U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JERRYSTEAN RICH and DEPARTMENT OF VETERANS AFFAIRS, REGIONAL OFFICE, St. Louis, Mo.

Docket No. 97-2069; Submitted on the Record;
Issued June 9, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof in establishing that she sustained mechanical low back pain in the performance of duty, causally related to factors of her federal employment.

On December 18, 1995 appellant then a 55-year-old program support clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that since October 6, 1992, she has had to leave work on many occasions to seek medical treatment due to chronic low back pain. Appellant indicated that she had been diagnosed with low back strain, mild paraspinal muscle spasm of the lower back and chronic back strain. She alleged that these conditions are the results of a chronic strain pattern from sitting at the computer terminals for long periods of time as required by her employment duties. Appellant also states that she first became aware of her disease or illness on October 2, 1992 and first realized that the disease or illness was caused or aggravated by her federal employment on November 3, 1994. Appellant then explained that she delayed filing her occupational claim because although she filled out her occupational disease form on December 18, 1995, she was unable to give the form to her supervisor until January 18, 1996. She noted that she was not at work because of the 1995 furlough of the federal government; that her supervisor returned the occupational disease form to her on January 24, 1996 and she resubmitted it to her supervisor on February 8, 1996.[1] On the reverse side of this form, the employing establishment controverted appellant's claim arguing that the information provided by appellant could not be verified.

In a decision dated July 8, 1996, the Office of Workers' Compensation Programs denied appellant's claim for failure to establish fact of injury. In an accompanying memorandum, the

[1] The record shows that appellant submitted various factual and medical documentation dated prior to November 3, 1994, the day she first realized the disease or illness was caused or aggravated by her federal employment; and December 18, 1995, the day appellant filed her occupational disease claim, Form CA-2, in this case. The Board will not consider appellant's predated factual and medical documentation with this decision.

Office found that the initial evidence of file supported the fact that appellant was exposed to the activities or employment factors to which she attributed the claimed medical condition; however, the medical condition diagnosed in connection with appellant's accepted employment factors was not supported by the medical evidence of file. The Office also noted that the initial evidence in the file consisted of documents and medical records from prior injury compensation claims covering February 27, 1991 through October 18, 1994.[2]

By letter dated November 27, 1996, appellant requested reconsideration of the Office's July 8, 1996 decision and submitted a medical report from Dr. Bob Einertson, a chiropractor, with the Einertson Chiropractic Centre dated November 26, 1996. In a merit decision on reconsideration dated January 7, 1997, the Office denied appellant's request for reconsideration of the July 8, 1996 decision on the grounds that the evidence submitted on reconsideration was not sufficient to warrant modification of its prior decision. The Office also found that Dr. Einertson related appellant's objective and subjective complaints to her reported traumatic injury of August 16, 1990[3] and did not address her work factors as a causative factor in any way. The Office determined that the medical evidence was not sufficient to establish that appellant sustained an injury due to any workplace factors.

By letter dated February 7, 1997, appellant again requested reconsideration of the Office's January 7, 1997 decision on reconsideration and submitted an additional medical report from Dr. Einertson dated February 3, 1997. In a merit decision on reconsideration dated April 18, 1997, the Office denied appellant's second request for reconsideration on the grounds that the evidence submitted on reconsideration was insufficient to warrant modification of its prior decisions. The Office also found that the medical reports submitted by Dr. Einertson, was of little probative value as a subluxation as defined under the Federal Employees' Compensation Act has not been established as medically connected to the injury sustained on August 16, 1990; therefore, Dr. Einertson cannot be considered a qualified physician under the Act. For example, the medical evidence failed to demonstrate that the employment activity of a sit/stand option caused any material worsening or recurrence of the claimant's 1990 injury.[4]

The Board finds that appellant has not met her burden of proof in establishing that she sustained mechanical low back pain in the performance of duty, causally related to factors of her federal employment.

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[2] *Id.*

[3] The Office noted that appellant's traumatic injury claim of August 16, 1990, File number A11-0103799, was under reconsideration at that current time. This claim is not before the Board and will not be addressed.

[4] The Act states at 5 U.S.C. § 8101(2) that the term physician "includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation of the spine as demonstrated by x-ray to exist." Subluxation is an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae anatomically which must be demonstrable on an x-ray film to individuals trained in the reading of x-rays. *Mary J. Briggs* 37 ECAB 578 (1986); however, in *Roddy D. Riggs*, 34 ECAB 1664 (1983), the Board held that the Office's regulations state that a chiropractor can interpret his or her own x-rays with regard to whether there is a subluxation.

An employee seeking benefits under the Act[5] 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.[6]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[7] 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,[8] must be one of reasonable medical certainty[9] 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.[10]

In the present case, there is insufficient rationalized medical opinion evidence to support that appellant suffered an injury or disability causally related to any factors of her federal employment. The relevant medical evidence of record consists of Dr. Pierron's medical report dated December 15, 1995 and signed by Dr. David L. Pohl, Board-certified in diagnostic radiology. Dr. Pohl's results revealed:

Procedure: Lumbar spine AP/LAT

Full Result: Three views of the lumbar spine on [December] 15[,] [19]95 shows the vertebral bodies to be normally aligned. There is mild disc space narrowing at L5-S1 with minimal hypertrophic changes associated. The remaining disc spaces are of essentially normal width. No fracture or bone destruction is seen.

