

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERI J. FRIEND and DEPARTMENT OF LABOR,
OFFICE OF WORKERS' COMPENSATION, New York, NY

*Docket No. 99-856; Submitted on the Record;
Issued July 27, 2000*

DECISION and ORDER

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

The issue is whether appellant has established that she sustained a recurrence of disability on and after November 21, 1996 due to her December 15, 1995 employment injury.

On December 19, 1995 appellant, then a 48-year-old claims examiner, filed a notice of traumatic injury alleging that on December 15, 1995 she sustained pain in her right shoulder down to her right ankle, back pain and broken glasses when she reached for a pen but fell onto the floor out of her chair. The Office of Workers' Compensation Programs accepted the claim for a lumbar strain. Appellant did not stop work

On November 21, 1996 appellant filed a recurrence claim alleging that she had continuous pain in her hips since December 15, 1995 and that the pain had increased and had become more localized.

In a December 26, 1995 report, Dr. Steve L. Weintraub, an attending physician, noted that appellant had fallen at work on December 18, 1995 and diagnosed acute lumbosacral strain and sprain with significant degenerative changes in the lumbar spine.

In progress notes dated January 4, 11 and 18, 1996, Dr. Weintraub diagnosed acute lumbosacral strain and sprain with significant degenerative changes in the lumbar spine. He noted that appellant continued to complain of "radicular symptoms down her right buttock all the way down to the right calf" and that she cannot tolerate sitting for extended periods of time.

In an August 22, 1996 report, Dr. Scott Blumberg, a Board-certified rheumatologist and internist, noted appellant's employment injury history and that she subsequently developed low back pain and pain in the buttocks radiating to the legs. Based upon his physical examination, review of the x-ray interpretations, medical history and employment injury history, Dr. Blumberg diagnosed advanced osteoarthritis in both hips, noted that the x-rays revealed the

existence of the osteoarthritis prior to her employment injury and opined that “fall exacerbated the preexisting condition and has caused progressive disability and impairment of function.”

By letter dated January 22, 1997, the Office informed appellant that the evidence of record was insufficient to support her recurrence claim and advised her as to the type of factual and medical evidence required to support her claim for a recurrence of disability.

In a January 29, 1998 letter, appellant responded to the Office’s request for additional information and submitted an August 22, 1996 report from Dr. Blumberg in support of her recurrence claim. In her letter, appellant stated that since her injury she had constant pain in her lower back, both hips, buttocks, and down both legs and that prior to the injury she had never suffered from this type of pain. Appellant also submitted a February 5, 1997 letter, indicating that she filed the recurrence claim so that her claim could be expanded to include aggravation of osteoarthritis of both hips as an accepted condition.

By decision dated April 8, 1997, the Office denied appellant’s recurrence claim on the basis that the evidence was insufficient to establish bridging symptoms to support that her hip or inguinal pain was causally related to her accepted December 15, 1995 employment injury.

In a letter dated May 1, 1997, appellant requested a review of the written record.

By decision dated August 7, 1997, the Office hearing representative affirmed the April 8, 1997 decision denying appellant’s recurrence claim.

Appellant requested reconsideration on June 6, 1998 and submitted notes dated February 23, 1995 and July 22, 1996 from Dr. Stephen L. Newman, a physician Board-certified in critical care medicine, internal medicine and pulmonary disease, a December 26, 1995 letter and treatment notes dated December 26, 1995 and January 4 and 11, 1996 from Dr. Weintraub, nursing notes dated December 15, 1995, emergency room notes dated December 16, 1995, physical therapy notes, an article on traumatic arthritis and reports dated August 26, 1996 and April 14, 1998 from Dr. Blumberg in support of her request.

In an April 14, 1998 report, Dr. Blumberg noted that he had been treating appellant for advanced osteoarthritis in both hips since August 26, 1996. Regarding whether appellant’s December 15, 1995 injury aggravated her condition, he stated:

“My review of the x-rays of the hips indicated that the radiographic changes were, within reasonable medical probability, preexistent to the fall at work on December 15, 1995, but were not causing any symptoms of pain or loss of motion. It is within reasonable medical probability that the fall at work on December 15, 1995 exacerbated the preexisting condition and led to progressive disability and impairment of function. It has been well established, through clinical experience, that trauma to a joint, which was previously normal or previously involved by an arthritic disorder, can accelerate the degenerative process. The temporal relationship of her fall to the onset of her musculoskeletal complaints, in reference to her hips, indicates that the trauma to the right hip and

soft tissues accelerated the degenerative process in both hips, leading to constant pain and loss of motion.”

On September 17, 1998 the Office denied appellant’s request for modification of its prior decision.

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

Under the Federal Employees’ Compensation Act, an employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.¹ As part of this burden the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition² or to work factors,³ and supports that conclusion with sound medical reasoning.⁴

Section 10.121(b) provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a medical report covering the dates of examination and treatment, the history given by the employee, the findings, the results of x-ray and laboratory tests, the diagnosis, the course of treatment, the physician’s opinion with medical reasons regarding the causal relationship between the employee’s condition and the original injury, any work limitations or restrictions and the prognosis.⁵

The Board has long held that proceedings under the Act are not adversarial in nature and that the Office is not a disinterested arbiter,⁶ but rather has an obligation to see that justice is done.⁷ While appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁸ The Office’s procedures provide that while an employee claiming compensation must show sufficient cause for the Office to proceed with processing and adjudicating a claim, the Office has the obligation to aid in this process by giving detailed instructions for developing the required evidence.⁹

¹ *Dennis J. Lasanen*, 43 ECAB 549-50 (1992).

² *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

³ *Carolyn F. Allen*, 47 ECAB 240 (1995).

⁴ *Lourdes Davila*, 45 ECAB 139, 142 (1993).

⁵ 20 C.F.R. § 10.121(b).

⁶ *Richard Kendall*, 43 ECAB 790, 799 (1992) and cases cited therein.

⁷ 20 C.F.R. § 10.110(b); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

⁸ *Leon C. Collier*, 37 ECAB 378-79 (1986).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3(a) (April 1993).

In his April 14, 1998 report, Dr. Blumberg provided a history of the injury, identified bridging symptoms and diagnosed causal relationship. Although his report does not contain sufficient detailed medical rationale to discharge appellant's burden of establishing by the weight of the reliable, substantial and probative medical evidence that she sustained a recurrence of disability causally related to her December 19, 1995 employment injury, it raises an inference of causal relationship sufficient to require further development of the case record by the Office.¹⁰ Additionally, there is no opposing medical evidence in the record and Dr. Blumberg's August 26, 1996 report also supports causal relationship.

Therefore, on remand, the Office should refer appellant, together with the case record and a statement of accepted facts, to an appropriate medical specialist for a well-rationalized opinion, based on a complete and accurate factual and medical background, regarding the causal relationship between appellant's current condition and the accepted employment injury. After such further development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated September 17, 1998 is set aside and the case remanded for further proceeding consistent with this opinion.

Dated, Washington, D.C.
July 27, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

¹⁰ See *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 821 (1978).