United States Department of Labor
Employees' Compensation Appeals Board

SHERRY SHREIBER, Appellant	)	
and	)	**Docket No. 04-1966**
	)	**Issued: January 24, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Harrisburg, PA, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On August 4, 2004 appellant filed a timely appeal of an August 2, 2004 decision of the Office of Workers' Compensation Programs that denied her claim for reimbursement of surgery. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the surgery appellant underwent on November 5, 2003 was necessary for an employment-related condition. On appeal her attorney contends that the opinion of the second opinion physician is of no probative value because this physician did not examine appellant and because he was asked and answered an Office question regarding causal relation, an issue that had already been resolved.

FACTUAL HISTORY

On September 3, 2003 appellant, then a 46-year-old mail processing clerk, filed a claim for compensation for an occupational disease. She claimed that the constant pulling and pushing

of mail trays, containers and racks resulted in uterine and bladder prolapse. The employing establishment indicated that her position required intermittent lifting of up to 40 pounds and intermittent pulling/pushing of up to 500 pounds.

In a September 6, 2003 report, Dr. Wayne D. White, a Board-certified obstetrician and gynecologist, diagnosed "symptomatic pelvic relaxation (cystocele, rectocele, uterine descent)" and stress urinary incontinence and indicated that these conditions were aggravated by lifting and straining. In an October 15, 2003 note, Dr. White indicated that appellant would be undergoing surgery on November 5, 2003. By letter dated November 3, 2003, the Office advised her that the materials she had submitted were not sufficient to determine whether she was eligible for compensation. The Office requested further factual information and a comprehensive medical report from her treating physician.

By letter dated November 5, 2003, the Office advised appellant that it had accepted that she sustained an aggravation of uterovaginal prolapse in the performance of duty. In another November 5, 2003 letter, the Office requested Dr. White's reasoned opinion whether appellant's surgery was needed as a result of a work-related aggravation of her condition or as a result of an underlying condition. In a November 7, 2003 report, Dr. White indicated that appellant's condition of uterine prolapse, rectocele, cystocele and urinary incontinence "can be exacerbated by heavy lifting/straining" and that he performed a vaginal hysterectomy and vaginal repairs with a pubovaginal sling on November 5, 2003.

By decision dated December 5, 2003, the Office denied appellant's request for surgery on the basis that the medical evidence did not demonstrate that the surgery was related to the accepted condition. Her January 12, 2004 request for reconsideration was denied by the Office without a review of the merits of her claim.

Appellant requested reconsideration and submitted an April 2, 2004 report from Dr. White, who, after noting that she underwent surgical correction of pelvic relaxation on November 5, 2003 stated:

> "The pelvic support defect resulting in this problem typically starts with trauma related to childbirth and may worsen at the time of menopause presumably due to declining estrogen levels and thinning of the support tissue.
>
> "[Appellant] was not menopausal and her one and only pregnancy ended in a vaginal delivery of a child that only weighed 5 pounds 4 ounces. No other risk factors for this condition are apparent in her medical history. It is a reasonable medical certainty that[,] if she engaged in heavy lifting for a prolonged period of time that it would represent a contributing factor in the development of this condition. This would be analogous to an abdominal wall hernia formation in a manual laborer."

An Office medical adviser reviewed Dr. White's report on May 17, 2004 and recommended that the request for surgery be denied for the reasons that Dr. White noted that the condition began with childbirth and was aggravated with age, that the condition was not

analogous to hernia because hernias commonly arise from a specific injury, that appellant sustained no specific identifiable injury and that she had preexisting pathology.

On May 17, 2004 the Office referred the case record and a statement of accepted facts to Dr. Donald L. Mansfield, a Board-certified obstetrician and gynecologist, for a second opinion whether appellant's condition was medically connected to factors of her employment and whether the November 5, 2003 surgery was needed due to an aggravation of the underlying condition or because of the natural progression of the underlying condition. In a July 15, 2004 report, Dr. Mansfield stated that the diagnoses of uterine prolapse, cystocele and rectocele were established. As to causal relation, Dr. Mansfield stated:

> "Symptomatic pelvic relaxation is always in women and can be related to genetics, but in most cases it is related to childbirth. The pelvic muscles are stretched during labor and from the baby's head coming through the vagina. The length of labor and the number of hard contractions and bearing down until the baby is delivered are all factors. The bigger the baby's head the more the pelvic supporting structures are stretched. However, some women heal without any evidence of permanent stretching and others even with a five[-]pound baby never have the same muscle tone and control as they did before having childbirth.
>
> "As time goes on the condition usually worsens with or without heavy lifting. I have never seen a case of symptomatic pelvic relaxation in a woman from heavy lifting, without having at least one vaginal delivery in the past. A lot of heavy lifting may aggravate the already existing condition, but I do not believe you could prove that objectively.
>
> "Most likely [appellant] would have had to have the surgery at some point in time whether she was doing heavy lifting or not."

Describing any preexisting disability, Dr. Mansfield stated: "[Appellant] had a baby and was later noted to have the prolapse problem. The problem started after the patient had a baby." In response to the question whether appellant's November 5, 2003 surgery was needed due to an aggravation of the underlying condition, Dr. Mansfield stated:

> "In my opinion it was needed because of a natural progression of the underlying condition that happened when she went through labor and delivery of her child.
>
> "There are many other women doing that same type of job with pushing and pulling and lifting the same amount of weight as she is required to do and they do not get uterine and bladder prolapse."

By decision dated August 2, 2004, the Office found that the opinion of Dr. Mansfield represented the weight of the medical evidence and that modification of its prior decision was not warranted.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
>
> '(1) end, decrease or increase the compensation awarded; or
>
> '(2) award compensation previously refused or discontinued.'"

The Office's regulation also provide for review of an award on the Director's own motion, stating, "If the Director determines that a review of an award is warranted (including, but not limited to circumstances indicating a mistake of fact or law or changed conditions), the Director (at any time and on the basis of existing evidence) may modify, rescind, decrease or increase compensation previously awarded or award compensation previously denied."[1] The Office is not precluded from readjudicating an issue that has once been decided[2] and may develop the medical evidence to determine whether rescission of its acceptance of a claim is justified.[3]

The Office's regulation authorize sending "the case file for second opinion review where actual examination is not needed."[4] Whether a physical examination is required depends primarily on the type of issue to be resolved. The Board has held that, "[W]here the diagnosis is clearly established and the issue is whether factors of employment caused or aggravated the diagnosed condition, a physical examination would add little probative value to a medical opinion on causal relation."[5]

ANALYSIS

The Office accepted that factors of appellant's employment aggravated her uterovaginal prolapse on November 5, 2003, but, by a December 5, 2003 decision, found that her November 5, 2003 surgery for the prolapse was not related to her employment. These two findings can only be reconciled by a finding that the aggravation was temporary and ended before the surgery. Otherwise, the employment-related aggravation of appellant's uterovaginal

[1] 20 C.F.R. § 10.610.

[2] *Howard E. Johnston*, 40 ECAB 777 (1989).

[3] *See John W. Pope*, 33 ECAB 810 (1982); *George B. Fillian*, 29 ECAB 331 (1978).

[4] 20 C.F.R. § 10.320.

[5] *Melvina Jackson*, 38 ECAB 443, 451 (1987).

prolapse contributed to the need for surgery for this condition, which would make the surgery compensable.[6]

After appellant submitted an April 2, 2004 report from Dr. White further explaining his opinion why her prolapse was related to lifting in her employment, an Office medical adviser reviewed this report and recommended that the surgery not be reimbursed by the Office, not because the aggravation was temporary and had ended, but because Dr. White's report did not show that the prolapse was related to her employment. At this point it was permissible for the Office to seek a second opinion not only on whether the surgery was related to the accepted aggravation but also on whether appellant's condition was actually related to her employment at all. As noted above, the Office is not prohibited from readjudicating the issue of whether appellant's uterovaginal prolapse was aggravated by her employment.

Dr. Mansfield, the Board-certified obstetrician and gynecologist, to whom the Office referred the case record for a second opinion, concluded that the surgery was "needed because of a natural progression of the underlying condition that happened when she went through labor and delivery of her child." His report also concluded that it could not be proven objectively that heavy lifting aggravated appellant's preexisting condition and his statement that many other women doing the same amount of lifting and pushing and pulling did not get uterine and bladder prolapse indicates that he does not believe appellant's condition was related to her employment, by cause or aggravation. That Dr. Mansfield did not physically examine appellant is of no consequence. The diagnosis was already established, the only question was causal relation and the diagnosed condition was already surgically corrected at the time of the referral to Dr. Mansfield.

The Board finds that there is a conflict of medical opinion between the two Board-certified obstetricians and gynecologists who rendered opinions in this case. Both reports have deficiencies that reduce their probative value, but the reports of Dr. White and Dr. Mansfield are of virtually equal weight and rationale. In his April 2, 2004 report, Dr. White, appellant's attending physician, reiterated his previous opinion that the heavy lifting in her employment contributed to her condition and explained that there were no other risk factors, such as menopause or giving birth to a large child. However, he did not specifically address whether the November 5, 2003 surgery was related to the accepted aggravation or to the natural progression of the underlying condition. Dr. Mansfield, the Office's referral physician, negated causal relation but acknowledged that heavy lifting can aggravate the preexisting condition appellant had due to childbirth. He did not adequately explain why he believed that the lifting appellant performed at work did not aggravate her condition or contribute to the need for surgery. Dr. Mansfield's statement that many other women doing the same amount of lifting, pushing and pulling did not get uterine and bladder prolapse is of general application rather than addressed to the particular circumstances of the case at hand.[7] Dr. Mansfield's statement that appellant would

[6] Any contribution of employment factors is sufficient to establish the element of causal relation. *Robert W. Griffith*, 51 ECAB 491 (2000); *Glenn C. Chasteen*, 42 ECAB 493 (1991); *Arnold Gustafson*, 41 ECAB 131 (1989); *Beth P. Chaput*, 37 ECAB 158 (1985). *See Carl R. Hill*, 33 ECAB 104 (1981) (case remanded to determine if surgery was "in any part" caused by employment injury); *John M. Ragsale, Jr.*, 19 ECAB 535 (1968) (case remanded for medical opinion whether effects of employment injury contributed to the need for surgery.)

[7] *Nathan L. Harrell*, 41 ECAB 402 (1990); *William J. Murray*, 35 ECAB 606 (1984).

have needed the surgery at some point in time whether she was doing heavy lifting or not does not address the compensability of the surgery, since the surgery would be compensable if employment factors hastened the need for it.[8]

CONCLUSION

There is an unresolved conflict of medical opinion in this case, necessitating referral to an impartial medical specialist, pursuant to section 8123(a) of the Act.[9]

ORDER

IT IS HEREBY ORDERED THAT the August 2, 2004 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Issued: January 24, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

[8] To hasten is to cause, as far as the right to compensation is concerned. *John I. Lattany*, 37 ECAB 129 (1985).

[9] 5 U.S.C. § 8123(a) states in pertinent part, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."