

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SEQUITA M. PAINTER and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Beckley, WV

*Docket No. 01-2195; Oral Argument Held December 11, 2002;
Issued February 4, 2003*

Appearances: *Brook L. Beesley*, for appellant; *Jim C. Gordon, Jr., Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

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

The issue is whether appellant sustained a recurrence of disability effective March 16, 2000 causally related to her accepted October 16, 1995 employment injury.

On December 11, 1995 appellant, then a 48-year-old purchasing agent, filed an occupational disease claim alleging that her upper back pain was due to employment factors. The Office of Workers' Compensation Programs accepted the claim for subluxation at C-6. Appellant stopped work on December 6, 1995 and returned to work on January 2, 1996.

On March 17, 2000 appellant filed a claim for a recurrence of disability beginning on March 16, 2000 due to her accepted October 16, 1995 employment injury.

In a March 20, 2000 attending physician's report (Form CA-20), Dr. Michael J. Kominsky, a chiropractor, diagnosed subluxation at C6, T3 and opined that appellant was totally disabled. Dr. Kominsky checked "yes" that appellant's condition was caused or aggravated by her employment.

By letter dated April 18, 2000, the Office advised appellant as to the type of evidence required to support a recurrence of disability claim.

In a report dated April 7, 2000, Dr. Kominsky noted that appellant had been treated "for neck and mid back pain." He requested the Office to authorize a magnetic resonance imaging (MRI) scan in order to further evaluate appellant's condition.

By decision dated June 21, 2000, the Office denied appellant's claim on the basis that she failed to submit any medical evidence supporting a causal relationship between her accepted employment injury and her total disability beginning March 16, 2000.¹

In a March 9, 2000 report, Dr. Jack Henry, a chiropractor, based upon a review of March 3, 2000 x-ray interpretations of the cervical, thoracic and lumbar spine, diagnosed mild spondylosis in the lower and mid cervical spine and the mid lumbar spine, "uncovertebral and facet arthrosis" in the lower and mid cervical spine, biomechanical alterations were noted in the spine, spondylosis in the mid thoracic region with developmental wedging, SI and facet arthrosis in the lumbar spine, disc narrowing at L3 and "vacuum cleft lucency within the anterior aspect of the L2 disc."

In a June 16, 2000 cervical MRI scan, Dr. Stephen P. Raskin, a Board-certified diagnostic radiologist, interpreted the MRI scan as showing:

"There is reversal of the normal cervical lordosis. The sagittal views suggest a right C4-5 extradural defect. Transverse views in this area show no abnormality, however. The appearance is most likely due to slight scoliosis.

"The vertebral bodies are normal. There is no fracture or marrow abnormality. The canal is capacious. The discs are normally hydrated and of normal height and contour. The cervical spinal cord is normal."

Dr. Raskin interpreted a June 23, 2000 thoracic MRI scan, as showing no spinal stenosis or herniated disc fragments and "multilevel degenerative disc disease with multiple levels of disc bulging from T4 through T8."

In a June 30, 2000 fitness-for-duty report, Dr. Glenn R. Goldfarb, a Board-certified neurologist and employing establishment physician, concluded that she was capable of returning to work.

Appellant requested an oral hearing by letter dated July 17, 2000.

In a July 19, 2000 report, Dr. Vincent E. Wardlow, a chiropractor, opined that her October 15, 1995 employment injury caused repetitive stress syndrome. In reviewing x-ray interpretations, Dr. Wardlow found "multiple cervical spondylosis complexes with C4 and C5 being posterior on the neutral lateral static view," a lumbar curve at L3, mild curvature of the thoracic area at T6. Under diagnosis, he opined:

"Diagnosis in this case would be considered a reoccurrence or exacerbation of her original compensable injury dated October 1[6], 1995 of repetitive motion syndrome resulting in cervical and thoracic spondylosis complexes causing chronic muscle spasming, pain and weakness of the upper extremities with paresthesias to the upper extremities. Additional diagnosis to be added would be

¹ The Board notes a typographical error regarding the date of injury in the decision. The Office noted the date of injury as December 16, 1995, when it should be October 16, 1995.

lumbar subluxation complexes resulting in right leg paresthesia, which is additional symptomatology that she has acquired since the initial date of injury of October 1[6], 1995.”

In an October 16, 2000 report, Dr. Rohiniben Patel concluded, after reviewing the objective evidence, that appellant was capable of performing her usual duties.

In a May 8, 2000 report, Dr. Kominsky diagnosed subluxations at T3 and C6. He opined that appellant “suffered a chronic repetitive injury to the soft tissue structures of her cervical spine” due to her repetitive employment duties. Dr. Kominsky also opined that she “developed an accumulation of microdamage that has led to the formation of fibrotic tissue in the soft tissues of the cervical spine” and a weakening of the ligaments in the cervical spine. Due to these conditions, he opined that appellant “developed a chronic condition, which makes her spine susceptible to suffer reoccurring subluxations due to the fibrotic tissue.”

