

work for several days, after which she returned without restrictions. The Office accepted the claim for multiple contusions.

On October 24, 2000 appellant filed a claim for a recurrence of disability, alleging that her pain had been “ongoing” since the 1997 injury and that the burning in her lower back and right leg had never stopped but rather had grown “continuously worse with partial numbness.” Appellant did not stop working.

Appellant submitted a letter from Dr. Dale Luketich, a treating physician, dated October 30, 2000 reflecting that her symptoms had “gradually worsened over time” since the September 11, 1997 accepted injury and that she was experiencing pain and burning with some decreased sensation in her legs.

The record contains Dr. Luketich’s handwritten notes indicating that appellant was treated on several occasions in 1997 for multiple contusions, muscle spasms and S1 joint tenderness resulting from the September 11, 1997 injury. On April 23, 1999 appellant obtained a letter from Dr. Luketich regarding her “past injury” and was diagnosed with sciatica and carpal tunnel syndrome. The record reflects that no further treatment for appellant’s back and leg pain occurred until September 28, 2000, when Dr. Luketich reported appellant’s complaints of pain and some numbness in her right leg. On November 24, 2000 he referred appellant to a neurologist. On November 25, 2000 Dr. Luketich stated that she continued to experience pain and burning in the low back and buttock, dating from the “original injury” in September 1997. A magnetic resonance imaging (MRI) scan was performed on October 5, 2000.

In an April 18, 2001 letter, the Office notified appellant that the information submitted was insufficient to substantiate her claim and requested medical records supporting her ongoing treatment since the 1997 injury as well as a medical explanation of how her current problem was related to the accepted injury. Appellant submitted a report dated April 16, 2001 from Dr. Gauri Pawar, a Board-certified neurologist, reflecting his treatment of appellant since November 6, 2000 for low back pain. Appellant’s neurological examination revealed “reduced pinprick” in the right L5 and S1 dermatomes and he requested an MRI scan of the lumbosacral spine and an electromyogram (EMG)/nerve conduction study to rule out lumbosacral radiculopathy. Dr. Pawar stated that he treated appellant in his office on February 26, 2001 for complaints of low back pain radiating down to her right lower extremity. He opined that appellant was able to work.

In a June 13, 2001 decision, the Office denied appellant’s claim for a recurrence of disability on the basis that Dr. Luketich failed to provide any rationale explaining how her current condition was causally related to her accepted September 11, 1997 injury.

On June 15, 2001 appellant submitted a report from Dr. Pawar, reflecting that an EMG/nerve conduction study showed evidence of lumbosacral plexopathy and a disc bulge at the L2-L3 levels.

On July 12, 2001 appellant requested a hearing, which was held on November 27, 2001. At the hearing appellant testified that, after her 1997 injury, she continued to have back and leg pain, for which she was treated on April 23, 1999 and referred to Dr. Pawar. She stated that she

had not been involved in any accidents since the accepted injury which could have been the cause for her current condition. Appellant indicated that, although she took prescribed medications and underwent physical therapy, she had been unable to maintain her work quota due to her need to stand or move every 15 minutes. She also stated that she was attempting to expand her claim to include a herniated disc diagnosed by Dr. Pawar. The hearing representative informed appellant that she would leave the record open for 30 days for submission of medical evidence establishing a causal relationship between appellant's current diagnosis and the accepted 1997 injury.

On November 29, 2001 Dr. Pawar reported that test results revealed diffuse disc bulge at L2-L3 levels with no significant central stenosis or neural foramen narrowing, as well as some soft evidence for right lumbosacral radiculopathy. He stated that appellant was able to work in spite of continued low back pain but expressed uncertainty as to whether the bulging disc was related to her fall or to arthritic changes.

In a decision dated February 7, 2002, the Office hearing representative affirmed the June 13, 2001 decision, finding that appellant had not submitted sufficient medical evidence establishing a recurrence of work-related disability or that her accepted conditions had worsened or materially changed. The representative found no rationalized medical opinion explaining a causal relationship between appellant's current condition and the 1997 work injury.

On October 16, 2002 appellant requested reconsideration. In an October 2, 2002 letter, Dr. Luketich stated that because appellant had never complained of back pain prior to the September 11, 1997 injury, he could "only associate her current pain and disabilities with the fall at work on September 11, 1997." In a letter dated November 4, 2002, Dr. Pawar repeated appellant's complaints of low back pain and numbness.

By decision dated July 17, 2003, the Office denied appellant's request for reconsideration.

