U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CATHERINE G. LACKLEY and DEPARTMENT OF VETERANS AFFAIRS, ALLEN PARK VETERANS HOSPITAL, Allen Park, MI

Docket No. 99-2158; Submitted on the Record;
Issued October 12, 2000

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issue is whether appellant's claimed condition or disability is causally related to her September 12, 1994 employment incident.

On May 8, 1996 appellant, then a 50-year-old nursing assistant, filed a traumatic injury claim for aggravation of her preexisting degenerative arthritis of her lower back. She reported that on September 12, 1994 she was transferring a patient from the stretcher to the bed and experienced a sudden sharp pain in her back. Appellant returned to work in a limited-duty capacity and worked through December 9, 1994 when the pain caused her to stop working. By notice of removal dated December 23, 1996, appellant was removed from the employing establishment effective January 10, 1997 on the grounds that she failed to provide adequate medical documentation to support her absence from work.

By decision dated September 16, 1996, appellant's claim was denied on the grounds that she failed to establish that her claimed back condition and disability for all work was causally related to the September 12, 1994 employment incident. Appellant requested reconsideration. By decision dated October 9, 1996, the Office of Workers' Compensation Programs denied appellant's application for review, finding that appellant failed to submit any new or relevant medical evidence not previously considered. Appellant appealed to the Board. By decision dated August 26, 1997, appellant's appeal was dismissed on the grounds that she had requested reconsideration of the prior decisions before the Office.[1]

Appellant subsequently requested numerous reconsiderations, which were denied in both merit and nonmerit reviews. By decisions dated December 11, 1997 and March 16, 1998, the Office, after conducting merit reviews, denied appellant's reconsideration requests on the grounds that the evidence submitted was insufficient to warrant modification of the prior decisions. By decisions dated August 6 and November 13, 1998, the Office denied appellant's

[1] Docket No. 97-599 (issued August 26, 1997).

request for review of the merits, finding the evidence submitted to be of an irrelevant or repetitious nature and, therefore, not sufficient to warrant review of the prior decisions. By decision dated March 12, 1999, the Office, after conducting a merit review, denied modification of its prior order, finding the evidence presented in support of the application not sufficient to warrant modification.

The Board finds that appellant has not met her burden of proof in establishing that her claimed condition or disability is causally related to her September 12, 1994 employment incident.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim, including the fact that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3]

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[4] There is no dispute that the incident occurred as alleged.

Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[5] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,[6] must be one of reasonable medical certainty[7] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[8]

In an October 24, 1994 medical report, Dr. Jeffrey Rose, an osteopath and appellant's treating physician, indicated that appellant has low back pain with pain radiating into her legs. He related that her pain started after lifting a patient at work on September 12, 1994. Dr. Rose

[2] 5 U.S.C. §§ 8101-8193.

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

[4] *Louise F. Garnett*, 47 ECAB 639, 643 (1996).

[5] *Id.*

[6] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[7] *Morris Scanlon*, 11 ECAB 384-85 (1960).

[8] *William E. Enright*, 31 ECAB 426, 430 (1980).

opined that appellant's pain was related to the work incident. He noted some restrictions and indicated that appellant's condition should resolve in four to six weeks.

A November 16, 1994 disability slip from Dr. Rose indicated that appellant was totally disabled secondary to a work injury. In a November 30, 1994 medical report, he indicated a history of the injury, noting that he first treated appellant on September 14, 1994. Dr. Rose noted that a September 19, 1994 electromyogram (EMG) on her lower extremities was normal. Thyroid function test and rheumatology profile on October 3, 1994 was normal. An October 11, 1994 computerized axial tomography (CAT) scan of her lumbar spine revealed minimal degenerative changes with the left facet joint at L4-5. No evidence of focal herniation or significant stenosis was identified. An October 19, 1994 bone scan was negative. Dr. Rose opined that he felt appellant's pain was real and stated that he doubted that appellant would be able to return to unrestricted work in the near future. He related that appellant's problems were severe and appeared to be chronic in nature.

In a December 15, 1994 report, Dr. Rose noted that a December 7, 1994 incident involving appellant's head nurse led to appellant's suspension from work. He stated that this incident increased appellant's stress level and anxiety and has aggravated her leg and back pain. The Board notes that appellant never filed a claim for the December 7, 1994 incident and this is not part of this claim.

In reports dated January 27 and September 10, 1996, Dr. Rose reiterated the history of the injury and objective testing of appellant. He diagnosed lumbar pain, degenerative arthritis of the lumbar spine and heel spurs bilaterally. Dr. Rose continued to opine that appellant could not return to work and should be considered permanently disabled. He also stated that appellant's pain was directly related to the incident of September 12, 1994. Dr. Rose reasoned that, although appellant's symptoms were subjective, due to the long-standing nature of her symptoms, he did not feel she would be able to be gainfully employed at this time or in the near future.

