

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACQUELINE A. PENKALA and SOCIAL SECURITY ADMINISTRATION,
GREAT LAKES PROGRAM SERVICE CENTER, Chicago, Ill.

*Docket No. 97-1755; Submitted on the Record;
Issued March 1, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant met her burden of proof to establish that her diagnosed back condition, for which she claims temporary total disability for the period May 28, 1996 to February 5, 1997 and continuing disability thereafter, is causally related to her accepted lumbar strain.

The Board has duly reviewed the case record and finds that the case is not in posture for decision due to an unresolved conflict in the medical opinion evidence. Further development of the medical evidence is required.

On April 2, 1996 appellant sustained an injury to her lower back while pulling out a heavy file drawer in her position as a claims development clerk for the employing establishment. The Office of Workers' Compensation Programs accepted that appellant sustained a lumbar strain and authorized appropriate benefits.

Appellant claimed injury-related total disability from May 28, 1996 to February 5, 1997. In support of her claim, appellant submitted regular form reports from her treating physician, Dr. Satish Patel, an internist, who opined that appellant was totally disabled due to chronic back pain and spinal stenosis causally related to her April 2, 1996 employment injury.

By letter dated August 26, 1996, the Office requested that Dr. Patel provide a well-rationalized medical assessment of the medical connection, if any, between the original injury of April 2, 1996 and the diagnosed medical condition and that he provide a discussion of all contributory factors, both nonwork related and work related, found to be causally related to the diagnosed condition.

In response to the Office's request on October 30, 1996, Dr. Patel submitted a narrative report, in which he provided a history of the injury, and of appellant's general health, noting that appellant did not have any history or evidence of concurrent or preexisting back pain, back

problems, back injuries, or physical back problems or diseases. He stated that appellant's primary condition was spinal stenosis, diagnosed by magnetic resonance imaging, causally related to her work injury. Dr. Patel provided his rationale for this diagnosis, stating:

"I believe that the yellow ligament, legamintum flavium, that lays just in back of her spinal canal became vary taut due to the extended period and frequent times she has had to continuously bend, twist, push and pull with extreme force to go in and out of these drawers.... Thus, doing this at work on April 2, 1996 it caused a slight anterior slippage of L4 over L5 of the spine and permanently stretched or ruptured the ligament which made it lose its elasticity and bulge into her spinal canal which is how she occurred spinal stenosis and felt this very severe lower back and leg pain then."

Dr. Patel further stated that on June 26, 1996, following her course of treatment and therapy, he released appellant to return to limited duty, but that by July 9, 1996 her condition had deteriorated to her pretreatment state and she became unable to perform any substantial gainful employment due to her spinal stenosis.

Upon receipt of Dr. Patel's report, the Office scheduled a second opinion examination with Dr. Julie Wehner, a Board-certified orthopedic surgeon. Following her review of the record and the statement of accepted facts, and her examination of appellant, Dr. Wehner opined by report dated January 22, 1997, that appellant had sustained a lumbar sprain on April 2, 1996, and that she now had no objective evidence of any active sprain, but rather had developed chronic lumbar pain syndrome. Dr. Wehner agreed with Dr. Patel's diagnosis of spinal stenosis, but determined this condition to be preexisting, not work related, and not a direct sequela of her April 2, 1996 injury or of her general work habits. Following her review of Dr. Patel's explanation of the causal relationship between appellant's work duties and her diagnosed spinal stenosis, Dr. Wehner stated that spinal stenosis with a slippage of L4-5 is a degenerative process consistent with aging, not an acute process, and that Dr. Patel's "paragraph of explanation of spinal stenosis is preposterous and without any scientific basis." Dr. Wehner concluded that there was no reason to give appellant any permanent physical restrictions and that she was not disabled for employment due to her employment-related lumbar sprain.

In a decision dated March 24, 1997, the Office denied appellant's claim on the grounds that the evidence of file failed to establish that the claimed condition of spinal stenosis was causally related to factors of her federal employment.

The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "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."¹

In the present case, appellant has alleged that she suffers from spinal stenosis caused by factors of her federal employment. As part of appellant's burden of proof, she must submit

¹ 5 U.S.C. § 8123(a); *Esther Velasquez*, 45 ECAB 249, 252-53 (1993).

rationalized medical evidence based upon a complete and accurate factual and medical background, showing a causal relationship between the injury claimed and her federal employment.² To support her claim, appellant submitted a narrative report from Dr. Patel, her treating physician. However, Dr. Wehner, the Office second opinion physician, is in disagreement with appellant's physician as to the causal relationship, if any, between appellant's diagnosed spinal stenosis and her April 2, 1996 employment injury. Consequently, the case will be remanded so that the Office may refer appellant, together with a statement of accepted facts, questions to be answered, and the complete case record, to an appropriate Board-certified specialist for an impartial medical referee examination and a rationalized medical opinion to resolve the medical conflict regarding this issue.³

Therefore, the decision of the Office of Workers' Compensation Programs dated March 24, 1997, is hereby set aside and the case is remanded for further action in accordance with this decision and order of the Board.

Dated, Washington, D.C.
March 1, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member

² *Kathryn Haggerty*, 45 ECAB 383, 389 (1994); *Steven R. Piper*, 39 ECAB 312 (1987).

³ *Kathryn Haggerty*, *supra*; *Carol A. Dixon*, 43 ECAB 1065, 1071 (1992).