

This case is before the Board for the second time. In the first appeal, the Board affirmed Office decisions dated July 5, 2000 and March 1, 2001 which found that appellant failed to establish a recurrence of disability on or after November 10, 1999 causally related to her May 31,

1990 employment injury.¹ The findings of fact and conclusions of law are hereby incorporated by reference.

On February 13, 2002 appellant, through her attorney, requested reconsideration of her claim. In support of her request, she submitted a medical report dated June 14, 2002 from Dr. Michael Broom, a Board-certified orthopedic surgeon, who discussed appellant's injury to her back due to a fall from a truck in 1990 while at work with "progressive worsening since 1999." He noted that a magnetic resonance imaging (MRI) scan study revealed a compression fracture at T12. Dr. Broom diagnosed lumbar disc degeneration with spondylolisthes and a T12 compression fracture by history. He opined that the compression fracture was "likely related to the fall."

In a deposition dated February 3, 2003, Dr. Broom discussed appellant's history of an injury to her back in 1990 "when she fell backwards from a flatbed truck while working." He noted that the original diagnosis was a strain but that it was later determined that she had a "compression of T12." Dr. Broom indicated that he had examined appellant and obtained x-rays. He diagnosed "a T12 compression fracture which, based on the history I received from her, I felt was likely related to the June 1990 injury." Dr. Broom opined that appellant's symptoms were consistent with a T12 fracture and noted that "some patients can be left with residual pain and limitations having sustained one of these fractures." He further related:

"[T]he T12 area sometimes is not well visualized on a plain x-ray of the low back since the beam tends to be focused on a little bit lower. It [is] also an area where tissues densities change. The overlying lung tissue sometimes can obscure visualization of that, and it [is] possible that the initial x-rays did [not] really well visualize that. She certainly may have had a sprain or soft tissue injury as part of her initial injury; but it would be my opinion, at least based on the history that I received from her of this significant fall and then the subsequent documentation of the fracture, that that area -- that the mechanism of this injury is certainly one that could have caused a fracture and likely did."

He noted that his finding regarding cause was "within a reasonable degree of medical probability" and that it was "medically probable and certain that her T12 fracture was caused from this accident."

By decision dated November 12, 2004, the Office denied modification of its finding that she had not established a recurrence of disability due to her accepted employment injury.

¹ Docket No. 01-1684 (issued March 4, 2002).

LEGAL PRECEDENT

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.² Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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, must be one of reasonable medical certainty, 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.³ Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁴

Proceedings under the Federal Employees' Compensation Act are neither adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁵

ANALYSIS

The Office accepted that appellant sustained back sprain and left knee sprain due to a fall from a truck at work on May 31, 1990. Appellant subsequently alleged that she sustained a fracture of the thoracic spine and submitted a notice of recurrence of disability beginning November 1999. The Office denied her claim in decisions dated July 5, 2000 and March 1, 2001 which the Board affirmed in a decision dated March 4, 2002. Appellant requested reconsideration, and submitted a medical report dated June 14, 2002 from Dr. Broom, who diagnosed lumbar disc degeneration with spondylothesis and a T12 compression fracture. He opined that the compression fracture was "likely related to the fall." In a deposition dated February 3, 2003, Dr. Broom discussed appellant's history of falling off a truck while at work in 1990. He noted that she was initially diagnosed with a strain but later also a compression fracture of T12. Dr. Broom opined that appellant's symptoms were consistent with a T12 fracture and attributed her fracture to her fall at work.

The Board finds that the February 3, 2003 deposition from Dr. Broom constitutes sufficient evidence in support of appellant's claim to require further development by the Office. Dr. Broom provided an accurate history of injury and explained that her symptoms were consistent with the diagnosed condition of a thoracic fracture. He further opined that the mechanism of injury could cause a compression fracture of the spine and related that x-rays may

² *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

³ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁴ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁵ *Phillip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004).

not have revealed her condition due to the fracture's location. Dr. Broom concluded that, within a reasonable degree of medical probability, her T12 fracture was caused by her fall at work.

It is well established that proceedings under the Act are not adversarial in nature and that while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁶ Although Dr. Broom does not provide sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence her contention that she sustained a fracture of the thoracic spine due to her fall at work on May 31, 1990, his opinion raises an inference of causal relationship sufficient to require further development by the Office.⁷ Additionally, the record does not contain substantial contradictory medical evidence.

The case will, therefore, be remanded to the Office for further development of the medical evidence to determine whether appellant sustained a fracture of the thoracic spine due to her May 31, 1990 fall at work and, if so, the nature and extent of any disability or need for medical treatment.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 12, 2004 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: February 9, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

⁶ *Allen C. Hundley*, 53 ECAB 551 (2002).

⁷ *John J. Carlone*, 41 ECAB 354 (1989).