

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIEAN PIERCE and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION HOSPITAL, Huntington, WV

*Docket No. 99-1828; Submitted on the Record;
Issued October 3, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof in establishing that her back condition is causally related to factors of her federal employment.

On May 19, 1997 appellant, then a 54-year-old medical records technician, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she suffered from disc herniation, which she attributed to her employment. With her claim, appellant submitted the results of a May 9, 1997 magnetic resonance imaging (MRI) scan by Dr. Eugene R. Degiorgio, a Board-certified radiologist, which indicated moderate size central disc herniation with spinal stenosis at the C6-7 level, that the central portion of the cord was indented, and moderate degenerative changes throughout the cervical spine. Dr. Degiorgio noted that no compression fracture or intrinsic abnormality of the cervical cord was seen.

Appellant also submitted a statement in support of her claim, wherein she indicated that her duties included helping patients in and out of wheelchairs, that she climbed in and out of a raised chair and reached over her head throughout the day, that she was in constant movement with her neck -- extending, bending, turning and twisting. She believed that this caused her to have a disc herniation in her cervical spine.

On May 13, 1997 appellant was referred by Dr. Charles M. Rhodes, a Board-certified internist, to Dr. William H. Brooks, a Board-certified neurological surgeon. In his initial medical report, dated May 27, 1997, Dr. Brooks noted he reviewed appellant's MRI scan and that she had advanced degenerative changes throughout the entire vertebral column. At that time, he elected to treat her with physical therapy and medication, although he indicated that he thought it would be "problematic" for appellant to return to the type of work she had been doing previously. In his July 21, 1997 report, Dr. Brooks noted that appellant had failed to respond to conservative treatment. Over the next several months, he ordered various tests. Dr. Brooks first addressed the issue of causal relationship in his report of July 21, 1997, when he stated that he believed that appellant had "advanced degenerative osteoarthritis that has been complicated by the type of work she does, as well as occurring naturally." In his reports of August 11 and September 8, 1997, Dr. Brooks opined:

“I believe that many of her symptoms are related to the position that she must assume while working and if she had sufficient time refraining from these activities, her symptoms may resolve and surgery will thereby be unnecessary.

“Nevertheless, based on the narrative I have received from her and her examination, it is my opinion that her symptoms are related to the type of work that she has been performing as a unit secretary which requires her to hold her neck in a flexed position.”

In a letter dated October 7, 1997, the employing establishment wrote a letter to Dr. Brooks, wherein it stated that appellant’s position at that time was a sedentary position and that she had back support, footstool, that she could stand or walk around as needed. The employing establishment also wrote Dr. Brooks that appellant did not have to stay in a flexed position at her workstation for long amounts of time. The employing establishment informed Dr. Brooks that it was willing to accommodate any medical restrictions that he set forth. In a reply dated October 13, 1997, Dr. Brooks stated as follows:

“I was under the impression that a ward clerk remains at a desk with her neck in a flexed position writing papers and working with computers/CRTS. Obviously, if the work station is ergonomically correct, there should be no problems or certainly they would be lessened.”

Appellant’s supervisor submitted a memorandum dated August 21, 1997, wherein she stated that appellant’s work area was changed when she said the high counter hurt her back, and she was moved to an area with a lower counter and given a special chair foot rest. She stated that due to appellant’s claimed limitations, it was not feasible for her to continue as a patient service assistant, even though efforts were made to accommodate her. Furthermore, by letter dated August 25, 1997, the employing establishment submitted position descriptions for appellant’s previous position as ward clerk and her current position as health benefits advisor. The position description for medical record technician noted that the position was basically sedentary but required some bending, walking, standing and carrying records and reports. Her present position, that of health benefits advisor, required walking, sitting and standing, and some bending and carrying of medical records and light supply items.

In a medical report dated December 17, 1997, Dr. David L. Jackson, a Board-certified physical medicine and rehabilitation specialist, found that appellant had chronic neck and left arm pain for seven months with evidence of cervical degenerative disc changes at multiple levels, and history of low back pain with degenerative changes noted at the level of L5-S1 with recent computerized tomography (CT) scan April 1997. Dr. Jackson noted that appellant had permanent restrictions. He opined that her degenerative condition would worsen and that work would hasten this decline.

In a medical report dated May 11, 1998, Dr. Tommasina, Pa-Rugino, a neurologist, found that appellant suffered from chronic neck and left arm pain with evidence of cervical degenerative disc disease per CT scan and evidence of disc herniation with spinal stenosis per MRI, and a history of low back pain with degenerative changes, status post lumbar fusion. With respect to causal relationship, Dr. Pa-Rugino stated:

“It is doubtful that the current condition and complaints of this individual can be attributed to a casual [sic?] relationship with the work she did, however, it is most likely that patient’s work was exacerbated her preexisting symptoms and contributed to her present condition.”

