U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of MIRNA J. CRUZ and U.S. POSTAL SERVICE,
POST OFFICE, Los Angeles, CA

*Docket No. 03-570; Submitted on the Record;*
*Issued May 1, 2003*

---

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty causally related to factors of her federal employment.

On December 13, 2000 appellant, a 36-year-old distribution/window clerk, filed an occupational disease claim for compensation (Form CA-2) alleging that she sustained a condition of chronic repetitive stress disorder of the lower back arising out of her duties, which included bending, lifting, pushing, pulling, operating the window and standing. Appellant explained that she became aware of the problem when she was treated by several physicians for numbness and severe pain to her lower back and legs after she jumped over a counter during a robbery of the employing establishment.[1] Appellant did not stop work.[2] The employing establishment controverted the claim.

The record reflects that appellant obtained chiropractic and orthopedic treatment dating from October 10, 1997 to February 23, 2001. Additional medical evidence consists of treatment notes and requests for physical therapy from Dr. Lorelei Davidson, Board-certified in physical medicine and rehabilitation, dating from May 3, 2000 to July 29, 2002. She diagnosed lumbar radiculopathy, myofascitis, discopathy, history of spondylolisthesis, sacroiliaciris, lumbar radiculitis, ruled out discopathy, lumbar derangement, sacroiliac instability, history of spondylolisthesis and mild anxiety.

In progress notes dated May 22, 2000, Dr. Nicholas Panaro, Board-certified in physical medicine and rehabilitation and appellant's treating physician, opined that appellant had a work-related injury of chronic repetitive stress to the lower back and was born with neural foraminal

[1] The record reflects that appellant was born with neural foraminal stenosis and was tested for multiple sclerosis.

[2] The record reflects that appellant filed a traumatic injury claim No. A2-773653, which was denied.

stenosis.[3] This allowed appellant to have more symptomatology secondary to her repetitive stress syndrome. Dr. Panaro explained that if she did not have this severe narrowing and spondylolisthesis, she may not have had such a severe breakdown of the lumbar spine over the years. He indicated that appellant was recently diagnosed with a neurological disease of unspecified origin that could compound and worsen her whole clinical syndrome and might also have multiple sclerosis. Dr. Panaro recommended that appellant continue to work with restrictions of no lifting greater than 20 pounds or repetitive bending of the back. In his addendum he opined that appellant had a partial disability that could progress to total disability. He noted that the work-related injury, which was chronic repetitive syndrome of the lower back, was causing a partial work disability status.

In a May 31, 2000 report, Dr. Suzanne Brown, a Board-certified diagnostic radiologist, indicated that appellant had a normal brain stem auditory evoked potential and a normal ENG, but her magnetic resonance imaging (MRI) scan of the brain showed focal high signal lesions without enhancement or mass effect and indicated that they did not involve the posterior fossa. Dr. Brown determined that appellant had unexplained bilateral lower extremity paresthesias and low back pain and recommended lumbar puncture under fluoroscopy to rule out multiple sclerosis and Lyme disease. The physician stated it was difficult to detect CNS vasculitis. Because of the positive Sjogren's B and recommended that appellant might benefit from a rheumatologic work up as well.

In a July 17, 2000 report, Dr. Panaro opined:

> "Apparently, the patient has a chronic repetitive stress disorder of the lower back, over 14 years, working at the [employing establishment] with bending and lifting being the primary job description for her. In addition, back in 1997, the [employing establishment] was robbed at gunpoint and she jumped over the counter during that time and strained her back in addition to that."

In his recommendations, Dr. Panaro indicated that appellant had a work-related injury of chronic repetitive stress to the lower back. She was born with, most likely, neural foraminal stenosis. He opined that this setup allowed her to have more symptomatology occurring secondary to her repetitive syndrome and should she not have this severe narrowing and spondylolisthesis, she may not have had such severe breakdown of the lumbar etiology over the years. Dr. Panaro also noted that the claimant had been diagnosed with a "neurological disease of unspecified origin, which will compound and worsen her whole clinical syndrome."

In a letter dated January 30, 2001, the Office of Workers' Compensation Programs requested additional information from appellant's treating physician.

In a February 23, 2001 report, Dr. Panaro opined that appellant had a diagnosis of spondylolisthesis with bilateral neural foraminal stenosis. He explained that appellant had chronic repetitive stress syndrome secondary to her preexisting lumbar spondylosis, however,

[3] He indicated that this was most likely.

her work injury aggravated the preexisting situation. Dr. Panaro opined that this was a partial causal relationship.