In a March 8, 1998 report, Dr. Surinder Mendiratta, a Board-certified internist, noted that appellant has a history of hypertension and hypercholesterolemia. She also noted that appellant has an alleged history of chronic back pain, which she allegedly suffered at work on September 12, 1994. Dr. Mendiratta noted that she was evaluating appellant for back pain and ordered an MRI. In a June 5, 1998 report, she noted a history of injury and noted that she had been under the care of Dr. Rose. Dr. Mendiratta noted that she examined appellant for the first time on December 26, 1997. A review of appellant's records indicated that appellant was being treated as a disabled patient. Work up done included EMG's, CAT and bone scans. Dr. Mendiratta provided the results of her examination. She noted that appellant underwent an MRI of the lumbar spine on April 27, 1998, which showed desiccation of disc material at L3-4, L5 and L5-S1 with no evidence of disc extrusion or protrusion identified. An EMG of the lower extremities showed no electrodiagnostic evidence of a right or left lumbosacral radiculopathy, plexopathy, or other mononeuropathy on examination.

In a June 9, 1998 report, Dr. David Gordon, a Board-certified physical medicine and rehabilitation specialist, noted that appellant had been involved in a therapy program and was on a weight loss conditioning program. He provided the results of his examination and diagnosed

low back pain, nonspecific without focal or neurologic deficits on examination, most likely myofascial in orgin; medical history includes hypertension and obesity; possible depression.

In a June 26, 1998 report, Dr. Phillip Friedman, a Board-certified neurosurgeon, noted the history of injury and provided his examination results. He noted that appellant had gained approximately 100 pounds due to inactivity since 1994. Dr. Friedman further noted that the April 1998 MRI scan showed dessication at L3-4, L4-5 and L5-S1, with no evidence of disc extrusion or protrusion. He opined that appellant has evidence of some chronic degenerative disease, obesity and that he suspected she probably has a chronic low back strain. Dr. Friedman found no indication for surgical intervention and advised weight reduction and a reconditioning program.

In a July 28, 1998 report, Dr. Gordon noted the history of injury as described by appellant. He noted that she was recently seen on July 28, 1998 with the impression of back and left hip area pain, without neurologic deficit, myofascial in nature. Dr. Gordon stated that as the myofascial pain was of approximately four years' duration, it was chronic. In a disability form of the same date, Dr. Gordon advised that appellant could return to work on July 29, 1998 with restrictions.

In an August 28, 1998 report, Dr. Mendiratta indicated that appellant had been under her care since January 1998, since Dr. Rose went on medical leave. She indicated that "as Dr. Rose previously concluded, I too think that [appellant] is unable to perform her work duties at this previous time. She is under my care for consistent chronic back pain, knee pain, difficulty lifting and traveling distances, all which are related to a work injury.

In a September 11, 1998 report, Dr. Gordon provided the results of his examination and noted that appellant's back and myofascial pain without neurologic deficit, induced with activity and in particular at the date of the prior mentioned incident in September 1994 while at work. He stated that, while there was noticed improvement in her symptoms and function by virtue of the treatment course undertaken, appellant "is not at this point, able or willing to return to work today."

In an undated report, which the Office received on February 26, 1999, Dr. Mendiratta provided a descriptive summary of appellant's care with Dr. Rose and noted his assessments. Dr. Mendiratta reiterated that she assumed care of appellant on December 26, 1997. She described appellant's symptoms and noted that her past medical history included a previous back injury in 1984, for which appellant received extensive physical therapy and was off work a significant amount of time. Dr. Mendiratta noted pertinent positive examination findings and stated that all the examination findings were based on her multiple examinations and encounters with appellant from December 1997 to December 1998. She noted that appellant also underwent multiple evaluations by Dr. Gordon and Dr. Friedman. An MRI on April 27, 1998 showed dessication of discs at L3-4, L4-5, L5-S1 without any disc extrusion. An EMG was also reported with no evidence of radiculopathy or neuropathy. Dr. Mendiratta opined, after reviewing appellant's medical chart of treatment with Dr. Rose and his strong opinion and also with the history of back injury in 1984 involving work loss, along with a documented degenerative joint disease, that there may be a possibility that the mechanics of injury sustained in 1994 could have

aggravated her fragile spine and degenerative joint disease, causing her to have some pain, even though there is no significant neurological deficit.

