U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LORRAINE DRAKE and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

Docket No. 98-1471; Submitted on the Record;
Issued June 1, 2000

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits.

On June 26, 1989 appellant, a letter carrier, sustained an injury while in the performance of her duties when she twisted her left ankle on an uneven sidewalk and fell on her knees. She described the nature of her injury as bruised left and right knees and a swollen left ankle. The Office accepted her claim for the conditions of lumbosacral strain, left ankle sprain and contusion to the right knee. Appellant received appropriate compensation benefits.

In a report dated August 15, 1989, Dr. Harry A. Cooper, a consulting orthopedic surgeon, related appellant's history and his findings on examination. He diagnosed acute lumbar strain and sprain, torn right medial meniscus and left ankle sprain. Dr. Cooper expressed the following opinion: "To a reasonable degree of medical certainty, [appellant's] acute lumbar strain and sprain, her torn right medial meniscus and her sprained left ankle are the direct results of her work-related accident of June 26, 1989."

On October 10, 1989 Dr. Cooper noted that appellant was still having strong clinical evidence of a torn right medial meniscus. He arranged to have appellant undergo diagnostic arthroscopy, which the Office authorized. The arthroscopy, performed on November 2, 1989, revealed early degenerative joint disease of the right medial femoral epicondyle and plica synovialis. The plica was resected.

On December 11, 1991 the employing establishment wrote to Dr. Arthur M. Lerner, appellant's specialist in internal medicine. Noting that he had reported that appellant was unable to return to her regular duties, the employing establishment asked Dr. Lerner to review copies of several modified job descriptions of positions currently available. On December 19, 1991 Dr. Lerner reported that appellant was unable to return to work. He completed a work restriction

evaluation dated December 19, 1991 indicating that appellant was unable to work but could sit and walk intermittently for one hour a day.

On July 6, 1992 Dr. Lerner reported that appellant remained totally disabled and unable to do any type of gainful employment. He diagnosed chronic unresolved lumbosacral strain and sprain with a clinical radiculopathy, clinical disc herniation, meniscal tear over the right knee with a strain of the right knee, status post arthroscopy of the right knee, unresolved exacerbation of chondromalacia with traumatic synovitis and degenerative joint disease of the right knee. Dr. Lerner reported: "It is … my professional opinion that the injuries sustained by [appellant] are directly and causally related to severe trauma which took place on June 26, 1989."

On October 6, 1992 Dr. Arnold Lincow, appellant's Board-certified osteopathic physician, reported essentially the same diagnoses reported by Dr. Lerner. Dr. Lincow stated: "At the present time [appellant] is totally disabled and unable to do any type of gainful employment. Her condition remains poor and it may have deteriorated."

Also on October 6, 1992 appellant's orthopedic surgeon, Dr. Corey K. Ruth, reported that appellant had L3-S1 bulging discs with bilateral lumbar radiculopathy and right knee lateral meniscal tear. He earlier reported that an August 12, 1991 magnetic resonance imaging (MRI) scan of the right knee at Graduate Hospital indicated a tear of the lateral meniscus.

The Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Henry S. Wieder, Jr., a Board-certified orthopedic surgeon, for a second opinion. In a report dated October 16, 1992, he referred the Office to his earlier report of January 6, 1990 for the details of appellant's history at that time. Dr. Wieder summarized medical records and related appellant's subsequent history, complaints and his findings on physical examination. He concluded that appellant "no longer has any complaints referable to her prior injury to the left ankle, nor does she show any abnormality on current physical examination." Dr. Wieder reported significant complaints referable to appellant's lower back and right lower extremity, as well as marked restriction of back motion, but he explained that the latter being under voluntary control could not be considered strictly objective. He reported pain and tenderness as other positive findings relative to the back. With respect to appellant's right lower extremity, Dr. Wieder reported significant atrophy of the right thigh and to a lesser extent of the calf. He noted no swelling, effusion or instability of the right knee joint and the range of motion of the right knee, he stated, was equal to that of the left. Although appellant offered no specific complaints referable to the knee, she did avoid squatting. Dr. Wieder reported that electrodiagnostic studies revealed evidence of radicular involvement, although the MRI scan of the lumbar spine was normal and the computerized tomography (CT) scan showed bulging of discs but no frank disc herniation.

