

**United States Department of Labor
Employees' Compensation Appeals Board**

CATHERINE VASQUEZ, Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
El Paso, Texas, Employer)

**Docket No. 04-2026
Issued: January 12, 2005**

Appearances:
Catherine Vasquez, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On August 12, 2004 appellant filed an appeal of a decision of the Office of Workers' Compensation Programs dated June 25, 2004 denying her claim for a recurrence of disability as of April 16, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the recurrence issue.

ISSUE

The issue is whether appellant sustained a recurrence of disability on or after April 16, 2004 causally related to her accepted July 8, 2002 employment injury.

FACTUAL HISTORY

Appellant, a 41-year-old detention enforcement officer, filed a timely claim¹ alleging that she sustained injuries to her shoulder, hand, right knee and tail bone on July 8, 2002 when she fell from her rolling chair onto the floor. She stopped work on August 24, 2002. On August 28, 2002 her claim was accepted for lumbar and right knee strain. She was released to work with restrictions on November 4, 2002 and to full-duty work on March 10, 2003 by Dr. F.J. Guerra, a physician's assistant.

Medical notes dated April 2, 2004 signed by April Gentry, a nurse practitioner, reflect that appellant complained of recurrent low back pain, which was aggravated by sitting. Appellant was referred for a magnetic resonance imaging (MRI) scan, which revealed a large central disc protrusion/extrusion at L5-S1 with severe spinal canal stenosis and mild stenosis at L4-5. On April 19, 2004 appellant filed a CA-2a (notice of recurrence), alleging that on April 2, 2004 on an airplane flight, she suddenly experienced "great pain" and thereafter "was unable to walk straight without assistance and unable to drive." Appellant also filed a CA-7 on April 19, 2004, reflecting her intent to take leave without pay effective April 16, 2004.

On April 30, 2004 the Office requested additional information, including a narrative report from her physician with his diagnosis and reasoned opinion as to the causal relationship between her current condition or disability and the injury of July 8, 2002. In response, appellant submitted a personal statement indicating her belief that her "current disability is related to [her] original work injury" because she "never recovered from the original injury." Appellant also submitted medical reports dated May 12, 2004 and June 15, 2004 stamp signed by Dr. Dean E. Smith,² a Board-certified orthopedic surgeon. In his May 12, 2004 letter, Dr. Smith stated that appellant was diagnosed with lumbar stenosis, lumbar disc herniation and disc displacement and that, due to her increased complaints of pain, she was unable to work. He indicated that she exhibited "the same exact pain" that she exhibited following her original injury but that the pain had increased in intensity. Dr. Smith opined that her condition was "a recurrent injury." He related that appellant "has had problems off and on but has had increased pain over the past few months." In his letter dated June 15, 2004, Dr. Smith stated his opinion that appellant's existing condition was directly related to her original injury and that, because appellant denies any new injury or trauma, "it is only common sense that this is a reagravation of an old injury."

By decision letter dated June 25, 2004, the Office denied appellant's claim on the grounds that the evidence submitted did not establish that her recurrence of disability was due to the accepted work injury. The Office found that Dr. Smith's reports did not constitute a reasoned medical opinion to explain how her new diagnosis for lumbar stenosis, lumbar disc herniation

¹ The record does not include a copy of appellant's original claim form or any reference to the date it was filed. However, the Office stated in its decision dated June 25, 2004 that appellant filed a timely claim establishing her July 8, 2002 work-related injury. It appears that the claim was filed between the date of the injury on July 8, 2002 and the date of the acceptance of the claim by the Office on August 28, 2002. The absence of the claim form does not impact the outcome of the Board's decision.

² See 20 C.F.R. § 10.331(a) (the medical report may be in narrative form on the physician's letterhead stationary but should bear the physician's signature or signature stamp).

and disc displacement were related to her original injury on July 8, 2002, which was accepted for lumbar strain.

LEGAL PRECEDENT

In this case, appellant has the burden of establishing that she sustained a recurrence of a disability³ on April 16, 2004 causally related to her July 8, 2002 employment injury.

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. This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury. Moreover, sound medical reasoning must support the physician's conclusion.⁴

An award of compensation may not be based on 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

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.⁶

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability on April 16, 2004 causally related to her July 8, 2002 employment injury. The medical evidence in the record does not provide sufficient facts or rationalized medical opinion to support her claim.

The Office accepted that appellant sustained a lumbar and right knee strain on July 8, 2002. Appellant was released to return to work with restrictions on November 4, 2002 and returned to unrestricted fully-duty work on March 10, 2003.

