

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDITH A. KLINE and U.S. POSTAL SERVICE,
POST OFFICE, Kent, OH

*Docket No. 00-2488; Submitted on the Record;
Issued April 4, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has established that she sustained a recurrence of disability on or after April 12, 1999 causally related to her January 24, 1992 employment injury; and (2) whether appellant sustained a herniated disc causally related to her January 24, 1992 employment injury.

On January 24, 1992 appellant, then a 48-year-old rural carrier, was injured in a motor vehicle accident. The Office of Workers' Compensation Programs accepted that she sustained a sprain of the left leg and knee, multiple contusions, back strain, traumatic chondromalacia of the left patella, an aggravation of degenerative arthritis of the left knee, a torn anterior cruciate ligament of the left knee, a medial meniscus tear of the left knee and a lateral meniscus tear of the left knee.

Appellant returned to regular employment following her injury on February 11, 1992. She stopped working in January 1996 due to problems with her left knee. In October 1996, the Office authorized medial and lateral meniscectomies and an anterior cruciate ligament reconstruction of the left knee. Appellant returned to part-time limited-duty employment on September 28, 1998 and to full-time limited-duty employment on January 2, 1999.¹

On April 21, 1999 appellant filed a notice of recurrence of disability alleging that on April 12, 1999 she sustained a recurrence of disability causally related to her January 24, 1992 employment injury.²

¹ On October 15, 1998 the Office referred appellant to Dr. Ralph Kovach, a Board-certified orthopedic surgeon and an Office referral physician, to resolve a conflict in the medical evidence on the extent of appellant's work limitations. In a report dated October 31, 1998, Dr. Kovach found that appellant could work for eight hours per day with restrictions.

² Appellant retired from the employing establishment on July 2, 1999.

By decision dated June 14, 1999, the Office found that the evidence was insufficient to establish that appellant sustained a recurrence of disability on April 12, 1999 or that she sustained a herniated disc causally related to her employment injury.

On July 7, 1999 appellant, through her representative, requested an oral hearing before an Office hearing representative. By decision dated February 24, 2000 and finalized February 25, 2000, the hearing representative affirmed the Office's June 14, 1999 decision regarding the denial of appellant's claim for a recurrence of disability on or after April 12, 1999. The hearing representative found, however, that a conflict in medical opinion existed between Dr. Jung U. Yoo, a Board-certified orthopedic surgeon and appellant's attending physician, and Dr. Kovach on the issue of whether appellant sustained a herniated disc causally related to her accepted employment injury.³ The hearing representative instructed the Office, on remand, to refer appellant to an appropriate Board-certified specialist for an impartial medical examination.

In a decision dated June 5, 2000, the Office denied appellant's claim on the grounds that the weight of the medical evidence did not establish that she sustained a herniated disc causally related to her January 24, 1992 employment injury.

The Board finds that appellant has not established that she sustained a recurrence of disability on or after April 12, 1999 causally related to her January 24, 1992 employment injury.

Where an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.⁴

In this case, appellant sustained multiple injuries due to a motor vehicle accident on January 24, 1992. She underwent arthroscopic surgery on her left knee in October 1996. Appellant returned to part-time work with restrictions on September 28, 1998 and to full-time work with restrictions on January 2, 1999. There is no evidence in the record establishing any change in the nature and extent of appellant's light-duty position as a cause of her claimed disability after April 12, 1999.

Appellant also has not submitted sufficient medical evidence to establish that she sustained a recurrence of disability on April 12, 1999 causally related to her January 24, 1992

³ The Office requested that Dr. Kovach, who had previously provided an impartial medical examination on the issue of appellant's work limitations, discuss whether appellant had an employment-related herniated disc. The hearing representative noted that Dr. Paquet, the Office referral physician on the issue of appellant's work restrictions, did not address the cause of her back problems. Thus, the hearing representative properly determined that Dr. Kovach was a second opinion examiner with regard to the issue of the cause of appellant's herniated disc and that therefore a conflict in medical opinion existed between Drs. Kovach and Yoo.

⁴ *Terry R. Hedman*, 38 ECAB 222 (1986).

employment injury. In support of her claim for a recurrence of disability, she submitted a disability certificate dated April 21, 1999 in which Dr. Yoo listed work restrictions of four hours per day. Appellant also submitted a May 3, 1999 appointment verification from Dr. Bouchard, who found that appellant could work four hours per day five days per week. In these reports, however, neither Dr. Yoo nor Dr. Bouchard provided a diagnosis or causation finding and therefore these reports are of little probative value.⁵

In a report dated May 13, 1999, Dr. Anil M. Parikh, a Board-certified psychiatrist, stated that he had treated appellant since November 2, 1998 for major depressive disorder and noted that she had a history of pain in her back and knee. He related that appellant believed that working over four hours per day “would exacerbate her pain including back and knee pain and this in turn will also exacerbate her psychiatric condition.” Dr. Parikh concluded that working over four hours per day “would exacerbate her condition.” However, he did not attribute appellant’s work limitations to her employment injury or provide any rationale for his finding and thus his opinion is of little probative value.⁶ The Board notes that Dr. Parikh’s opinion is of limited probative value regarding appellant’s physical ability to perform her employment duties for the further reason that he specializes in a field relevant to emotional rather than physical conditions. The opinions of physicians with training and knowledge in a specialized medical field have greater probative value concerning medical questions peculiar to that field than the opinion of other physicians.⁷

As appellant has not submitted rationalized medical evidence supporting a causal relationship between her accepted employment injury and a recurrence of disability on April 12, 1999, she has failed to meet her burden of proof.