On February 8, 2001 the Office referred appellant for a second opinion examination with Dr. Michael J. Carciente, a Board-certified neurologist.

In a report dated March 21, 2001, Dr. Carciente indicated the etiology of appellant's current complaints remained unclear. He noted the neurological examination was essentially unremarkable except for minimal atrophy noted in the right hand from a prior injury and the reported sensory deficits noted in his evaluation did not obey any specific anatomic distribution. The physician indicated that appellant was found to have spondylolisthesis with severe root compression in an MRI scan study and recommended that is should be further assessed by an orthopedic consultant, including whether this was related in any way to her work-related activities or to the August 15, 1997 incident. Dr. Carciente opined that he could not rule out the possibility that her leg symptoms were due to the findings noted in the MRI scan study and especially in view of a positive lower extremity electromyogram, assuming that the test was done in an accurate manner. He again deferred assessment regarding the spondylolisthetic condition noted in the MRI scan study to an orthopedic consultant.

In an April 2, 2001 report, Dr. Panaro indicated that he believed that appellant had a "Workers' [c]ompensation related injury where she has spondylolisthesis, which was then aggravated by her jumping over the counter during a robbery and having chronic repetitive stress of the lower back also over a period of time since then which is amplified her symptoms into the legs as well."

On April 4, 2001 the Office advised appellant of a second opinion examination with Dr. Kenneth Falvo, a Board-certified orthopedic surgeon.[4]

In a report dated April 25, 2001, Dr. Falvo indicated that appellant presented with low back pain following an accident on August 15, 1997 when she jumped over the counter at work after being threatened by a robber. The physician indicated that at this point she experienced low back pain. He noted that appellant had both chiropractic and orthopedic treatment. Dr. Falvo diagnosed L5-S1 spondylolisthesis, Grade 1, preexisting and chronic low back sprain. Further, the physician noted that appellant exhibited a mild permanent partial disability, maximum medical improvement was achieved and appellant could return to a full workday provided her lifting did not exceed 10 pounds, regularly during the routine workday. Regarding appellant's spondylolisthesis, he stated that it was his belief that her spondylolisthesis preexisted the accident of July 21, 1997 but perhaps has aggravated the condition.

On August 15, 2001 the Office received a statement from appellant describing the Jefferson Valley robbery that occurred on July 21, 1997. In her statement, appellant indicated that she climbed the counter after the robbers left to check on her coworkers.

[4] This second opinion was based upon the referral from Dr. Carciente.

In a decision dated August 21, 2001, the Office denied appellant's claim for compensation as the evidence did not demonstrate a causal relationship between the injury and the claimed conditions or disability.

In a report dated September 5, 2001 from Dr. Ezriel Kornel, a Board-certified neurological surgeon, noted appellant's history of injury and indicated that she jumped over a desk during a robbery. Dr. Kornel diagnosed a condition of L5 radiculopathy secondary to spondylolisthesis at L5-S1. He did not provide any opinion with respect to whether the condition was related to any claimed work factors.

In a report dated January 2, 2002, Dr. Panaro indicated:

> "[Appellant] is a patient known to me since January 28, 2000 where she presented as a patient who had radiculopathic symptoms into the legs and lower back pain involving left leg sciatica like symptoms as well as right side leg numbness in addition. She also had additional history in 1997 of having right sided leg numbness that also resolved in about a month's time. She reported no specific trauma previously, one time incident of injury, other than the fact that she had been working as a mail clerk throughout this period of time."

Dr. Panaro noted appellant's various diagnostic testing and treatments and restrictions that were placed on the appellant's work activities. He noted that by April 2, 2001, it was clarified that the patient had a workers' compensation related injury aggravating the preexisting condition of spondylolisthesis with chronic repetitive stress of lifting and bending required in the employing establishment position that she had. In addition to that, the robbery of the employing establishment, in which she jumped over a counter, seemed to aggravate her symptomatology as well. This was also added to the preexisting situation of low back pain and lumbar radiculopathy. He concluded:

> "In my medical opinion and specialty of physical medicine and rehabilita1ion, I feel that this patient has had chronic repetitive injury to the lower back to her preexisting spondylolisthesis causing radicular symptoms into the legs, which would require lumbar interventional surgery. I believe that also in addition to that the incidents of the robbery where she jumped over the counter aggravated further her preexisting lumbar radiculopathy. I believe that the patient cannot work full [-]time because of this and is permanently partially disabled due to the fact that her symptoms have not improved with conservative and aggressive conservative care to this date. Again, the action of jumping over the counter I believe strained the lower back further in 1997 on top of the repetitive injury that she sustained with chronic lifting of weight in the area of 50 pounds, which is part of her job description. She did work full[-]time duty until 1999 as my history has stated previously. I believe that her situation is permanent. I believe she is permanently partially disabled and I believe that it is secondary to her work[-]related activities."

In a report dated July 3, 2002, Dr. Panaro indicated:

> "The patient has repetitive lower back injury from the long exposure of, lifting, bending and sorting mail via the postal service. This is a chronic repetitive injury to her lower back. If she was out of work one hundred per cent, her back would still be in the same condition it is today. 'Resting for a period of time or having a light[-]duty assignment' will not reverse the degeneration of her lower back.
>
> "As far as number two is concerned, the Department of Labor needs to have a more detailed explanation of her work duties and how it aggravated her condition. Again, this is a chronic, repetitive job injury of bending and lifting. The Department of Labor, I believe, is very familiar with the lifting requirements of postal workers, which need to be at least 75 pounds minimum, of which [appellant] has met, up to the point of 1997, when she had right-sided leg numbness and back pain, which should resolve in about one months time."

Further, he stated that Dr. Andrew Peretz, a Board-certified orthopedic surgeon, saw the patient in November 1999, when she had another episode of back pain with radicular symptoms where her back symptoms were aggravated by jumping over a counter during a robbery incident. He concluded by stating that he did not understand why the Office was denying responsibility for appellant's treatment, when, indeed, "chronic low back pain is quite often attributed to chronic, repetitive injury, which this patient has been exposed to prior to her work restrictions."

Appellant, through her attorney, requested reconsideration on August 19, 2002.

In an August 26, 2002 decision, the Office denied modification of the August 21, 2001 decision.

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

An employee who claims benefits under the Federal Employees' Compensation Act[5] has the burden of establishing the essential elements of his or her claim.[6] The claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.[7] 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 in the development of the

[5] 5 U.S C. §§ 8101-8193.

[6] *Ruthie B. Evans,* 41 ECAB 416, 423-24 (1990); *Donald R. Vanlehn,* 40 ECAB 1237, 1238 (1989).

[7] *Brian E. Flescher,* 40 ECAB 532, 536 (1989); *Ronald K. White,* 37 ECAB 176, 178 (1985).

evidence.[8] Accordingly, once the Office undertakes development of the medical evidence, it has the responsibility to do so in the proper manner.[9]

In the instant case, the Office requested information from two second opinion physicians, Drs. Carciente and Falvo. Dr. Carciente indicated the etiology of appellant's current complaints remained unclear. Further, he was unable to make a decision with respect to causation and advised that an orthopedic opinion should be obtained. The Office referred appellant to Dr. Falvo, a Board-certified orthopedist, who opined that appellant's spondylolisthesis preexisted the accident of July 21, 1997 but perhaps aggravated the condition. His opinion was speculative[10] and did not answer the causation issue. Accordingly, after receiving Dr. Falvo's opinion, the Office determined that it was of no assistance and relied upon the report of appellant's physician, Dr. Panaro. The Board finds that as the Office sought the opinion of two medical specialists, it has the responsibility to obtain an opinion that adequately addresses the issue presented in the case.[11] On remand, the Office should secure a medical report containing a reasoned medical opinion on the relevant issue of whether appellant's condition of repetitive stress disorder and preexisting condition of spondylolisthesis was caused or aggravated by identified compensable factors of employment.[12]

[8] *Dorothy L. Sidwell,* 36 ECAB 699 (1985); *William J. Cantrell,* 34 ECAB 1233 (1983).

[9] *John W. Butler*, 39 ECAB 852 (1988).

[10] The Board has held that an opinion which is speculative in nature has limited probative value in determining the issue of causal relationship. *Arthur P. Vliet,* 31 ECAB 366 (1979).

[11] *See Mae Z. Hackett,* 34 ECAB 1421 (1983).

[12] After a claims examiner requests clarification of an issue from an attending physician, the Office's procedure manual provides, "The CE [claims examiner] must ensure, however, that the attending physician's reply really does dispose of the issue." Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.8(a) (April 1993).

The August 26, 2002 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded to the Office for further proceedings consistent with this decision.

Dated, Washington, DC
May 1, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member