In a March 23, 2000 report, Dr. G. Kevin Robinson, a chiropractor, based upon a cervical videofluoroscopy, stated:

“The hypermobility observed in the patient’s cervical spine will in all likelihood result in acceleration of degenerative change and potentially intermittent trauma to the neurological structures.”

In an August 21, 2000 report, Dr. Robert J. Crow diagnosed chronic musculoskeletal pain syndrome in the shoulders and neck. Regarding her ability to work, Dr. Crow stated “from my standpoint she can attempt to carry out her full normal ADLs included work as tolerated.”

A hearing was held on May 21, 2001.

By decision dated August 17, 2001, the hearing representative affirmed the denial of appellant’s claim for a recurrence of disability.

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability causally related to her October 16, 1995 employment injury.

An employee 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 she claims compensation is causally related to the accepted injury.² This burden of proof requires that a claimant furnish 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.³

In the instant case, it is not contested that appellant has had continuous medical treatment since her original injury. The issue is whether appellant sustained a recurrence of disability such

² *Ricky S. Storms*, 52 ECAB ____ (Docket No. 00-1721, issued April 24, 2001).

³ *Ronald A. Eldridge*, 53 ECAB ____ (Docket No. 01-67, issued November 14, 2001).

that she was totally disabled from performing her employment duties beginning March 16, 2000, due to her accepted October 16, 1995 employment injury.

Initially, the Board notes that under section 8101(2) of the Federal Employees' Compensation Act, chiropractors are only considered physicians and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.⁴ As neither Dr. Henry nor Dr. Robinson diagnosed a subluxation as demonstrated by x-rays, their reports have no probative value on the issue of whether appellant sustained an employment-related recurrence of disability on March 16, 2000.

In support of her claim, appellant submitted various reports from Drs. Kominsky, Wardlow and Crow. In his March 20, 2000 attending physician's report, Dr. Kominsky concludes appellant is totally disabled and checked "yes" that her condition was caused or aggravated by her employment. This report is insufficient to support appellant's burden as when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish a claim.⁵

Similarly, the May 8, 2000 report, by Dr. Kominsky and the July 19, 2000 report by Dr. Wardlow, are insufficient to establish that appellant's disability beginning March 16, 2000 was causally related to her accepted October 16, 1995 employment injury. Dr. Kominsky in his May 8, 2000 report concludes that appellant "suffered a chronic repetitive injury to the soft tissue structures of her cervical spine" due to her repetitive employment duties without offering an opinion as to whether appellant was disabled from performing her employment duties. Dr. Kominsky failed to provide any medical rationale explaining how or why appellant's current conditions were causally related to her October 16, 1995 employment injury. Thus, his opinion is of little probative value. Dr. Wardlow concluded that appellant developed "a reoccurrence or exacerbation of her original compensable injury dated October 1[6], 1995 of repetitive motion syndrome" and notes she has acquired additional symptomatology since the accepted injury. However, he did not offer a reasoned medical opinion⁶ to establish that appellant sustained a recurrence of disability causally related to her accepted work injury. Further, as appellant sought compensation for time loss from work due to her alleged recurrence of disability, neither Dr. Kominsky nor Dr. Wardlow addressed whether appellant had any disability for work causally related to October 16, 1995 employment injury.

The Board finds Dr. Crow's August 21, 2000 report insufficient to support appellant's burden. In his report, the physician concluded that appellant was capable of performing her normal duties as tolerated. Dr. Crow did not provide any opinion that appellant was totally disabled from performing her employment duties due to her accepted employment injury. Thus, this opinion is insufficient to meet her burden.

⁴ 5 U.S.C. § 8107(2); *see Pamela K. Guesford*, 53 ECAB ____ (Docket No. 02-915, issued August 12, 2002).

⁵ *Lee R. Haywood*, 48 ECAB 145, 147 (1996).

⁶ A medical opinion must be based on a complete and accurate factual and medical history. *See Joseph M. Popp*, 48 ECAB 624 (1997). Medical conclusions unsupported by rationale are of diminished probative value. *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

The record is devoid of any medical evidence providing a history of injury, an opinion on the causal relationship between appellant's total disability beginning March 16, 2000 and her 1995 employment injury and supporting these conclusions with medical reasoning. For these reasons, the Board finds that appellant has failed to meet her burden of proof.

The August 17, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.⁷

Dated, Washington, DC
February 4, 2003

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁷ The Board notes that Michael J. Walsh, who participated in the oral argument on December 11, 2002 was not Chairman of the Board after January 10, 2003, as his appointment expired, and did not participate in the preparation of this decision.