Dr. Kniffen, in response to the question why appellant was unable to perform light-duty from September 26, 1998 to January 20, 1999, indicated that she “was experiencing significant subjective pain.” He stated, “she complained of significant sedation and loss of concentration, which rendered her incapable of driving and performing her light duties at work.” Dr. Kniffen, however, did not provide an independent opinion that appellant was unable to work from September 26, 1998 to January 20, 1999 but instead related her belief that she was unable to work due to subjective pain and medication. Therefore, his report is insufficient to meet appellant's burden of proof.¹²

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 employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.¹³ As appellant failed to submit a rationalized medical report supporting that her employment injury resulted in her inability to perform her employment on or after September 26, 1998, the Office properly denied her claim for compensation.

¹¹ *Betty M. Regan*, 49 ECAB 496 (1998).

¹² *See Earl David Seal*, *supra* note 3.

¹³ *See Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

The decision of the Office of Workers' Compensation Programs dated August 14, 2002 is affirmed.

Dated, Washington, DC
August 21, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member