

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EVELYN SHELTON and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Coatesville, PA

*Docket No. 03-969; Submitted on the Record;
Issued June 2, 2003*

DECISION and ORDER

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

The issue is whether appellant sustained a recurrence of disability on November 19, 2002 causally related to her May 17, 1995 employment injury.

In this case, the Office of Workers' Compensation Programs accepted that on May 17, 1995 appellant, then a 54-year-old cook, sustained cervical and lumbar strains when she was involved in a motor vehicle accident in the performance of duty. Appellant stopped work on May 18, 1995. Appellant returned to work on July 13, 1995, with restrictions on heavy lifting, and on September 5, 1995 she returned to her full regular duties as a cook, limiting only her time spent standing and entering the walk-in refrigeration unit.¹

On December 29, 2002 appellant filed a claim alleging that she sustained a recurrence of disability. Appellant indicated that she developed increased back pain and symptoms, causing her to seek medical treatment on November 19, 2002, and stopped work on December 26, 2002.

In support of her claim for a recurrence of disability, appellant submitted a narrative statement, as well as right knee, right hip and lumbar spine x-rays dated October 1 and November 21, 2002, and the results of electromyography and magnetic resonance imaging performed December 19 and December 21, 2002.

By letter dated January 24, 2003, the Office advised appellant that the information submitted was insufficient to determine whether she was eligible for compensation benefits, and asked that she submit additional medical and factual evidence, including a comprehensive medical report from her physician containing a rationalized opinion explaining the causal relationship between appellant's current condition and her May 17, 1995 injury. The Office allowed 30 days for appellant to submit the requested information.

¹ There is no evidence in the record that this constituted light or modified duty.

In a decision dated February 26, 2003, the Office rejected appellant's claim for a recurrence of disability, causally related to her accepted May 17, 1995 cervical and lumbar strains. The Office found that appellant failed to respond to its January 24, 2003 request for additional information and therefore had failed to establish that her claimed recurrence resulted from her accepted work injury.

The Board finds that appellant has not established that she sustained a recurrence of disability, on or around December 26, 2002, causally related to her accepted May 17, 1995 cervical and lumbar strains.

A person 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. 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.²

In this case, the Office properly determined that appellant failed to carry her burden of proof to establish an employment-related recurrence of disability, because she did not provide a rationalized medical opinion discussing the causal relationship, if any, between her current condition and her accepted May 17, 1995 employment injuries. Although appellant clearly suffers from a back condition, the only medical evidence received by the Office prior to the issuance of the Office's February 26, 2003 decision, consisted of x-ray reports and other test results which do not contain any discussion as to the cause of the conditions revealed, or their relationship, if any, to appellant's May 17, 1995 employment injury.³ Such rationalized medical evidence is especially important in light of the fact that appellant suffers from preexisting

² *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

³ The Board notes that appellant did respond to the Office's request for additional factual and medical evidence, but that the submitted items were not received by the Office until March 3, 2003, more than 30 days after the Office's January 24, 2003 letter, and subsequent to the issuance of the Office's February 26, 2003 decision. Appellant also submitted this additional evidence together with her appeal to the Board. The Board cannot consider this evidence, however, as the Board's review is limited to the evidence that was before the Office at the time it issued its final decision. 20 C.F.R. § 501.2(c); *Charles P. Mulholland, Jr.*, 48 ECAB 604 (1997); *Robert D. Clark*, 48 ECAB 422 (1997). Appellant can submit a written request for reconsideration to the Office, asking that this evidence, together with any additional evidence she may obtain, be considered.

arthritis. By letter dated January 24, 2003, the Office advised appellant of the type of medical evidence necessary to establish her claim. As appellant has failed to submit rationalized medical evidence establishing that she sustained a recurrence of disability causally related to her accepted employment injuries, she has not met her burden of proof.⁴

The February 26, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 2, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁴ *Debra A. Kirk-Littleton*, 41 ECAB 703, 706 (1990) (whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence); (in assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality); *Anna C. Leanza*, 48 ECAB 115, 124 (1996) (the factors which enter in such an evaluation include the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion).