U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RITA SOCKPICK and DEPARTMENT OF HEALTH & HUMAN SERVICES, ALASKA NATIVE MEDICAL CENTER, Anchorage, AK

*Docket No. 98-2198; Submitted on the Record;*
*Issued August 7, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant established that she sustained an aggravation of myofascial syndrome and depression as the result of a January 23, 1997 employment injury.

On January 30, 1997 appellant, then a 45-year-old administrative assistant, filed a notice of traumatic injury and claim for compensation alleging that on January 23, 1997 she sustained injuries to her neck, back, left hip and leg when she slipped and fell on ice in the parking lot at work while on her lunch hour. Appellant was off work from January 24 until February 21, 1997, when she returned to light duty for four hours per day. Appellant thereafter filed a series of CA-8 claim forms for wage loss based on partial disability.[1]

The employing establishment issued a Form CA-16 authorization for medical treatment on the date of injury to Dr. G. Bell, a family practitioner, which noted that appellant had fallen in the parking lot at work in the performance of duty. Dr. Bell was authorized to perform medical treatment for 60 days. In completing the attending physician's side of the CA-16 form, Dr. Bell noted that appellant had a preexisting history of myofascial pain. He diagnosed contusions,

[1] Appellant sustained an injury at work on September 12, 1989 when her chair back broke causing her to fall on her back. The Office of Workers' Compensation Programs accepted the claim for thoracic and lumbar strain. Appellant received compensation for partial wage loss from September 16 to October 10, 1989. Thereafter she filed claims for continuing medical benefits. Appellant began treatment with Dr. Brian Trimble, a neurologist, in December 1992. Dr. Trimble reported that appellant suffered from myofascial pain syndrome as a result of the September 12, 1989 injury and began treating her for that condition. The Office arranged for appellant to be seen by Dr. Mark Gabr, a Board-certified neurologist, and Dr. Jerry Becker, a Board-certified orthopedic specialist. These physicians concluded that appellant had no residuals of her September 12, 1989 work injury. Therefore, in a decision dated April 17, 1996, the Office terminated appellant's entitlement to continuing compensation and benefits. The Office subsequently refused appellant's request for reconsideration, finding the evidence on reconsideration to be insufficient to warrant a merit review of the case. Appellant did not take any further action with regard to that claim.

strain and arthralgias and check marked a box indicating that appellant's condition was causally related to the January 23, 1997 injury.[2]

On February 26, 1997 appellant filed a CA-8 form claiming compensation for wage loss for the period of April 13 to 26, 1997.

In an attending physician's report dated February 26, 1997, Dr. Trimble, a neurologist, noted the date of injury as January 23, 1997, described the nature of impairment as a ligament injury to the back resulting in pain and further diagnosed myofascial pain syndrome. He check marked the box indicating that appellant's diagnosed condition was due to the January 26, 1997 injury. He prescribed prolotherapy followed by six weeks of rest.

In an attending physician's report dated April 22, 1997, Dr. Trimble diagnosed "chronic pain (myofascial pain syndrome) aggravated by fall on ice" on January 23, 1997. He noted that appellant underwent prolotherapy every six weeks and recommended that she continue that treatment. He opined that appellant was able to work part time.[3]

Appellant filed a series of CA-8 forms claiming wage loss for partial disability for 20 hours per week.

The record contains treatment notes dating from February 1994 through October 1996, indicating that appellant was seen by Dr. Trimble on an intermittent basis for recurrent myofascial pain syndrome, including symptoms of low back pain, neck pain and headaches.

In a letter dated June 30, 1997, the Office requested that Dr. Trimble provide a rationalized opinion explaining how appellant's diagnosed condition of myofascial syndrome was causally related to the January 23, 1997 employment incident.

In a decision dated August 19, 1997, the Office denied compensation on the grounds that the medical evidence was insufficient to establish a causal relationship between appellant's back condition and the January 23, 1997 injury.

Appellant requested a review of the written record and submitted additional evidence.

In an August 25, 1997 report, Dr. Trimble stated:

> "[Appellant] has been under my care … for some years now for myofascial pain syndrome. This condition was initially sustained in 1994 following a fall in the office. She was responding nicely to therapy when, on January 23, 1997, she

[2] In an emergency room treatment note dated January 23, 1997, Dr. Bell wrote that appellant "fell approximately [one] hour ago c/o neck, hip and low back pain. [Patient] land on right arm/elbow. Denies [right] arm pain. History of myofascial pain syndrome. [Patient] of Dr. Trimble, current pain exacerbated chronic pain."