Dr. Pa-Rugino continued that it was “unlikely that at present time after such a prolonged time that the patient could return to a less painful or more comfortable preexisting level.” Finally, she concluded:

“[Appellant] was not totally disabled from any employment, but is partially disabled and has permanent restrictions. I agree with previous specialist who have seen the patient that the patient should not lift above five pounds, especially over her head, should not engage in any situation where she is required to do any type of repetitive movement of the head, especially neck flexion, as well as any repetitive bending. The patient should avoid any situation that also requires prolonged sitting, standing, crawling, kneeling, etc.”

In a decision dated June 26, 1998, the Office denied appellant’s claim, holding that the medical evidence was not sufficient to establish that her condition was caused by her employment.

On July 13, 1998 appellant requested reconsideration. On August 10, 1998 the Office denied reconsideration, noting that no new evidence was submitted in support of her request.

By letter dated September 7, 1998, appellant again requested reconsideration and attached a medical report dated September 2, 1998, wherein Dr. Jackson, explained that appellant has severe degenerative disc and joint disease of the cervical region with a MRI scan confirming a herniated disc at C6-7 and a spinal stenosis at that level. After reciting the work history that appellant related to him, he opined that her neck injury and complaints of pain involving her left arm were directly related to her activities at work. He continued, “Obviously, she has some degenerative changes that were preexisting; however, the evidence of a herniated disc indicates that this may have been actually caused by conditions at work as she indicates an acute onset of this problem with persistence and gradual worsening.”

On November 24, 1998 the Office referred appellant to Dr. Luis A. Loimil, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a medical report dated January 13, 1999, Dr. Loimil opined that he did not believe that appellant’s employment duties caused her possible cervical disc problem and that although they may have aggravated some of the symptoms of her preexistent degenerative cervical disc disease, that appellant’s symptoms probably would have been aggravated by any activity even not related to work due to what seems to be a very poor condition in her entire spine. He believes that if there were any aggravation of her symptoms due to her work, that this would be temporary. Dr. Loimil further stated, “I feel that she would reach the condition that she is in now regardless of the condition that she was exposed to in her work duties from 1996 to 1997.” He also stated that appellant was limited not only from her cervical condition, but from entire degeneration of the spine that has required in the past a fusion of the lumbar spine with rodding, bilateral carpal tunnel syndrome and triggering of the finger and finally, disc degeneration of the cervical spine.

In a decision dated February 11, 1999, the Office denied appellant's request for modification finding that the medical evidence was insufficient to establish that she experienced a cervical herniated disc, and the medical evidence established that appellant's cervical degenerative disc disease was not materially worsened by her work duties.

In a letter dated March 8, 1999, appellant requested reconsideration of the decision. In a decision dated June 4, 1999, the Office denied appellant's request, finding that she failed to raise a substantive legal question or introduce new and relevant evidence.

The Board finds that appellant has not met her burden of proof in establishing that her back condition was causally related to the employment injury.

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;¹ (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;² 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.³ The medical evidence required to establish 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,⁴ must be one of reasonable medical certainty,⁵ 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.⁶

In the case at hand, Dr. Brooks originally opined that appellant's condition was causally related to her employment. However, he qualified this position in his report dated October 13, 1997, when he stated that if appellant's work station was ergonomically correct, there would be no problems. Dr. Brooks' opinion does not satisfy appellant's burden of proof in that it does not definitely establish that appellant's work conditions caused her back condition in that Dr. Brooks appeared to be somewhat confused as to appellant's job duties. Dr. Jackson's opinion is speculative, in that although he clearly stated that appellant's neck injuries and complaints of pain involving her left arm may have been related to her activities at work, he failed to adequately explain his rationale for this conclusion. Furthermore, the only work activity that he

¹ See *Ronald K. White*, 37 ECAB 176, 178 (1985).

² See *Walter D. Morehead*, 31 ECAB 188, 194 (1979).

³ See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

⁴ *William Nimitz, Jr.*, 30 ECAB 567 (1979).

⁵ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁶ See *William E. Enright*, 31 ECAB 426, 439 (1980).

mentioned as contributing to her back condition was when she had an onset of neck and left arm pain when lifting several reams of paper and alleged injury which is not the basis of this claim.

An award of compensation may not be based on surmise, conjecture or speculation. 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.⁷ Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

The February 11, 1999, August 10 and June 26, 1998 decisions of the Office of Workers' Compensation Programs are affirmed.⁸

Dated, Washington, DC
October 3, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

⁷ *Victor J. Woodhams*, 41 ECAB 345, 353-354 (1989)

⁸ The Board and the Office cannot have jurisdiction over the same case at the same time. 20 C.F.R. § 501.2(c); *Arlonia B. Taylor*, 44 ECAB 591, 597 (1993). Accordingly, the Office's decision denying reconsideration dated June 4, 1999 is null and void.