

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAWN M. MORIN and DEPARTMENT OF THE NAVY,
NAVAL TRAINING CENTER, Great Lakes, IL

*Docket No. 00-475; Submitted on the Record;
Issued December 28, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant's alleged disability beginning June 1, 1999 was causally related to her accepted acute lumbosacral strain of January 19, 1999.

On January 20, 1999 appellant, then a 36-year-old accounting technician, filed a notice of traumatic injury, alleging that, on January 19, 1999, she slipped on ice next to her truck and hurt her left leg and back. Appellant returned to full duty on March 10, 1999 with no restrictions. By letter dated March 22, 1999, the Office of Workers' Compensation Programs accepted appellant's claim for acute lumbosacral strain.

On June 14, 1999 appellant filed a notice of recurrence of disability, claiming that, on June 1, 1999, the pain in her back and leg became "very intense" and that she was unable to work the next day.

Appellant submitted a medical report dated June 4, 1999, in which Dr. Michael Zeihen, a Board-certified internist, stated that appellant had a flare-up of her sciatica which started 7 to 10 days ago, that this was from her work-related injury in January 1999, and that a magnetic resonance imaging (MRI) of her lumbar spine and physical therapy were necessary. In a medical report dated June 9, 1999, Dr. Zeihen added that appellant had been off work from June 2 to 8, 1999 due to the pain and limited range of motion.

By letter dated June 28, 1999, the Office requested further information from appellant.

In response, appellant indicated that she took leave without pay for eight hours on June 7 and 8, 1999, and four hours on June 11, 1999 for an MRI appointment. Appellant also stated that she had a recurrence of the original injury of January 19, 1999, that the pain had become unbearable, and that she did not have any other injuries from March 10 to June 2, 1999.

The June 11, 1999 MRI showed degenerative disc changes at L4-5 without narrowing and minimal midline bulging of disc material at L1. Dr. Zeihen noted no signs of protruding or

herniated discs in the lumbosacral spine. In a July 5, 1999 medical report, Dr. Zeihen stated that appellant's "back injury is a flare-up of her sciatica, from her injury of January 1999."

In a decision dated August 26, 1999, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that appellant's disability from June 1 through 11, 1999 was causally related to the original injury of January 19, 1999. The Office noted that there was no evidence that appellant's condition worsened to the point where she was unable to perform her duties.

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

When appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the subsequent disability for which she claims compensation is causally related to the accepted injury.¹ 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 that conclusion with sound medical reasoning.²

However, it is well established that proceedings under the Act are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility for the development of the evidence.³ The Office has an obligation to see that justice is done.⁴

In this case, the Board finds that the reports of Dr. Zeihen, while insufficiently rationalized to establish that appellant's most recent back pain in June 1999 was causally related to her employment injury, do provide enough support for appellant's claim to require further development by the Office.⁵ Dr. Zeihen has treated appellant since the initial injury and has twice stated that the June 1999 flare-up of her sciatica was causally related. Also, there is no contrary evidence in the record.

Accordingly, the Office should prepare a statement of accepted facts and refer appellant, along with the statement of accepted facts and the medical records, to an appropriate specialist for a rationalized medical opinion on whether appellant has sustained a recurrence of disability causally related to factors of her federal employment. After such further development as it may deem necessary, the Office shall issue a *de novo* decision.

¹ *Jose Hernandez*, 47 ECAB 441 (1996); *John E. Blount*, 30 ECAB (1979).

² *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996); *Frances B. Evans*, 31 ECAB 60 (1980).

³ *Mark A. Cacchione*, 46 ECAB 148, 152 (1994).

⁴ *John J. Carlone*, 41 ECAB 354, 360 (1989).

⁵ *Mark A. Cacchione*, *supra* note 3.

The decision of the Office of Workers' Compensation Programs dated August 26, 1999 is set aside and the case is remanded for further proceedings consistent with this decision.⁶

Dated, Washington, DC
December 28, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

⁶ Appellant submitted additional medical evidence with her appeal. The Board, however, may not review evidence for the first time on appeal that was not before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c).