

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

LEONA E. FLAKE, Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, East Orange, NJ, Employer)

**Docket No. 06-851
Issued: July 6, 2006**

Appearances:
Leona E. Flake, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 27, 2006 appellant filed a timely appeal from a December 28, 2005 merit decision of the Office of Workers' Compensation Programs denying her claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that she sustained a recurrence of disability on April 28, 2005 causally related to her October 11, 2004 employment injury.

FACTUAL HISTORY

On October 11, 2004 appellant, then a 57-year-old nurse, filed a claim for an injury occurring on that date in the performance of duty. The employing establishment submitted the claim noting that she had not lost any time from work and claimed no medical expenses.¹

In a form report dated June 20, 2005, Dr. Charles A. Loguda, a Board-certified plastic surgeon, diagnosed a ganglionic cyst with exostosis on the distal interphalangeal (DIP) joint of the left index finger. He indicated that he had performed an excision of the ganglionic cyst and removal of the exostosis of the DIP joint. Dr. Loguda did not respond to the question on the form regarding whether the diagnosed condition was caused or aggravated by appellant's employment. He found that she could resume work on May 30, 2005.² In a work capacity evaluation form dated June 24, 2005, Dr. Loguda diagnosed a ganglionic cyst of the DIP joint of the left index finger with exostosis and listed work restrictions.

On July 18, 2005 the Office accepted appellant's claim for abrasions between the left index finger and left ring finger.³ In an accompanying memorandum to the file, the Office noted that appellant had claimed no time lost due to her injury until her May 4, 2005 surgery on her left index finger.

On July 18, 2005 appellant filed a claim for a recurrence of disability on April 28, 2005 causally related to her October 11, 2004 employment injury. She stopped work on May 4, 2005 and returned to work on May 30, 2005. Appellant related that her finger was swollen and painful and that she required assistance opening medications. Her supervisor indicated on the claim form that she was performing her regular employment duties at the time of her alleged recurrence of disability.

By letter dated December 15, 2005, the Office requested additional factual and medical information. The Office provided appellant 30 days to respond with additional evidence.⁴ Appellant did not respond within the time allotted.

In a decision dated December 28, 2005, the Office denied appellant's claim on the grounds that she failed to establish a recurrence of disability beginning April 28, 2005 due to her accepted employment injury.

¹ An x-ray of appellant's left index finger, obtained on February 4, 2005, was negative for fracture but showed marked osteoarthritis.

² In a disability certificate dated May 27, 2005, Dr. Loguda opined that appellant could return to work on May 30, 2005.

³ In a report dated October 11, 2004, a physician diagnosed a small abrasion between the index and ring finger of the left hand.

⁴ The Office found that appellant was working in a light-duty capacity; however, it appears from the employing establishment's statement on the notice of recurrence of disability that she was performing her usual employment duties.

LEGAL PRECEDENT

When an appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the 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 and supports this conclusion with sound medical reasoning.⁵

Section 10.5(x) of the Office's regulations provides in pertinent part:

“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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”⁶

ANALYSIS

The Office accepted that appellant sustained abrasions between the left index finger and left ring finger due to an October 11, 2004 employment injury. She did not stop work. On July 18, 2005 appellant filed a claim for a recurrence of disability beginning April 28, 2005.

The Board finds that appellant failed to submit probative medical evidence establishing that she sustained a recurrence of disability causally related to her October 11, 2004 employment injury. In support of her claim, she submitted a form report dated June 20, 2005 from Dr. Loguda, who diagnosed a ganglionic cyst with exostosis on the DIP joint of the left index finger. He noted that he had performed an excision of the ganglionic cyst and removal of the exostosis of the DIP joint. Dr. Loguda did not respond to the question on the form regarding whether the diagnosed condition was caused or aggravated by her employment. As the physician did not address the cause of the ganglionic cyst and exostosis, his opinion is insufficient to meet appellant's burden of proof. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.⁷

In a work capacity evaluation form dated June 24, 2005, Dr. Loguda diagnosed a ganglionic cyst of the DIP joint of the left index finger with exostosis and listed work restrictions. Again, however, as the physician did not address the causation, his report is of little probative value.⁸

⁵ *Ricky S. Storms*, 52 ECAB 349 (2001).

⁶ 20 C.F.R. § 10.5(x).

⁷ *Conrad Hightower*, 54 ECAB 796 (2003).

⁸ *Id.*

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between her claimed condition and her employment.⁹ To establish causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination of appellant, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion.¹⁰ Appellant failed to submit such evidence in this case and, therefore, has failed to discharge her burden of proof to establish that she sustained an employment-related recurrence of disability.

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability on April 28, 2005 causally related to her October 11, 2004 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 28, 2005 is affirmed.

Issued: July 6, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

⁹ *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

¹⁰ *Calvin E. King*, 51 ECAB 394 (2000).