[3] The record contains treatment notes dating from February to May 1996. In a treatment note dated February 15, 1996, Dr. Trimble noted that appellant was seen for "complaints of flu and myofascial syndrome." He stated, "[f]ollowing prolotherapy four [months] ago HA's [headaches] are much better. Still gets an occasional HA, neck-stretching exercises help. Low back pain better but continues to be worse problem."

slipped on the ice out in front of the hospital and caused a setback in her progress. She is again, slowly responding to treatment, and I expect, with time, will be able to return to full employment without restrictions."

He concluded that he expected prolotherapy to gradually repair the damage done to appellant's ligaments "as a result of her fall."

In a report dated September 3, 1997, Dr. Trimble opined that appellant suffered from myofascial syndrome as the result of at least two injuries, "one in the early 90's when she fell out of a chair while at work, and then this was exacerbated by a fall that occurred on [January] 23, 1997." He stated that "myofascial pain syndrome is basically a ligament strain which was responding well to treatment prior to [appellant's] fall in January, and since then, she had an exacerbation of her pain which, again, is slowly responding to prolotherapy." He opined that appellant could return to full-time work in approximately six months.

In a decision dated March 24, 1998, an Office hearing representative determined that the evidence was insufficient to establish a causal relationship between the diagnoses of myofascial pain syndrome and depression rendered by Dr. Trimble and the January 23, 1997 work injury. The Office hearing representative noted, however, that the district office had not fully investigated whether appellant's injury was sustained in the performance of duty, *i.e.*, whether the parking lot constituted premises of the employing establishment within the meaning of the Federal Employees' Compensation Act. He further noted that, if appellant established that she was injured on the employing establishment's premises in the performance of duty, she established "a *prima facie* claim for injury in the performance of duty" based on the diagnoses of contusions, strains and arthralgias made by Dr. Bell on the CA-16 form dated January 23, 1997.

On remand, an April 16, 1998 conference determined that the parking lot where the January 23, 1997 incident occurred was owned or controlled by the employing establishment.

In a decision dated May 12, 1998, the Office noted that the January 23, 1997 incident occurred in the performance of duty but still found the medical evidence insufficient to establish that appellant sustained an injury causally related to the January 23, 1997 work incident.

The Board finds that the case is not in posture for a decision.

In order to determine whether an employee has sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether a "fact of injury" has been established. There are two components involved in establishing fact of injury that must be considered. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.[4] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused personal injury.[5] The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.

[4] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *Id.*

An award of compensation may not be based on surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between her condition and her employment.[6] To establish causal relationship, appellant must submit a physician's report in which the physician reviews the factors of employment identified by appellant as causing her injury and, taking these into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed conditions and present medical rationale in support of her opinion.[7]

Under the Act, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation. However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.[8]

In the instant case, appellant contends that the January 23, 1997 fall exacerbated her preexisting condition of myofascial pain syndrome as reported by Dr. Trimble, appellant's treating physician. While the report of Dr. Trimble is not sufficiently rationalized[9] to establish appellant's claim, his opinion at least raises an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.[10] The medical evidence submitted by appellant, including emergency treatment records from Dr. Bell and the various reports by Dr. Trimble, are not contradicted by any other medical evidence of record.[11] Thus, the Board remands this case to the Office for further development of the record, including but not limited to an opinion from a Board-certified specialist as to whether appellant sustained a temporary or

[6] *See Victor J. Woodhams*, 41 ECAB 345 (1989).

[7] *Id.*

[8] *Gary Sieber*, 46 ECAB 215 (1994).

[9] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[10] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

[11] The Board notes that although the Office did not previously approve appellant's myofascial pain syndrome as work related, that finding in the prior claim does not preclude appellant from establishing that she has a preexisting condition of myofascial pain syndrome and that her work injury on January 23, 1997 aggravated that condition.

permanent aggravation or exacerbation of myofascial syndrome causally related to the January 23, 1997 work injury.[12]

The decisions of the Office of Workers' Compensation Programs dated May 12 and March 24, 1998 are hereby vacated, and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, D.C.
August 7, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

[12] Furthermore, the Board notes that appellant is entitled to reimbursement for or payment of expenses incurred for medical treatment for the 60-day period following January 23, 1997, the date the employing establishment signed the Form CA-16 authorizing medical treatment; *see Robert F. Hamilton*, 41 ECAB 431 (1990); *Frederick J. Williams*, 35 ECAB 805 (1984); 20 C.F.R. § 10.403.