Dr. Wieder concluded that the ongoing problem with appellant's lower back would, in his opinion, be causally related to the work injury of June 26, 1989. He also concluded that appellant was not currently capable of returning to the work as a letter carrier. Further, Dr. Wieder reported that the modified position submitted for his review would probably be beyond appellant's current capacity for lifting. He completed a work restriction evaluation dated October 13, 1992 indicating that appellant could work four to six hours within the restrictions indicated.

On October 28, 1992 Dr. Wieder reported that films of the lumbosacral spine showed minimal anterior superior marginal spurring at L3 and L4 and a flattening of the lumbar lordosis. He noted no apparent loss of disc height, no spondylolisthesis and sacroiliac joints that appeared normal. Films of the right knee showed no evidence of any apparent degenerative changes. There was slight clouding of the suprapatellar space suggestive of possible synovial thickening.[1]

On October 29, 1993 appellant's specialist in internal medicine, Dr. Benjamin Bennov, diagnosed unresolved and severe lumbosacral sprain and strain, unresolved lumbar radiculopathy, multiple lumbar protruding discs, status post arthroscopy of the right knee with internal derangement, lateral meniscal tear of the right knee and exacerbation of chondromalacia of the right knee. He stated: "It is my professional opinion, based upon a reasonable degree of medical certainty, that [appellant's] injuries are directly and causally related to her severe trauma which took place on June 26, 1989."

On December 28, 1993 the Office determined that a conflict existed between appellant's attending physician and Dr. Wieder on the issue of the nature and extent of appellant's disability. On February 28, 1994 the Office referred appellant, together with the medical record and a statement of accepted facts, to an impartial medical specialist, Dr. Noubar Didizian, a Board-certified orthopedic surgeon, for the purpose of resolving the residuals of appellant's employment injury.

On May 2, 1994 Dr. Didizian reported that he had examined appellant on March 24, 1994. After relating appellant's history, medical course, symptoms and findings on examination, Dr. Didizian reported as follows:

> "Based on the examination and the extensive file review, it is my medical opinion that at the present time [appellant] does not have any acute findings as far as the right knee is concerned or the lower back. The neurologic examination of the lower back is completely negative for any nerve root compression. She was found by x-ray to have some spondylitic changes in the lumbar spine and certainly some of the symptomatology could be explained on that nature. The orthopedic examination today was negative to incriminate any ongoing residual low back problem at this time.
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> "As far as the right knee is concerned, there is no evidence of internal derangement nor effusion. [Appellant] had bilateral patellofemoral crepitation which is part of the aging process and this was not acute nor pain productive and of equal magnitude in both knees.
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> "At this point it is my medical opinion that all passive modalities of treatment should be stopped. [Appellant] should stay on isometric quadriceps exercises for

[1] In his January 6, 1990 report, Dr. Wieder opined that appellant sustained a low back strain/sprain and contusion of the right knee as a result of the traumatic episode of June 26, 1989. He reported that appellant no longer presented any residuals of the sprain of the left ankle but did present objective evidence of chronic low back strain/sprain and status post-surgical arthroscopy of the right knee joint.

both lower extremities. As fare as the low back is concerned, she should also stay on an isometric back program and range of motion program.

"It is also my medical opinion that the patient is capable of going back to gainful employment starting initially at the sedentary to light level and gradually increasing it.

"[Appellant's] initial symptoms did not include the lower back but that was incorporated after treatment was started by Dr. Lincow. Her initial complaints were hip, knee and ankle rather than back. [Appellant] was found to have spondylo which carries a natural history of intermittent exacerbations and remissions of back pain irrespective of any trauma. In my opinion [her] present symptomatology in the back is not related to the injury of June 26, 1989. This is related to the spondylo which she had as well as the degenerative changes as part of the aging process and the mild scoliosis which was noted.

"As far as the right knee is concerned, [appellant] underwent arthroscopic surgery and a plica was found which is not an abnormal structure by today's standards of appreciation of the knee. I thought [she] had inter-body grade II which is a degenerative tear of the posterior horn of the medial meniscus when I reviewed the MRI [scan] of August 12, 1991. [Appellant's] present symptomatology does not comply with any tear of the medial meniscus and so arthroscopic surgery for diagnostic purposes this time is redundant. I did not see any other MRI [scan] that was ordered by Dr. Ruth. I am not sure if there was another one even though the history indicates."

