

On November 5, 2002 Dr. Michael F. Avallone, Jr., an attending Board-certified osteopathic family practitioner, diagnosed a cervical sprain and strain and a cervical disc bulge. He indicated by checking a block marked “yes” that the condition was work related.

By letter dated November 27, 2002, the Office advised appellant that she needed to submit additional evidence in support of her claim, including a rationalized medical opinion explaining how her recurrence of disability was causally related to factors of her federal employment.

A report of a July 9, 2002 magnetic resonance imaging (MRI) scan of the cervical spine indicated that appellant had a disc bulge or protrusion at C5-6 and a hemangioma¹ at T1. In a December 12, 2002 report, Dr. Avallone stated that on July 9, 2002 appellant sought treatment for spasm and tenderness in her cervical spine and noted that a July 9, 2002 MRI scan of the cervical spine revealed a disc protrusion at C5-6 and a problem in the thoracic spine around the area of C7-T1. He stated, “[T]he problems I am currently treating are directly related to the work injury of December 18, 2000.”

By decision dated January 21, 2003, the Office denied appellant’s claim on the grounds that the evidence of record failed to establish that she sustained a recurrence of disability on July 27, 2002 causally related to her December 18, 2000 employment injury.²

LEGAL PRECEDENT

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

¹ A hemangioma is a “common benign tumor, occurring most commonly in infancy and childhood, made up of newly formed blood vessels, and resulting from malformation of angioblastic tissue of fetal life. *DORLAND’S Illustrated Medical Dictionary*, 740 (27th ed. 1988).

² The record contains evidence submitted subsequent to the Office’s January 21, 2003 decision. However, the jurisdiction of the Board is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c).

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

⁴ *Lourdes Davila*, 45 ECAB 139 (1993); *Mary S. Brock*, 40 ECAB 461 (1989); *Nicolea Bruso*, 33 ECAB 1138 (1982).

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

ANALYSIS

The record shows that appellant returned to full-time regular work on March 14, 2001. She did not seek medical care again until July 9, 2002. In reports dated in late 2002, Dr. Avallone, an attending Board-certified family practitioner, opined that appellant's back problem was related to the December 18, 2000 employment injury. However, he provided insufficient medical rationale in support of his opinion, stating only that appellant was experiencing pain in the cervical and thoracic areas of her spine where she had problems in December 2000. Thorough medical rationale regarding causal relationship is particularly important due to the fact that appellant returned to regular work on March 14, 2001, 16 months before her claimed recurrence of disability, and she apparently did not seek medical treatment between her return to regular duty and July 2002. Additionally, Dr. Avallone did not address the relevance of the July 9, 2002 MRI findings, to appellant's neck and back condition in July 2002. Due to these deficiencies, Dr. Avallone's opinion regarding causal relationship is of diminished probative value and is not sufficient to establish that appellant sustained a work-related recurrence of disability on July 27, 2002 causally related to her December 18, 2000 employment injury.

On appeal, appellant's attorney argues that the employing establishment mistakenly gave her a claim form for a recurrence of disability and the Office should have developed the case as a claim for a new injury. He asserted that the Office denied the claim because of an incorrect claim form, rather than on the merits of the case. However, appellant indicated on her recurrence claim form that her condition in July 2002 was related to her December 2000 employment injury. Additionally, in an undated letter to the Office, appellant indicated that her pain in July 2002 had been "ongoing since December 18, 2000" and she stated her reasons for believing that her back condition was related to the December 18, 2000 employment injury. Even if this case had been developed as a claim for a new injury, the medical evidence lacks supporting rationale regarding the issue of causal relationship, as noted above. Therefore, the argument on appeal is without merit.

CONCLUSION

Appellant has failed to provide rationalized medical evidence establishing that her disability for work on July 27, 2002 was causally related to her December 18, 2000 employment injury. Therefore, the Office properly denied her claim for a recurrence of disability.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 21, 2003 is affirmed.

Issued: February 12, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member