

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANICE NEAL and DEPARTMENT OF THE ARMY,
ABERDEEN PROVING GROUND, MD

*Docket No. 03-1049; Submitted on the Record;
Issued July 25, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on or after October 30, 2001 causally related to her March 31, 1999 employment injury.

On April 7, 1999 appellant, then a 51-year-old secretary, filed a traumatic injury claim alleging that on March 31, 1999 she was walking on a sidewalk when she tripped on an uneven surface and landed on her face, right hand, elbow and left knee. The Office Workers' Compensation Programs accepted that appellant sustained an abrasion to her nose and right hand in the performance of duty.

In a report dated February 21, 2001, Dr. David T. Sowa, a Board-certified orthopedic surgeon, indicated that appellant was being evaluated for pain and numbness in both hands and had signs and symptoms of bilateral carpal tunnel syndrome. In a March 14, 2001 report, he stated that he obtained x-rays of both wrists and that there was no evidence of fracture or dislocation and no bony abnormalities. Dr. Sowa noted, however, that an x-ray of the cervical spine showed narrowing at levels C5-6 with some foraminal narrowing at the same level with osteophytes at levels C5-6.

In a report dated May 16, 2001, Dr. Sowa noted that appellant had left-sided neck pain and stiffness and complained of radicular-type aching into her left upper extremity. He stated:

“[Appellant] relates the onset of symptoms to an injury that occurred at work in March 1999. I first saw her for this problem in February 2001. [Appellant] initially showed signs of irritability over the median nerve of the right wrist but her EMG [electromyogram] did not show evidence of carpal tunnel syndrome. Subsequently, neck pain became more of a problem and [appellant] had diffuse symptoms in the C6 dermatome bilaterally. She relates these symptoms to her fall at work. [Appellant] states that she suffered facial lacerations when she fell and that the trauma was severe enough that she underwent a CT [computerized

tomography] scan to rule out facial fracture. She relates her present complaints to her March 1999 fall at work.”

In an August 13, 2001 report, Dr. Frank J.E. Falco, Board-certified in physical medicine and rehabilitation, indicated that appellant complained of neck pain and pain radiating down both arms, left being worse than the right and diagnosed cervical radiculopathy. He noted that appellant had an onset of new complaints of the third finger of her right hand, which included “clicking and losing motor strength.” Dr. Falco stated that her pain was made worse with keyboarding, telephone work and sitting at her desk. He noted that appellant’s original history began in December 2000 when she began to develop severe wrist pain that radiated into her fingers. Dr. Falco stated that appellant was preliminarily diagnosed with carpal tunnel syndrome in January 2001 and went to see a hand specialist and underwent physical therapy. He noted that appellant underwent an EMG and nerve conduction study which were both negative, but an x-ray showed “neck problems.” Appellant was referred by Dr Sowa to Dr. Bruce E. Katz, a Board-certified orthopedic surgeon, who ordered a magnetic resonance imaging (MRI) scan of the cervical spine, which showed discovertebral degenerative changes and a large spondylotic ridge at levels C5-6, as well as a left osteophyte at levels C6-7 impressing on the left anterior aspect of the left recess of the foraminal stenosis. Dr. Falco indicated that appellant would undergo a C7 selective nerve root block procedure on August 17, 2001.

On October 30, 2001 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that she sustained a recurrence of disability on or after October 30, 2001, causally related to her March 31, 1999 employment injury. Appellant claimed that she began having pain and numbness in both hands in November 2000 and that her supervisor sent her to “Occupational Health” in January 2001. She also claimed that she had neck pain that was related to the March 1999 work injury. Appellant stated: “[s]ince returning to work my pain recurs daily coming down my neck across my shoulders and down my arms. By the end of the day pain is in my fingers, wrists and elbows (more R than L). Recently I began experiencing trigger finger. By end of day, range of motion is extremely limited.” Appellant alleged that her neck, shoulder and arm pain “never really stopped” and that after her cervical procedure in August 2001 the right side of her neck got worse. She conceded that she was originally examined for carpal tunnel syndrome and that her cervical condition was discovered during this time.

By letter dated January 22, 2002, the Office explained the meaning of a recurrence of disability and requested that appellant submit additional factual and medical evidence in support of her claim.¹ By decision dated February 22, 2002, the Office denied appellant’s claim for recurrence of disability on the grounds that the factual and medical evidence did not establish that her condition on or after October 30, 2001 was related to the original employment injury.²

By letter dated September 13, 2002, appellant requested reconsideration. In support of her request, she submitted reports from Dr. Sowa, Dr. Katz and Dr. Matt Amick. By decision

¹ Appellant was told to file an occupational disease claim as her original condition was only accepted for superficial abrasions but she insisted that her recurrence was due to the fall that she sustained on March 31, 1999.

² The Office noted in their decision that medical evidence was received by the Office on February 21, 2002, the day before the Office’s final decision.

dated December 27, 2002, the Office denied appellant's request on the grounds that the evidence submitted was insufficient to warrant modification of its previous decision.

By letter dated February 10, 2003, appellant requested reconsideration and submitted reports from Dr. Falco and Dr. Katz. In a report dated December 28, 2002, Dr. Falco stated:

"I have been treating [appellant] for her neck pain, cervical radiculopathy and other upper extremity symptoms since August 2001. These symptoms have been present as a result of a March 31[,] 1999 work injury. It is my medical opinion that these musculoskeletal conditions are causally related to the March 31[,] 1999 work accident."

In a report dated January 16, 2003, Dr. Katz stated:

"We reviewed when [appellant] started having her complaints. She states she fell in March 1999 while at work. [Appellant] had several facial lacerations at that time. She started complaining of increasing pain in her neck and arms and finally sought the care of her medical doctor in January 2000. It is certainly possible that [appellant's] symptoms are the result of her accident in March 1999."

By decision dated February 25, 2003, the Office denied appellant's request on the grounds that the evidence submitted was insufficient to warrant modification of its previous decision.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability on or after October 30, 2001, causally related to the March 31, 1999 work injury.

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

In the present case, the Office accepted that appellant sustained lacerations to the nose and right hand when she was walking on an uneven sidewalk and tripped and fell on March 31, 1999. Following the injury, appellant claimed in November 2000 that she started having pain and numbness in her hands and was evaluated for symptoms of carpal tunnel syndrome; however, x-rays performed in March 2001 by Dr. Sowa revealed that appellant had

³ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

⁴ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989).

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

degenerative changes in the cervical spine. In October 2001, appellant filed a notice of recurrence of disability alleging that her neck and upper extremity symptoms were the result of the fall in March 1999. On her Form CA-2a she stated that her “pain never really stopped” and since she returned to work she had recurring pain in her neck, across her shoulders and down her arms.

The record, however, does not contain evidence of bridging symptoms during the approximately two-year period between March 1999, when appellant’s condition was accepted for a nose and right hand laceration and March 2001, when an x-ray revealed cervical radiculopathy. Her allegation of a recurrence of disability must be supported by rationalized medical evidence explaining the relationship between the accepted work injury and the diagnosed conditions of cervical and upper extremity radiculopathy and period of disability. An opinion that a work-related injury several years prior causes disability must be based on bridging evidence between the injury and the period of disability or other explanation.⁶ Without supporting medical rationale from a physician, appellant’s personal belief that she was totally disabled beginning October 30, 2001 due to the March 31, 1999 injury is not sufficient to establish her claim.⁷

Dr. Sowa indicated that appellant believed that her neck and upper extremity problems were the result of the fall at work in 1999. He did not explain, however, if appellant had sought medical care for her neck condition between March 1999 and the time he examined her in February 2001. Dr. Sowa also did not opine on the cause of appellant’s neck and upper extremity condition and only restated appellant’s personal beliefs.