In the present case, there is insufficient rationalized medical opinion evidence to support that appellant's claimed back condition is causally related to her September 12, 1994 employment incident. As noted previously, the medical evidence submitted, which relates to a psychiatric or emotional condition on December 7, 1994, is not part of this claim and is considered to be irrelevant to the issue in this case. Appellant's personnel awards and performance appraisals are also considered to be irrelevant to the issue in this case. Furthermore, as physical therapists are not considered physicians under the Act, the physical therapy notes of Susan Cotter have no probative value in this claim.[9]

The Board finds that Dr. Rose has not provided a reasoned medical opinion supported by objective findings as to the medical connection between appellant's diagnosed conditions of chronic lumbar pain syndrome and degenerative arthritis of the spine and the September 12, 1994 employment incident. Although in his latest reports of record from January 27 and October 31, 1995 and September 10, 1996 Dr. Rose provided an accurate history of appellant's September 12, 1994 employment incident, he failed to provide objective evidence upon examination or provide medical reasoning to support his opinion that appellant's subjective complaints of pain were related to the September 12, 1994 incident. Further, Dr. Rose diagnosed not an objective compensable diagnosis, but a pain based diagnosis of chronic lumbar pain syndrome and degenerative arthritis. The Board notes that it has frequently explained that statements about an appellant's pain, not corroborated by objective findings of disability being demonstrated, or a diagnosis of "pain" or "chronic pain syndrome," do not constitute a basis for payment of compensation.[10] Moreover, no medical reasoning or connection between appellant's September 12, 1994 employment incident and the diagnosis of degenerative arthritis of the spine was discussed. Due to these deficiencies, Dr. Rose's reports are of diminished probative value and are insufficient to establish appellant's claim of disability.

Although the June 26, 1998 report from Dr. Friedman mentions an injury at work, the report is devoid of any details. Although he opined that appellant has evidence of some chronic degenerative disease and suspected that she probably has a chronic low back strain, the report did not discuss the specifics of the claimed injury at work and provided no discussion of causal relationship, which is the relevant issue in this case. Accordingly, Dr. Friedman's report is of diminished probative value and is insufficient to establish appellant's claim of disability. Likewise, although Dr. Gordon noted in his report of September 11, 1998 that appellant's back and myofascial pain without neurological deficit was induced with activity and started while at work on September 12, 1994, he failed to discuss the specifics of the claimed work injury and provided no discussion of causal relationship. Moreover, in his report of July 29, 1998, Dr. Gordon noted that appellant was not totally disabled as he opined she could return to work on July 28, 1998 with restrictions.

[9] *Thomas R. Horsfall*, 48 ECAB 180 (1996).

[10] *See John L. Clark*, 32 ECAB 1618 (1981); *Huie Lee Goad*, 1 ECAB 180 (1948).

The Board further notes that none of Dr. Mendiratta's reports contain an adequate history of injury upon which a reasonable opinion can be based and she provides only speculative and unrationalized support for her opinion on causal relationship. In her June 5, 1998 report, Dr. Mendiratta noted a brief history of the employment incident, but failed to provide a discussion of causal relationship. Although in her August 28, 1998 report Dr. Mendiratta advised that appellant was totally disabled and that her consistent chronic back pain and other conditions were related to a work injury, she based her opinion on Dr. Rose's conclusions. In her undated report, which the Office received on February 26, 1997, Dr. Mendiratta noted for the first time that appellant had a previous back injury in 1984, for which she underwent extensive physical therapy and was off work a significant amount of time. Based on the findings and opinions of appellant's former physician along with a previous history of back injury in 1984 and documented degenerative joint disease, Dr. Mendiratta opined that, even though there was no significant neurological deficits, there was a "possibility" that the mechanics of injury sustained in 1994 could have aggravated her fragile spine and degenerative joint disease, causing her chronic pain. As previously noted, pain is a subjective finding and does not equate to a diagnosable condition from the work injury itself. With Dr. Mendiratta's reliance on the findings and opinions of Dr. Rose, her opinion on causal relationship is not well rationalized. Moreover, her opinion on causal relationship is couched in speculative terms and she failed to note whether the September 1994 employment incident did in fact cause a material worsening of appellant's underlying condition.[11]

An award of compensation may not be based on surmise, conjecture or speculation, or appellant's belief of causal relationship. The mere fact that a disease or condition manifests itself or worsens during a period of employment[12] or that work activities produce symptoms revelatory of an underlying condition[13] does not raise an inference of causal relationship between the condition and the employment factors. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence and appellant has failed to submit such evidence in the present case.[14] Consequently, appellant has not submitted rationalized medical evidence explaining how and why the diagnosed condition was caused or aggravated by appellant's federal employment or the September 12, 1994 employment incident, the Office properly denied appellant's claim for compensation.

[11] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value); *see also Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

[12] *William Nimitz, Jr., supra* note 6.

[13] *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

[14] *William Nimitz, Jr., supra* note 6.

The decisions of the Office of Workers' Compensation Programs dated March 12, 1999, November 13 and August 6, 1998 are hereby affirmed.

Dated, Washington, DC
October 12, 2000

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member