On December 1, 2003 appellant filed a Form CA-7 requesting a schedule award and submitted a report dated June 30, 2003 by Dr. Davis Weiss, who provided a diagnosis of: chronic post-traumatic lumbosacral strain and sprain; right lumbar radiculopathy; chronic post-traumatic trochanteric bursitis to the right hip; bulging lumbar disc L2-L3; and chronic pain syndrome. He also provided a rating of appellant's alleged impairment based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed.). He found appellant's right lower extremity to be 27 percent impaired.

On December 19, 2003 the Office notified appellant's attorney that Dr. Weiss' report based impairment on conditions that had not been accepted as related to the September 11, 1997 injury, in that the Office had previously denied expansion of the accepted conditions beyond multiple contusions. The Office referred appellant to the appeal rights that accompanied the earlier decision.

On January 20, 2004 appellant submitted a request for reconsideration of the Office's July 17, 2003 decision, relying on Dr. Weiss' report to establish that she had a permanent impairment due to her accepted 1997 injury.

By decision dated April 23, 2004, the Office denied modification of its July 17, 2003 decision, finding that there was no evidence explaining how appellant's current condition was related to the accepted 1997 injury. The Office also denied her claim for a schedule award for permanent impairment as a result of the 1997 injury was not supported, because there was no evidence that the 1997 contusions resulted in a permanent condition.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.² An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing that the disability for which he 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 medical reasoning.³ Where no such rationale is present, the medical evidence is of diminished probative value.⁴

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.⁵ While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal.⁶

In order to establish that her claimed recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between her present condition and the accepted injury must support the physician's conclusion of a causal relationship.⁷

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained multiple contusions on September 11, 1997, and she was released to work without restrictions several days after her accepted injury. The medical evidence submitted in support of appellant's October 24, 2000 recurrence claim includes

¹ 5 U.S.C. §§ 8101-8193.

² *Joan R. Donovan*, 54 ECAB ____ (Docket No. 03-297, issued June 13, 2003).

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

⁴ *Mary A. Ceglia*, 55 ECAB ____ (Docket No. 04-113, issued July 22, 2004).

⁵ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁶ *Samuel Senkow*, 50 ECAB 370, 377 (1999).

⁷ *Mary A. Ceglia*, *supra* note 4.

reports from three physicians. None of these reports provides a rationalized medical opinion establishing a causal relationship between appellant's current condition and the accepted injury.

According to his treatment notes, Dr. Luketich treated appellant on several occasions in 1997 for multiple contusions, muscle spasms and S1 joint tenderness resulting from her September 11, 1997 injury, and for sciatica and carpal tunnel syndrome. The record reflects that no further treatment for appellant's back and leg pain occurred until September 28, 2000, when Dr. Luketich reported appellant's complaints of pain and some numbness in her right leg. On November 25, 2000 Dr. Luketich stated that she continued to suffer pain and burning in her lower back and buttock, dating from the "original injury" in September 1997. His report dated October 30, 2000 reflected that appellant's symptoms had "gradually worsened over time" since her September 11, 1997 accepted injury and that she was then experiencing pain and burning with some decreased sensation into her legs. In his October 2, 2002 report, he stated that because appellant had never complained of back pain prior to the September 11, 1997 injury, he could "only associate her current pain and disabilities with the fall at work on September 11, 1997." Although he implied that there may have been a relationship between appellant's current pain and the 1997 injury, Dr. Luketich did not provide a physiological explanation as to how the employment injury would result in a recurrence of disability several years later. His conjecture on October 2, 2002 that appellant's then current pain was associated with the 1997 fall at work is speculative and therefore lacks probative value.

Dr. Pawar began treating appellant on November 6, 2000 for low back pain. In his June 15, 2001 letter, he reported evidence of lumbosacral plexopathy and a disc bulge at the L2-L3 level. On November 29, 2001 he expressed uncertainty as to whether the bulging disc was related to appellant's 1997 injury or to arthritic changes. Dr. Pawar's reports provide insufficient explanation as to the cause of appellant's current condition. He began treating appellant three years after her accepted injury and his report does not reveal the cause of her current condition. Dr. Pawar made no attempt to relate the "bulging disc" diagnosis to the accepted condition of multiple contusions.

