

the Office accepted as right elbow contusion and cervical strain, right shoulder sprain and aggravation of cervical strain and left wrist sprain, left shoulder sprain and aggravation of cervical strain, respectively. Appellant filed a notice of recurrence of disability on December 1, 1983 alleging that she sustained a recurrence of disability on November 22, 1983 causally related to her October 16, 1983 employment injury. The employing establishment terminated appellant for cause on January 27, 1984. By decisions dated October 23, 1986, May 5, 1987, October 2, 1989 and November 6, 1992, the Office denied appellant's claim for a recurrence of disability. In a decision dated June 23, 1994, the Board denied appellant's claim for recurrence of disability on or after November 22, 1983 as causally related to her accepted employment injuries finding that she failed to submit the necessary medical opinion evidence.¹

Appellant requested a merit review reconsideration which was denied by the Office on October 31, 1994. Appellant appealed this decision to the Board. In its April 8, 1997 decision,² the Board found that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits.

Appellant requested reconsideration on October 28, 1997. By decision dated November 14, 1997, the Office declined to reopen appellant's claim for consideration of the merits. The Board issued an order remanding the case to the Office for reassemblage of the record and a *de novo* decision on July 26, 1999.³ On August 9, 1999 the Office again issued a nonmerit decision. On May 22, 2001 the Board again remanded the case for the Office to perform a merit review.⁴ The Office issued a nonmerit decision on July 11, 2001. Appellant requested reconsideration on May 6, 2003 and by decision dated June 12, 2003, the Office declined to reopen appellant's claim for consideration of the merits. The Board again remanded appellant's claim for the Office to conduct a merit review on October 22, 2003.⁵ The facts and the circumstances of the case as set out in the Board's prior decisions are adopted herein by reference.

In support of her requests for reconsideration after the last merit decision, appellant submitted additional evidence. In a report dated January 10, 1984, Dr. Robert H. Saxton, a neurosurgeon, stated that appellant complained of neck pain which he attributed to arthritis aggravated by trauma. Dr. Saxton did not provide a history of injury nor an opinion on causal relationship.

The record contains treatment notes from Dr. Harry W. Slade, a neurosurgeon, dating from November 5, 1984 through May 15, 1988. He continued to diagnose lumbar disc suspect, cervical disc suspect, functional overlay and back pain with no opinion regarding the causal relationship between appellant's condition and her employment injuries. Dr. Slade referred

¹ Docket No. 93-663 (issued June 23, 1994).

² Docket No. 95-819 (issued April 8, 1997).

³ Docket No. 95-819.

⁴ Docket No. 99-2542 (issued May 22, 2001).

⁵ Docket No. 03-1714 (issued October 22, 2003).

appellant to the Family Practice Center on May 16, 1988. The notes from this practice are included in the record and provide a diagnosis of chronic neck pain.

Dr. Slade submitted a report dated March 3, 1987 and a note dated March 4, 1987 in which he diagnosed lumbar disc suspect, cervical disc suspect, functional overlay and back pain. Dr. Slade stated: “[O]f course there is nothing that is stamped on your back or your disc that says this is job related but the history that we have on this plus the supporting evidence that you brought in was to the effect that you were injured on the job and so I would say that it is job related by deductive reasoning.”

Appellant submitted a report dated February 6, 1997, diagnosing dysthymic disorder and delusional disorder. The physician, whose signature is illegible, did not provide an opinion on the causal relationship between these conditions and appellant’s employment.

By decision dated April 30, 2004, the Office reviewed appellant’s claim on the merits and found that she failed to submit the necessary medical evidence to establish a recurrence of disability on or after November 11, 1983.

LEGAL PRECEDENT

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. The burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concluded that the condition is causally related to the employment injury. Moreover, sound medical reasoning must support the physician’s conclusion.⁶

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury. In this regard, medical evidence of bridging symptoms between the recurrence of the accepted injury must support the physician’s conclusion of a causal relationship. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁷

ANALYSIS

Appellant has attempted to submit medical evidence to establish that her recurrence of disability after November 22, 1983 was causally related to her employment injuries. While appellant has submitted several reports and many treatment notes, the Board finds that she had failed to submit the necessary rationalized medical opinion evidence to meet her burden of proof.

⁶ *Ricky S. Storms*, 52 ECAB 349 351-52 (2001).

⁷ *Id.*

On January 10, 1984 Dr. Saxton, a neurosurgeon, stated that appellant complained of neck pain which he attributed to arthritis aggravated by trauma. Dr. Saxton did not provide a history of injury nor an opinion on causal relationship. As Dr. Saxton did not directly attribute appellant's arthritis to her accepted employment injuries, this report lacks the necessary medical opinion evidence to establish a causal relationship between this condition and appellant's employment. Furthermore, Dr. Saxton did not offer any opinion as to whether appellant's diagnosed condition rendered her disabled for work.

Appellant submitted medical evidence from Dr. Slade, a neurosurgeon, dating from 1987 in which he diagnosed lumbar disc suspect, cervical disc suspect, functional overlay and back pain. Dr. Slade stated: "[O]f course there is nothing that is stamped on your back or your disc that says this is job related but the history that we have on this plus the supporting evidence that you brought in was to the effect that you were injured on the job and so I would say that it is job related by deductive reasoning." Although Dr. Slade's report suggests a causal relationship between appellant's suspected disc injuries and her employment, the Office has not accepted that appellant's employment injuries resulted in a condition more serious than a cervical strain. Furthermore, Dr. Slade does not provide any medical reasoning explaining why or how he believes that appellant's accepted employment injuries of cervical strain and aggravation of cervical strain resulted in the diagnosed conditions. For these reasons, his reports are insufficient to meet appellant's burden of proof. The medical evidence included in the record is not sufficient to establish that appellant sustained a recurrence of disability on or after November 22, 1983 causally related to her accepted employment injuries.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained a recurrence of disability causally related to her accepted employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 30, 2004 is affirmed.

Issued: January 27, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member