



## **FACTUAL HISTORY**

On March 26, 1996 appellant, a 34-year-old administrative technician, filed a traumatic injury claim alleging that she injured her back and left knee on March 25, 1996 while lifting two boxes off the floor. The Office accepted the claim for left knee internal derangement and a lumbar sprain, authorized arthroscopic partial lateral meniscectomy of the left knee, which was performed on October 3, 1996 and authorized surgery for decompression and foraminotomy at L3-4 on January 18, 2000. Appellant stopped work on May 13, 1996, returned to work for four hours per day on May 20, 1996, stopped again on September 26, 1996 and returned to work for four hours per day on November 12, 1996. On October 14, 1997 Dr. Frederick L. Keppel, appellant's attending physician, released her to regular duty. The Office approved intermittent disability for the period June 14, 1999 to September 15, 2000.

In disability notes dated December 13, 2000 and January 24, 2001, Dr. Bryant George, Sr., an attending Board-certified neurological surgeon, indicated that appellant was instructed to remain off work for the period November 27, 2000 to February 14, 2001.

On March 8, 2001 appellant filed a claim for compensation (Form CA-8) for the period December 5 to 29, 2000. The Office authorized the payment of compensation for the period December 6, 2000 to January 24, 2001.

In a letter dated March 26, 2001, the Office informed appellant that it had received evidence indicating the possibility of a recurrence of disability. The Office advised appellant of the evidence required to support her claim for a recurrence of disability.

On May 16, 2001 appellant filed a claim for a recurrence of disability due to her accepted March 25, 1996 employment injury beginning November 16, 2000. She stopped work on December 6, 2000. In a letter dated July 30, 2001, appellant informed the Office that she had been involved in an automobile accident on November 22, 2000.

An Office medical adviser reviewed the medical evidence on February 14, 2002 and concluded that it did not support that appellant's present disability was due to a work-related injury. The magnetic resonance imaging (MRI) scan following her motor vehicle accident showed an L5-S1 disc extrusion on the side to the one for which he indicated a foraminotomy was warranted in January 2000.

In a March 4, 2002 letter, the Office requested Dr. George to provide a supplemental report, addressing the basis for attributing appellant's L5-S1 disc injury to the 1996 employment injury "when the disc was reported as normal in a 1998 MRI [scan], but abnormal in the MRI [scan] after [appellant's] motor vehicle accident."

On May 20, 2002 the Office referred appellant, a statement of accepted facts and prior medical reports, to Dr. Robert Applebaum, a Board-certified neurosurgeon, for a second opinion evaluation of her condition and its relationship to her employment injury. In a June 18, 2002 report, Dr. Applebaum stated that the fact that appellant stopped work following her motor vehicle accident contradicted her contention that this accident did not change her lumbar condition. Dr. Applebaum concluded: "It would therefore be my opinion that more likely than

not, the motor vehicle accident did aggravate her symptoms, although again, this could be better documented” by further records from Dr. George.

In an August 9, 2002 report, Dr. George noted the 1996 employment injury and reported a May 16, 2002 MRI scan “revealed degenerative disc at L4-5 and central disc bulge at L4-5 with facet arthropathy.”

In a September 26, 2002 report, Dr. George noted that appellant sustained a work-related injury on March 26, 1996. A physical examination revealed a restricted range of motion in the lumbar spine, negative straight leg raising maneuver, normal muscle tone and normal sensation in her lower extremities. With regard to her disability, he stated that she could perform light-duty work and that she was at maximum medical improvement.

By decision dated October 22, 2002, the Office denied appellant’s claim for a recurrence of disability.<sup>2</sup>

Subsequent to the denial of her claim, the Office received reports dated from February 24, 2001 to November 8, 2002 from Dr. George. In a February 24, 2001 disability note, Dr. George diagnosed cervical pain and lumbar pain with radiculopathy. He reported that appellant sustained a nonindustrial motor vehicle accident on November 22, 2000 and that she “complained of low back pain and bilateral leg pain worse since the accident.” On March 9, 2001 Dr. George diagnosed lumbar radiculopathy and noted that she sustained a work injury on March 9, 1996. On May 9, 2001 Dr. George noted appellant’s March 26, 1996 employment injury history and diagnosed lumbar disc syndrome. He reported that appellant sustained a new injury at work in November 2000 while lifting some boxes. In reports dated July 7 and September 15, 2001, the physician diagnosed lumbar disc syndrome and noted that appellant sustained an employment injury on March 26, 1996. On November 8, 2001 he concluded that appellant was totally disabled since December 2000. He opined that her lumbar degenerative disc disease predated the motor vehicle accident of November 22, 2000 and attributed her current symptoms to the March 1996 employment injury. In reports dated March 6, May 13 and November 3, 2002, Dr. George concluded that appellant was totally disabled with an unknown date for maximum medical improvement.