Dr. Didizian stated that in his opinion appellant's current symptomatology was not related to the injury of June 26, 1989. He completed a work restriction evaluation on March 24, 1994 showing estimated restrictions for sedentary-to-light work for four to six weeks.

On October 25, 1994 the Office issued a notice of proposed termination of compensation. The Office found that Dr. Didizian's opinion represented the weight of the medical opinion evidence and supported that all residuals of appellant's injury had ceased.

In a decision dated February 1, 1995, the Office terminated appellant's compensation benefits on the grounds that the weight of the medical evidence supported that the injury-related disability had ceased by March 5, 1995.

Appellant requested reconsideration on several occasions and submitted evidence in support thereof. A CT scan of the lumbar spine taken on November 30, 1994 was reported to show a bulging disc at L4-5 and degenerative changes at the posterior elements of L3-S1. An MRI scan of the right knee taken on December 5, 1994 was reported to show a sprain of the anterior cruciate ligament. The menisci were reported to be triangular with uniform signal intensity. A CT scan of the lumbar spine taken on June 21, 1995 was reported to show mild degenerative changes of the facet joints at L4-5 and mild-to-moderate changes at L5-S1, as well as a minimal bulge at L4-5. X-rays of the right knee taken on June 26, 1995 were reported to show minimal degenerative changes.

In a report dated June 21, 1995, Dr. Peter Bandera, a specialist in physical medicine and rehabilitation, noted a high degree of spasm in the thoracic and lumbosacral musculature. Range of motion in flexion and extension was severely limited due to an increase spasm pattern. He reported electrodiagnostic changes consistent with a radiculopathy involving the right nerve root: "These changes current[ly] have subacute and chronic features, reflecting ongoing nerve root irritation. This represents chronic unresolved low back syndrome with associated disc herniation." Dr. Bandera also reported that appellant was status post-internal injury to the right knee, with exacerbation of chondromalacia and traumatic synovitis by medical history.

In a report dated June 22, 1995, Dr. Richard L. Band, an orthopedic surgeon, related appellant's history of injury, medical course and complaints. On physical examination of the right knee, he noted atrophy of the quadriceps muscles, synovitis, positive patellofemoral click, markedly positive patellofemoral compression test, audible patellofemoral crepitus and positive Lachman's test. On examination of the lumbar spine, Dr. Band noted diminished range of motion in flexion, extension and lateral bending, mild tenderness and spasm in the paravertebral muscles and decreased sensation of the right anterolateral leg and right great toe. He diagnosed lumbar sprain and strain, chronic; lumbar degenerative disc disease; lumbar radiculopathy; herniated nucleus pulposus at L4-5; status post arthroscopy for torn lateral meniscus and chondromalacia patella; and rule out anterior cruciate ligament tear and degenerative changes in the right knee. Dr. Band reported:

> "In my profession opinion, within a reasonable degree of medical certainty, [appellant] did receive severe injuries in the work[-]related accident on June 26, 1989. Prior to the accident [appellant] was in good health and as a result of the accident she has had consequential limitations of use and function of her back and right lower extremity. The accident has caused her the inability to perform her normal daily activities. [Appellant] can[no]t work in any capacity and is totally disabled in my opinion.
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> "I have reviewed some comments made by Dr[s]. Didizian and Wieder and feel that they are not accurate regarding [appellant's] physical condition as evidenced by positive physical findings on my examination today."

In a January 8, 1997 report, Dr. Joseph S. Torg, an orthopedic surgeon, reported that x-rays that day demonstrated patella femoral degenerative changes on the skyline view. His examination revealed quadriceps atrophy, positive patella inhibition tests and anterior knee tenderness with small effusion, right knee. Dr. Torg stated: "On the basis of the history and physical examination, I think it is clear that [appellant] sustained an injury to the cartilaginous surface of her patella at the time of the initial injury. I think she now has post-traumatic chondromalacia patella." He restricted appellant to inside duties.

In decisions dated June 19, October 11, 1995, December 6, 1996 and January 12, 1998, the Office reviewed the merits of appellant's claim and denied modification of its prior decision.