The medical evidence submitted in support of appellant's recurrence claim consisted of a report of an MRI scan and two reports from Dr. Smith. The April 6, 2004 results of the MRI

³ Recurrence of disability means "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness." 20 C.F.R. § 10.5(x) (2003).

⁴ *Ricky S. Storms*, 52 ECAB 349 (2001).

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

⁶ *Mary A. Ceglia*, 55 ECAB ___ (Docket No. 04-113, issued July 22, 2004).

scan performed by Dr. Hugo Isuani, a Board-certified radiologist, did not contain any discussion of causal relationship. Thus, this report did not support appellant's claim for a recurrence.

On May 12, 2004 Dr. Smith provided a diagnosis of lumbar stenosis, lumbar disc herniation and disc displacement. However, he provided no information whatsoever connecting appellant's newly diagnosed condition to her injury of July 8, 2002, but rather made conclusory statements to the effect that "this is a recurrent injury for this patient." In his follow-up letter dated June 15, 2004, Dr. Smith reiterated his opinion that appellant's condition was related to the July 8, 2004 injury, basing his conclusion on the facts that appellant exhibited the "same exact pain" that she exhibited following her original injury; her pain had increased in intensity; and she denied any recent injury or trauma that would cause a new injury. In Dr. Smith's opinion, "it is only common sense that this is a reagravation of an old injury." When a physician concludes that a condition is causally related to employment because the employee was asymptomatic before the employment injury, the opinion is insufficient, without supporting medical rationale, to establish causal relationship.⁷ Dr. Smith must do more than note a temporal relationship. He must positively demonstrate how appellant's disability on or after April 16, 2004 is causally related to the incident that occurred on July 8, 2002. He must base his opinion on a complete factual and medical background with an accurate history of the employment injury. He must explain how appellant's newly diagnosed condition is physiologically related to the July 8, 2002 employment injury and provide medical evidence of bridging symptoms between appellant's present condition and the accepted injury which support the conclusion of a causal relationship.⁸ He has provided, however, only conjectural opinion but no factual information to substantiate a causal relationship between appellant's current condition and the original injury. Therefore, his opinion is of little probative value.

In *Joan R. Donovan*,⁹ the employee filed a claim for a recurrence of disability a condition causally related to an employment injury. The Office had accepted the claim for contusions of the left leg and knee. The employee received compensation for temporary total disability for approximately six months. Eight months after returning to work, she filed a claim asserting a recurrence of her accepted condition. As in the instant case, the employee explained that her symptoms were "the same as before." However, medical reports reflected treatment for back pain and severe headaches. The Board found that the employee did not meet her burden of proof in that she failed to submit evidence establishing a causal relationship between the newly diagnosed condition and the original injury. In this case, as in *Donovan*, appellant has not met her burden of proof. She has failed to produce any rationalized medical opinion evidence explaining how her present condition is pathophysiologically related to the July 8, 2002 employment injury.

In *Mary A. Ceglia*,¹⁰ the Board again found that the employee had failed to meet her burden of proof. The Board noted that, because the Office had never accepted the condition of

⁷ See *Joan R. Donovan*, 54 ECAB ____ (Docket No. 03-297, issued June 13, 2003).

⁸ *Mary A. Ceglia*, *supra* note 6.

⁹ See *John R. Donovan*, *supra* note 7.

¹⁰ See *Mary A. Ceglia*, *supra* note 6.

spinal subluxation, it was her burden to provide sufficient evidence to show a causal relationship between the newly diagnosed spinal subluxation and the accepted left rib contusion injury. Although the medical evidence provided a clear diagnosis of spinal subluxation and a physician's report attributing the employee's condition to the accepted condition, none of the medical reports explained how the accepted employment injury caused the spinal subluxation. The Board held, therefore, that the medical evidence did not support the claim for a recurrence.¹¹ Similarly, in this case, the Office has never accepted the condition of lumbar stenosis, lumbar disc herniation and disc displacement, and appellant has failed to show a causal relationship between that condition and the accepted condition of lumbar and right knee strain.

Appellant asserted in her personal statement dated April 30, 2004 that she believed her current disability to be related to the injury which occurred on July 8, 2002 because she never recovered from the original injury. However, an award of compensation cannot be predicated upon appellant's belief of causal relationship.¹² 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 beginning April 16, 2004 causally related to the July 8, 2002 employment injury. The Board accordingly finds that appellant did not meet her burden of proof and the Office properly denied the claim.

CONCLUSION

The Board finds that appellant failed to establish that she sustained a recurrence on or about April 16, 2004 related to her accepted July 8, 2002 employment injury.

¹¹ *Id.*

¹² *See Dennis M. Mascarenas, supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 25, 2004 is affirmed.

Issued: January 12, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member