The Board further finds that the case is not in posture for decision on the issue of whether appellant sustained a herniated disc causally related to her January 24, 1992 employment injury.

The Office based its decision denying appellant’s claim that she sustained a herniated disc caused by her January 1992 motor vehicle accident on the report of Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon, selected as the impartial medical specialist to resolve the conflict in medical evidence.

Section 8123 of the Federal Employees’ Compensation Act⁸ provides that where there is disagreement between the physician making the examination for the United States and the physician of the employee, the Office shall appoint a third physician who shall make an examination. In situations where there exists a conflict in medical opinion and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of

⁵ *Dennis M. Mascarenas*, 49 ECAB 215 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship).

⁶ *Ronald C. Hand*, 49 ECAB 113 (1997).

⁷ *See Lee R. Newberry*, 34 ECAB 1294, 1299 (1983).

⁸ 5 U.S.C. § 8107 *et seq.*

such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁹

The Board finds, however, that Dr. Kaffen's medical opinion is not sufficiently rationalized and, therefore, not entitled to special weight. In his April 22, 2000 report, Dr. Kaffen discussed appellant's employment injury and medical history. Regarding appellant's complaints, he stated:

"On the date of this interview, she states her low back pain has become more severe and is constant in nature. The pain is aggravated by bending and lifting activities. She describes intermittent radiation of the pain into both buttocks and thighs to the mid calves. Pain is generally more severe on the left and is accompanied by numbness and tingling sensation. It should be noted, however, that the radicular pain is not present in both lower extremities at the same time but varies and alternates...."

Dr. Kaffen further related:

"Examination of the lumbar spine revealed tenderness and muscle guarding. The voluntary range of motion of the lumbosacral spine is flexion to 40 degrees, extension to 10 degrees, right and left lateral bending 10 degrees each. All motions are accompanied by complaints of pain. The straight leg raising test is negative bilaterally producing low back pain to the proximal thigh on the right. The neurological examination revealed the deep tendon reflexes to be equal bilaterally. There was no motor or sensory deficit."

Dr. Kaffen noted that x-rays of appellant's lumbar spine beginning January 24, 1992 revealed evidence of degenerative changes and further noted that neurological examinations in 1996 and 1997 were essentially normal. He related:

"An MRI [magnetic resonance imaging] [study] of the lumbar spine was performed on September 18, 1996 and shows disc space narrowing at L5, degenerative disc disease at L5 and a 'mild central and left paramedian disc protrusion or herniation of the L5 disc, this just touches the left S1 nerve root.' A repeat MRI dated May 2, 1998 indicates that there has been no previous change from the prior examination. However, he now describes it as an osteophyte disc complex at L5-S1."¹⁰

Dr. Kaffen diagnosed lumbar strain and degenerative disc disease of the lumbar spine and opined:

⁹ *Leanne E. Maynard*, 43 ECAB 482 (1992).

¹⁰ The physician interpreted the May 22, 1998 MRI scan as revealing "[n]o interval change from the previous examination of September 18, 1996 with a mild to moderate-sized central and bilateral posterior disc/osteophyte complex at the level of the L5-S1 disc with mild to moderate impingement upon the caudal aspect of the right and left L5 neural foramina."

“Based on the history and physical examination and review of medical records, it is my opinion that this claimant does not have a clinically evident herniated disc at L5-S1. Repeated neurological examinations failed to show significant neurologic changes or findings.

“It is my opinion that the herniated disc noted on the MRI of September 18, 1996 and May 22, 1998 is an incidental finding and is not causally related to the accepted employment incident of January 24, 1992. The presence of a herniated disc and/or osteophyte disc complex on an MRI must be correlated with the patient’s symptoms and physical findings to be of significance.”

Although Dr. Kaffen set forth in his medical report a complete and accurate factual and medical history, his opinion does not contain sufficient rationale explaining why the herniated disc at L5-S1 was not causally related to appellant’s January 24, 1992 motor vehicle accident. He noted that a herniated disc or osteophyte disc complex on MRI scan should correspond with appellant’s symptoms and physical findings but did not explain why appellant’s symptoms were incompatible with a herniated disc given her complaints of radicular pain in her legs with “numbness and a tingling sensation.” Additionally, while Dr. Kaffen indicated that the herniated disc was inconsequential, the relevant issue is whether appellant sustained a herniated disc due to her employment injury; the severity or significance of the condition relates to the issue of disability rather than causation.

When the Office secures an opinion from an impartial medical specialist and the opinion of the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report.¹¹ However, when the impartial medical specialist’s statement of clarification or elaboration is not forthcoming or if the physician is unable to clarify or elaborate on his original report or if the supplemental report is also vague, speculative or lacks rationale, the Office must refer appellant to a second impartial medical specialist for a rationalized medical report on the issue in question.¹² The case, therefore, must be remanded for the Office to obtain a supplemental report from Dr. Kaffen or, if such supplemental report is defective or inadequate, to refer appellant to a new impartial medical specialist. After any necessary further development, the Office should issue a *de novo* decision.

The decision of the Office of Workers’ Compensation Programs dated February 20, 2000 and finalized February 25, 2000 is affirmed. The decision dated June 5, 2000 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Dated, Washington, DC
April 4, 2001

¹¹ *Terrence R. Stath*, 45 ECAB 412, 420 (1994); *Harold Travis*, 30 ECAB 1071, 1078-79 (1979).

¹² *Id*; *Wilfred M. Hamilton*, 41 ECAB 530-31 (1990).

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member