The Board finds that the Office met its burden of proof to justify its termination of compensation benefits for the accepted conditions of left ankle sprain and contusion to the right knee.

It is well established that once the Office accepts a claim it has the burden of proof to justify termination or modification of compensation benefits.[2] After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[3]

The Office accepted appellant's claim for the conditions of lumbosacral strain, left ankle sprain and contusion to the right knee. Before it may terminate benefits for these conditions, the Office must establish that the conditions have resolved. The Office did not accept appellant's claim for disc herniation, bulging or protruding discs, spondylolisthesis, degenerative changes of the spine, radiculopathy, meniscal tear, right knee strain, exacerbation of chondromalacia, traumatic synovitis, degenerative joint disease of the right knee or crepitus. Appellant has the ultimate burden of proof to establish that any such conditions are causally related to the incident that occurred at work on June 26, 1989.

With respect to the accepted conditions, there is no issue regarding appellant's left ankle sprain and contusion to the right knee. On January 6, 1990 Dr. Wieder, the orthopedic surgeon and second-opinion physician, reported that appellant no longer presented any residuals of the sprain of the left ankle. Appellant's own physicians stopped diagnosing left ankle sprain and contusion to the right knee. On October 16, 1992 Dr. Wieder reported that appellant no longer had any complaints referable to her prior injury to the left ankle and showed no abnormality on current physical examination. Accordingly, the Board finds that the Office has met its burden of proof to terminate compensation benefits for the accepted conditions of left ankle sprain and contusion to the right knee.

The Board finds, however, that the Office has not met its burden of proof to justify its termination of compensation benefits for the accepted condition of lumbosacral strain.

On January 6, 1990 Dr. Wieder reported that appellant presented objective evidence of chronic low back strain/sprain. On July 6, 1992 Dr. Lerner, the attending specialist in internal medicine, diagnosed chronic unresolved lumbosacral strain and sprain and reported that it was his professional opinion that this, together with other conditions, was directly and causally related to the severe trauma that took place on June 26, 1989. In his second opinion report of October 16, 1992, Dr. Wieder made positive findings on physical examination. He reported significant complaints referable to appellant's lower back and marked restriction of back motion. Dr. Wieder also reported pain and tenderness. He concluded that the ongoing problems with appellant's lower back would, in his opinion, be causally related to the work injury of June 26, 1989. Dr. Wieder also concluded that appellant was disabled from returning to work as a letter carrier.

Thus, when the Office obtained its second opinion the record showed no conflict on the issue of whether residuals of the accepted lumbosacral strain had ceased. Attending physicians

[2] *Harold S. McGough*, 36 ECAB 332 (1984).

[3] *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

and the Office second opinion physician agreed that appellant continued to suffer from a chronic lumbosacral strain/sprain causally related to employment incident of June 26, 1989. When the Office determined that Dr. Wieder's opinion created a conflict necessitating referral to an impartial medical specialist, the conflict was not on whether residuals of the accepted lumbosacral strain had ceased but on the level of appellant's disability. He had reported that appellant could work four to six hours with restrictions while Dr. Lerner and Dr. Lincow, the osteopathic physician, had reported that appellant was totally disabled and unable to do any type of gainful employment. For this reason, Dr. Didizian, the orthopedic surgeon selected to resolve the conflict, is not considered to be an impartial medical specialist with respect to whether residuals of the accepted lumbosacral strain have resolved. His opinion in this regard does not carry the special weight generally accorded the opinion of such a specialist.[4] Dr. Didizian is, instead, considered to be a second opinion physician on this matter.

On May 2, 1994 report, Dr. Didizian reported that appellant had no acute findings as far as the low back was concerned. The neurologic examination was completely negative for any nerve root compression. X-rays showed some spondylitic changes, but the orthopedic examination was negative to incriminate any ongoing residual low back problem. Dr. Didizian opined that appellant's symptomatology was not related to the injury of June 26, 1989 but to spondylolisthesis, degenerative changes and mild scoliosis.