Dr. Weiss, who first examined appellant on June 30, 2003, provided a diagnosis of chronic post-traumatic lumbosacral strain and sprain; right lumbar radiculopathy; chronic post-traumatic trochanteric bursitis to the right hip; bulging lumbar disc L2-L3; and chronic pain syndrome. He also found a 27 percent permanent impairment of appellant's total right lower extremity. Dr. Weiss' report provided no explanation or rationalized medical opinion as to how appellant's newly diagnosed conditions are related to the accepted condition or to the 1997 injury. Because no such rationale is present, the medical evidence is of diminished probative value.⁸

Each physician provided a different diagnosis. None of the medical reports in the record provide rationale beyond conclusory statements, explaining how the September 11, 1997 employment injury accepted for multiple contusions caused appellant's current condition, as diagnosed by each respective physician. Moreover, the only condition accepted by the Office is multiple contusions. It is appellant's burden to establish a causal relationship between any newly diagnosed condition and the accepted employment injury. As appellant's physicians failed to

⁸ *Mary A. Ceglia, supra* note 4.

provide a rationalized medical opinion explaining how a condition newly diagnosed several years following the accepted September 11, 1997 injury is related to the injury, appellant has not met her burden of proof. Furthermore, appellant's belief that her current pain, burning and numbness in her lower back and right leg is causally related to the September 11, 1997 injury is insufficient to establish causal relationship.

In *Ronald A. Eldridge*,⁹ the employee filed a claim for a recurrence of disability causally related to an accepted back injury. The Board found that the medical evidence submitted did not specifically address whether the employee's recurrence of disability was causally related to his earlier employment-related injury. He alleged that he experienced sudden numbness in his lower back and his legs became weak as he was walking through the employing establishment. The Board found that none of the medical reports of record directly addressed whether the sudden numbness was causally related to the effects of the accepted employment injury; nor did the reports provide any physiological explanation as to how the employment injury would result in a recurrence of disability many years later. In the instant case, the medical reports are likewise devoid of an explanation of causal relationship.

The Board finds that appellant has not submitted the necessary rationalized medical evidence to substantiate that her current condition is causally related to the September 11, 1997 employment injury.

It is appellant's burden of proof to submit the necessary medical evidence to establish a claim for a recurrence. The record does not contain a medical report providing a reasoned medical opinion that appellant sustained a recurrence commencing on or before October 24, 2000 causally related to the September 11, 1997 employment injury. The Board accordingly finds that appellant did not meet her burden of proof and the Office properly denied the claim.

LEGAL PRECEDENT -- ISSUE 2

Section 8107 of the Act¹⁰ provides that an employee is entitled to compensation for a permanent disability involving the loss, or loss of use, of a member or function of the body or involving disfigurement. Section 10.404 of the implementing regulations provide that compensation is payable for specified periods of time for permanent impairment.¹¹

ANALYSIS -- ISSUE 2

On December 1, 2003 appellant filed a Form CA-7 requesting a schedule award, supported by a report dated June 30, 2003 by Dr. Weiss, who provided a diagnosis of: chronic post-traumatic lumbosacral strain and sprain; right lumbar radiculopathy; chronic post-traumatic trochanteric bursitis to the right hip; bulging lumbar disc L2-L3; and chronic pain syndrome. He

⁹ 53 ECAB ___ (Docket No. 01-67, issued November 15, 2001).

¹⁰ 5 U.S.C. § 8107.

¹¹ 20 C.F.R. § 10.404. "Compensation is provided for specified periods of time for the permanent loss or loss of use of certain members, organs and functions of the body. Such loss or loss of use is known as permanent impairment...."

found appellant's right lower extremity to be 27 percent impaired. Dr. Weiss provided no explanation as to how appellant's then current diagnosed conditions were causally related to the accepted contusions resulting from the 1997 injury.

Because appellant has not established that she sustained a permanent impairment causally related to the accepted September 11, 1997 injury, she is not entitled to a schedule award.¹² The only condition accepted by the Office was multiple contusions. Dr. Weiss' report, however, was based on conditions that were not accepted as related to the September 11, 1997 injury. Therefore, the report is of no probative value. There is no medical evidence of record establishing that appellant's 1997 accepted condition resulted in a permanent condition. Thus, her claim for a schedule award is denied.

CONCLUSION

The Board finds that appellant failed to establish that she sustained a recurrence of disability on or before October 24, 2000 causally related to her accepted September 11, 1997 employment injury. The Board also finds that the Office properly denied appellant's request for a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 23, 2004 is affirmed.

Issued: February 14, 2005
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹² 20 C.F.R. § 10.404; 5 U.S.C. § 8107.