Dr. Falco indicated that appellant complained of neck pain and pain radiating down both upper extremities and noted that her pain was made worse by keyboarding, telephone work and sitting at her desk. He also noted the results of the May 2001 MRI scan, which showed degenerative changes in the cervical spine, but he did not, however, provide an opinion on the cause of appellant’s condition or mention the March 1999 work injury. In a subsequent report, Dr. Falco opined that appellant’s conditions were related to the March 1999 work incident but did not support his opinion with medical rationale. He noted that he had been treating appellant since August 2001 for cervical radiculopathy and upper extremity symptoms and stated: “[t]hese symptoms have been present as a result of the March 31[,] 1999 work injury. It is my medical opinion that these musculoskeletal conditions are causally related to the March 31[,] 1999 work accident.” Dr. Falco’s opinion on causal relationship is of little probative value since it is not supported by medical rationale. The Board has held that such a report has little probative value where there is no explanation or rationale supporting the opinion on causal relationship between the diagnosed condition or disability and working conditions.⁸ Dr. Falco did not positively demonstrate how appellant’s current conditions are related to the accepted work injury. According to *Joan R. Donovan*,⁹ the medical report must be based on a complete factual and

⁶ *Linda L. Mendenhall*, 41 ECAB 532 (1990).

⁷ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

⁸ *Lillian M. Jones*, 34 ECAB 379, 381 (1953); *George V. Lambert*, 44 ECAB 870 (1993).

⁹ *Joan R. Donovan*, Docket No. 03-297 (issued June 13, 2003).

medical background with an accurate history of the employment injury. He also must explain appellant's failure to report any cervical or upper extremity symptoms to contemporaneous physicians. Dr. Falco did not firmly diagnose appellant's cervical and upper extremity conditions and explain how they are pathophysiologically related to the March 31, 1999 incident. He also did not account for the lack of reported neck and upper extremity complaints from March 1999 to August 2001.¹⁰ Dr. Falco's report is incomplete and does not establish a causal relationship between appellant's current conditions and the accepted work injury.

Last, Dr. Katz indicated that appellant started complaining, but did not indicate when, of increasing pain in her neck and upper extremities and said that she finally sought medical attention in January 2000. He stated: "[i]t is certainly possible that [appellant's] symptoms are the result of her accident in March 1999." Dr. Katz's opinion regarding the cause of appellant's condition is speculative and is not supported by medical rationale. The Board has held that an opinion, which is speculative in nature, is of diminished probative value on the issue of causal relationship.¹¹ The Board held in *Connie Johns*¹² that the opinion of the physician must be one of reasonable medical certainty, supported with affirmative evidence, explained by medical rationale and based on a complete and accurate factual and medical background. Dr. Katz's opinion on causal relationship is of little probative value since it is not based on a complete factual and medical background and contains a conclusory statement on causal relationship.

It is not necessary that the evidence be so conclusive as to suggest causal connection beyond all possible doubt. The evidence required is only necessary to convince the adjudicator that the conclusion drawn is rational, sound and logical.¹³

Appellant has not met her burden of proof because the medical opinion evidence in this case is insufficient to establish the critical element of causal relationship between appellant's cervical and upper extremity conditions and the accepted work injury. As such, the Board finds that the Office properly denied her claim.

¹⁰ *Id.*

¹¹ *Jennifer Beville*, 33 ECAB 1970, 1973 (1982).

¹² *Connie Johns*, 44 ECAB 560 (1993); *See also Philip J. Deroo*, 39 ECAB 1294 (1988).

¹³ *Joan R. Donovan*, *supra* note 9; *See also Kenneth J. Deerman*, 34 ECAB 641, 645 n. 1 (1983).

Accordingly, the Office of Workers' Compensation Programs decisions dated February 25, 2003 and December 27, 2002 are hereby affirmed.

Dated, Washington, DC
July 25, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member