The Board finds that a conflict in medical opinion exists between Dr. Didizian and appellant's physicians, Drs. Lerner and Lincow, on whether appellant continues to suffer residuals of the accepted lumbosacral strain. On June 22, 1995 Dr. Bland, an orthopedic surgeon, renewed the conflict. Having diagnosed chronic lumbar sprain and strain, he related appellant's limitation of use and function of her back to the employment accident of June 26, 1989 and expressly disagreed with some of the comments made by Dr. Didizian (and Dr. Wieder) regarding appellant's physical condition. As there remains an unresolved conflict in medical opinion on whether appellant continues to suffer residuals of her employment-related lumbosacral strain, the Office has not met its burden of proof to terminate appellant's compensation benefits. The Board will reverse the Office's January 12, 1988 decision denying modification of its decision to terminate benefits.

The Board also finds that further development of the evidence is warranted to determine whether the arthroscopic surgery authorized by the Office caused or contributed to any medical condition of the right lower extremity or disability for work.

The Board has held that disability resulting from surgery or treatment authorized by the Office is compensable, even if the surgery or treatment is not for an employment-related condition.[5] The Office authorized arthroscopic surgery on appellant's right knee. Appellant underwent surgery on November 2, 1989. In 1992 Dr. Lerner diagnosed status post arthroscopy

[4] When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

[5] *Carmen Dickerson*, 36 ECAB 409 (1985).

of the right knee and Dr. Wieder reported significant atrophy of the right thigh and, to a lesser extent, the calf. Neither Drs. Wieder nor Didizian addressed whether this atrophy was a result at least in part of the authorized surgery. The Board will remand the case for further development and an appropriate final decision on this particular issue.

The Board also finds that appellant has not met her burden of proof to establish that other diagnosed conditions are causally related to the employment injury of June 26, 1989.

A claimant seeking benefits under the Federal Employees' Compensation Act[6] has the burden of proof to establish the essential elements of her claim by the weight of the evidence,[7] including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.[8]

The Office accepted that appellant sustained an injury in the performance of duty on June 26, 1989, but it did not accept appellant's claim for the conditions of disc herniation, bulging or protruding discs, spondylolisthesis, degenerative changes of the spine, radiculopathy, meniscal tear, right knee strain, exacerbation of chondromalacia, traumatic synovitis, degenerative joint disease of the right knee or crepitus. Appellant has the burden of proof to establish that any such conditions are causally related to her accepted employment injury.

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.[9]

The record in this case contains supporting opinion evidence from Dr. Lerner, who reported that relevant conditions were, in his professional opinion, directly and causally related to the severe trauma that took place on June 26, 1989. Similar supporting opinions can be found in reports from Dr. Bennov, a specialist in internal medicine, Dr. Band and Dr. Torg, an orthopedic surgeon. These opinions, however, are of diminished probative value because the physicians failed to provide sound medical reasoning to support their conclusions. Drs. Lerner and Bennov simply stated that it was their professional opinion; they did not disclose the basis of their opinion or explain what permitted such conclusions to a reasonable medical certainty. Dr. Bland went slightly further and noted that prior to the accident appellant was in good health; however, when a physician concludes that a condition is causally related to an employment because the employee was asymptomatic before the employment injury, the opinion is

[6] 5 U.S.C. §§ 8101-8193.

[7] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

[8] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[9] *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

insufficient, without supporting medical rationale, to establish causal relationship.[10] Dr. Torg indicated that he based his opinion on the history and his physical examination of appellant, but lacking any specificity this opinion is too vague and brief to establish appellant's entitlement to compensation benefits for chondromalacia patella.

It is not necessary that the evidence be so conclusive as to suggest causal connection beyond all possible doubt. The evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound and logical.[11] Typically, this entails describing in sufficient detail the employment incident in question, contemporaneous clinical findings and diagnoses, the claimant's relevant medical course and the currently diagnosed conditions. The probative value of an opinion on causal relationship will largely be determined by the care with which the physician explains his or her medical reasoning and the degree to which the physician supports the opinion with references to specific medical records. The opinions noted here support that a number of conditions not accepted by the Office are causally related to the incident that occurred on June 26, 1989, but they lack sufficient medical reasoning to discharge appellant's burden of proof.

[10] *Thomas D. Petrylak*, 39 ECAB 276 (1987).

[11] *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein at note 1.

The January 12, 1998 decision of the Office of Workers' Compensation Programs is affirmed regarding the termination of compensation benefits for the accepted conditions of left ankle sprain and contusion of the right knee and is reversed in all other regards and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.
June 1, 2000

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member