Appellant’s counsel requested an oral hearing before an Office hearing representative in a November 22, 2002 letter. A hearing was held on August 28, 2003, at which appellant testified and submitted depositions of Dr. George dated November 8, 2001 and December 6, 2002.

Dr. George stated that subsequent to appellant’s motor vehicle accident she had “severe muscle spasms in her lumbar area, restricted range of motion and tenderness in her lumbar musculature.” He also noted that these findings were not present on her prior medical visit and he would not have released appellant to her usual work if she had muscle spasms of that character. Dr. George stated that on her April 30, 2001 visit, she reported a new injury in “November 2000 when she lifted some boxes resulting in low back pain and right leg pain.” Regarding appellant’s preexisting degenerative disc disease, the physician stated: “degenerative

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<sup>2</sup> The Office also denied appellant’s claim for authorization of lumbar surgery on the grounds that the evidence was insufficient to show a causal relationship between the proposed surgery and her accepted employment injury.

changes probably predated the car accident or the car accident probably exacerbated her symptoms for a period of time.” Dr. George opined that the motor vehicle accident aggravated or exacerbated her preexisting condition and symptoms, but he could not provide an opinion as to cause of appellant’s continued exacerbation. He was unable to “separate the issues” of whether her exacerbation was due to the 1996 employment injury or the motor vehicle accident. The physician further testified that he could not “separate the motor vehicle accident from the 1996 injury” and he could not “separate it from a November reinjury at work either.” He noted that there was pathology at L5-S1 that was not present on her premotor vehicle accident MRI scan. Dr. George stated: “the accident could possibly have caused additional pathology that was found at L5-S1.”

By decision dated October 21, 2003, the hearing representative affirmed the denial of appellant’s recurrence of disability claim and her request for authorization for back surgery, finding November 2000 motor vehicle accident to be an intervening nonindustrial cause of her disability. The Office hearing representative found that Dr. George’s opinion was equivocal regarding whether appellant’s condition was due to her employment injury or the subsequent motor vehicle accident.

### **LEGAL PRECEDENT**

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which she seeks compensation was causally related to her employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.<sup>3</sup> In this case, appellant claimed that the September 27, 2000 incident which precipitated the recurrence of disability was a consequence of her prior employment-related back injuries. In the case of *John R. Knox*,<sup>4</sup> regarding consequential injury, the Board stated:

“It is an accepted principal of workers’ compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee’s own intentional conduct. As is noted by Professor Larson in his treatise: ‘[O]nce the work-connected character of any injury, such as a back injury, has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.... [S]o long as it is clear that the real operative factor is the progression of the compensable injury, associated with an exertion that in itself would not be unreasonable [under] the circumstances. A different question is presented, of

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<sup>3</sup> *Dominic M. DeScala*, 37 ECAB 369 (1986).

<sup>4</sup> 42 ECAB 193 (1990).

course, when the triggering activity is itself rash in the light of claimant's knowledge of his condition.”<sup>5</sup> (Citations omitted.)

### ANALYSIS

In this case, appellant's burden includes submitting rationalized medical opinion evidence, showing that her claimed recurrence of disability was the direct and natural result of the accepted work-related injury in 1996. She has the burden to establish that her recurrence is directly attributable to federal employment factors and not factors of her nonindustrial motor vehicle accident. The Office procedure manual states: “A recurrence of disability differs from a new injury in that with a recurrence, no event other than the previous injury accounts for the disability.”<sup>6</sup> The Board finds that the medical evidence of record fails to demonstrate that the claimed recurrence of disability of November 2000 is causally related to the accepted 1996 injury.