Opinion: Mild degenerative changes at L5-S1

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[5] 5 U.S.C. §§ 8101-8193.

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

[7] *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

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

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

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

Dr. Pierron also submitted a progress note and a medical report dated December 22, 1995; an attending physicians report, Form CA-20, dated January 12, 1996. In these documents, Dr. Pierron stated that appellant had reported that her current job, sitting for prolonged periods and sometimes getting up and down for certain activities, was aggravating to her back. He indicated that appellant tried to change the position of her chair height without resolution of her symptoms. Dr. Pierron then indicated that appellant has had ongoing complaints of low back pain and that x-rays showed no bony pathology. He stated that her working diagnosis was mechanical low back pain and stated that appellant's "employment activity has aggravated the patient's symptoms." Dr. Pierron then informed appellant that she had no condition that required orthopedic intervention and that no further orthopedic evaluation or treatment was needed unless a new problem developed.

In addition, Dr. Lisa Ruth Ross, Board-certified in internal medicine, submitted a medical report dated March 9, 1995, stating that appellant had been under her care since January 3, 1994. Dr. Ross reported that appellant has had recurrent low back pain since a fall in October 1990 and that her most recent exacerbation was November 1994 and required anti-inflammatory and analgesic medication as well as physical therapy. Her symptoms reportedly persisted intermittently through February, though they were much improved after physical therapy.

Finally, the record contains medical reports from Dr. Einertson dated November 26, 1996 and February 3, 1997. In the November 26, 1996 report, Dr. Einertson noted that appellant came to his office complaining of discomfort and injuries as a result of a fall sustained on August 16, 1990. He indicated that x-ray examination revealed:

> "multiple views of the lumbar spine [were] exposed utilizing routine weight bearing spinal projections. There was no evidence of dislocation, fracture, either recent or old, or osseous or joint pathology. Vertebral open wedge left L3, L4 with convexity to the right" and diagnosed lumbosacral plexus lesion, lumbar/spondylolisthesis, lumbar ligamentous lax/vert? instability and L5 subluxation." Dr. Einertson also stated: "[t]he patient [appellant] has sustained an acute traumatic hyperextension injury of the lumbar spine along with an acute discogenic subluxation complex of the lumbar spine at level of L3, L4 and L5. This injury is accompanied by ligamentous instability and tearing, myofascial residual, vertebral subluxation, secondary disc involvement and localized evidence of nerve root irritation. This injury is further complicated by the longevity of the injury and the work ergonics present. These injuries are usually of long[-]term instability depending on the amount of joint and ligamentous damage."

The Board finds that none of the physicians of record have provided a reasoned medical opinion, supported by objective finding as to the medical connection between appellant's diagnosed condition of mechanical low back pain and factors of appellant's federal employment. For example, they did not describe appellant's specific work duties in any detail or provide medical reasoning explaining how or why the constant sitting or standing while working on a computer terminal for long periods of time caused or aggravated a specific medical condition.[11]

[11] *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer

Without any explanation or rationale for the conclusion reached, such reports are insufficient to establish causal relationship.[12] Therefore, the reports of Dr. Pierron, Dr. Pohl and Dr. Ross are of little probative value and are insufficient to meet appellant's burden of proof.

Furthermore, as indicated by the Office, the chiropractors medical reports are insufficient to meet appellant's burden of proof as the x-ray examination showed that there was no evidence of dislocation, fracture, either recent or old, or osseous or joint pathology. Dr. Einertson failed to demonstrate by x-ray that appellant had the diagnosed L5 subluxation.[13] Where x-rays do no demonstrate a subluxation (a diagnosis of a subluxation based on x-rays has not been made), a chiropractor is not considered a "physician" and his or her reports cannot be considered as competent medical evidence under the Act.[14]

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[15] or that work activities produce symptoms revelatory of an underlying condition[16] 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 his condition was caused, precipitated or aggravated by his 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.[17] Consequently, appellant has not submitted rationalized medical evidence explaining how and why the diagnosed condition was caused or aggravated by appellant's federal employment, the Office properly denied appellant's claim for compensation.

The decisions of the Office of Workers' Compensation Programs dated April 18 and January 6, 1997 and July 8, 1996 are hereby affirmed.

Dated, Washington, D.C.
June 9, 1999

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any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship); *see also George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[12] *Lucrecia M. Nielson*, 41 ECAB 583 (1991).

[13] *See supra* note 4.

[14] *Susan M. Herman*, 35 ECAB 669 (1984).

[15] *William Nimitz, Jr., supra* note 8.

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

[17] *Victor J. Woodhams, supra* note 7.

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member