The medical evidence relevant to appellant's claimed recurrence includes a disability note, reports for the period February 24 to November 3, 2002 and December 2, 2002 deposition from Dr. George. In a November 8, 2001 report, the physician opined that appellant had been totally disabled since December 2000 and that her degenerative lumbar disc disease preceded her nonindustrial automobile accident of November 22, 2000. He attributed her current disability to her March 1996 employment injury. In his deposition testimony Dr. George stated that, subsequent to appellant's November 22, 2000 nonindustrial motor vehicle accident, she experienced “severe muscle spasms in her lumbar area, restricted range of motion and tenderness in her lumbar musculature” and noted that these findings were not present prior to the accident. The physician also testified that appellant reported a new injury in November 2000 which occurred when she lifted some boxes. With regard to the cause of appellant's current disability, Dr. George testified he was unable to “separate the issues” of whether appellant's exacerbation was due to the 1996 employment injury or the November 22, 2000 motor vehicle accident. He related: “there was pathology at L5-S1 that was not present” on the MRI scan prior to the November 22, 2000 motor vehicle accident and that “the accident could possibly have caused additional pathology that was found at L5-S1.”

The Board finds that the medical evidence from Dr. George is insufficient to establish that appellant's claimed recurrence is a direct result of the 1996 employment injury and not due to the independent, intervening factor of the nonindustrial November 2000 motor vehicle accident or an alleged November 2000 employment injury.<sup>7</sup> Dr. George's reports are insufficient to support appellant's burden of proof in establishing her recurrence of disability due to her March 25, 1996 employment injury. In his reports, Dr. George notes an employment-injury date of March 26, 1996, physical findings and then concludes appellant is disabled. However,

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<sup>5</sup> *Id.* at 196.

<sup>6</sup> *Robert W. Meeson*, 44 ECAB 834 (1993).

<sup>7</sup> A recurrence of disability is defined in the Office's regulation, at 20 C.F.R. § 10.5(x) as “inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”

Dr. George did not provide an opinion supported by medical rationale explaining why appellant's current disability was related to her employment injury rather than the November 22, 2000 motor vehicle accident. In his November 8, 2001 report, he noted that appellant was totally disabled since December 2000, that her degenerative lumbar disc disease predated her motor vehicle accident and attributed her current symptoms to her March 1996 employment injury. The Board has held that a rationalized opinion is one in which the physician's opinion is based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.<sup>8</sup> Dr. George provides no explanation on how appellant's current condition is related to the employment injury particularly in light of the November 22, 2000 employment injury. Dr. George's reports are of limited probative value on the issue of causal relationship as they contain a conclusion regarding causal relationship that is unsupported by medical rationale.<sup>9</sup> In his deposition testimony, Dr. George stated that he was unable to "separate the issues" of whether her exacerbation is due to the 1996 employment injury or the November 22, 2000 motor vehicle accident. Dr. George also testified that the November 22, 2000 motor vehicle accident exacerbated or aggravated her preexisting condition, but was unable to provide an opinion as to the cause of her continued exacerbation. Dr. George's testimony is equivocal regarding whether appellant's disability was due to the March 26, 1996 employment injury or the November 22, 2000 motor vehicle accident. The Board has held that medical opinions that are equivocal are of diminished probative value.<sup>10</sup> The Board has held that medical opinions which are not supported by medical rationale are of little probative value.<sup>11</sup> This is particularly important where there is evidence of a nonindustrial motor vehicle accident. The evidence of record supports that appellant had a worsening of her condition unrelated to her March 25, 1996 employment injury. An Office medical adviser and Dr. Applebaum, a second opinion Board-certified neurosurgeon, both concluded that appellant's condition was caused by the November 22, 2000 motor vehicle accident. Dr. George noted that appellant sustained possible new employment injury in November 2000 and the nonindustrial motor vehicle accident on November 22, 2000. Moreover, Dr. George stated that appellant's condition worsened subsequent to the November 22, 2000 motor vehicle accident as reported on the MRI scan taken subsequent to the accident.

### CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability due to her accepted March 25, 1996 employment injury.

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<sup>8</sup> *Tomas Martinez*, 54 ECAB \_\_\_\_ (Docket No. 03-396, issued June 16, 2003).

<sup>9</sup> *Conard Hightower*, 54 ECAB \_\_\_\_ (Docket No. 02-1568, issued September 9, 2003).

<sup>10</sup> *Kathy A. Kelley*, 55 ECAB \_\_\_\_ (Docket No. 03-1660, issued January 5, 2004).

<sup>11</sup> *Brenda L. DuBuque*, 55 ECAB \_\_\_\_ (Docket No. 03-2246, issued January 6, 2004).

**ORDER**

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

Issued: September 1, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member