

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JO-ANN HOSLEY and U.S. POSTAL SERVICE,
POST OFFICE, Providence, R.I.

*Docket No. 96-806; Submitted on the Record;
Issued February 10, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issue is whether appellant's medical treatment beginning October 25, 1993 or her spinal fusion performed on July 6, 1994 are causally related to her March 9, 1986 employment injury.

The Office of Workers' Compensation Programs accepted that appellant sustained an acute lumbosacral strain on March 9, 1986, in an injury described by appellant as, "Pulled a box and something snapped in my lower back." Appellant received continuation of pay from March 10 through April 13, 1986. She returned to a modified distribution clerk position for four hours per day on April 14, 1986 and received compensation for the other four hours per day, reduced to compensation for two hours per day when she began working six hours per day on September 6, 1986. On October 11, 1986 appellant returned to work for eight hours per day in the position of flat sorter machine clerk she held when injured on March 9, 1986.

On October 29, 1993 appellant filed a claim for a recurrence of disability, due to her March 9, 1986 employment injury. She listed the date of the recurrence of disability as October 25, 1993, but did not stop work at that time. It is not clear when appellant stopped work, but she underwent a spinal fusion on July 6, 1994.

Dr. Phillip R. Lucas, the Board-certified orthopedic surgeon, who first examined appellant on October 25, 1993, diagnosed symptomatic spondylolisthesis in an October 25, 1993 report. That appellant's spondylolisthesis was a condition that preexisted her March 9, 1986 employment injury is uncontested. Dr. John W. Hayes, a Board-certified orthopedic surgeon, stated in a March 11, 1986 report, that x-rays showed spondylolisthesis and Dr. Hayes characterized this condition as an "underlying abnormality" in an April 8, 1986 report. In a report dated March 20, 1986, Dr. Edward Spindell, a Board-certified orthopedic surgeon, who examined appellant for the employing establishment, characterized appellant's spondylolisthesis as long-standing and preexisting. In a report dated August 24, 1994, Dr. Lucas characterized appellant's spondylolisthesis as "an underlying developmental problem in her spine."

While there is no medical evidence that appellant's spondylolisthesis was caused by her March 9, 1986 employment injury, several physicians have stated that this injury aggravated her underlying condition of spondylolisthesis. In a report dated April 8, 1986, Dr. Hayes stated that appellant had "an underlying abnormality of her spine which was aggravated by the incident in question." In a report dated October 1, 1986, Dr. Robert J. Fortuna, a Board-certified orthopedic surgeon, to whom the Office referred appellant for a second opinion, stated, "the patient's present symptoms and findings reflect an exacerbation of a pre-existing condition, namely, the spondylolisthesis of L5-S1." In a report dated August 24, 1994, Dr. Lucas stated, "[B]ased upon her history she sustained an injury, to her lower back centering at the L5-S1 level and based upon her history the injury that occurred while working aggravated the spondylolisthesis, causing chronic lower back pain." In a report dated May 18, 1995, Dr. Lucas stated:

"It is my feeling that based upon her history that her back pain was due to symptomatic spondylolisthesis and based upon her history that her pain began in 1986 and that the fall undoubtedly aggravated the underlying area of instability. The numbness she experienced in her leg is related to the spondylolisthesis with aggravation of the spondylolisthesis it is certainly possible that the nerve was irritated and as such the nerve symptoms, leg pain, were related to her aggravating injury. It is my feeling that the injury that occurred in 1986 aggravated the underlying spondylolisthesis."

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused or adversely affected by her employment. As part of this burden she must present, rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.¹ However, proceedings under the Federal Employees' Compensation Act are not adversarial in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation benefits, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.²

The only statement in any of the medical reports, quoted above explaining why any of the examining physicians believe that appellant's spondylolisthesis was aggravated by her March 9, 1986 employment injury is Dr. Lucas' statement that appellant's pain began with the employment injury. The Board has held that a doctor's statement that an employee was asymptomatic before an injury, but symptomatic after it, is not sufficient without supporting rationale to establish causal relation.³ However, given the witnesses' statements that appellant had bridging symptoms from the time of the injury, to the time of Dr. Lucas' initial examination

¹ *Froilan Negron Marrero*, 33 ECAB 796 (1982).

² *Isidore J. Gennino*, 35 ECAB 442 (1983).

³ *Thomas D. Petrylak*, 39 ECAB 276 (1987).

of her and in light of the absence of any medical evidence negating causal relation, the Board finds that the medical evidence supporting appellant's claim is sufficient to require the Office to further develop the evidence.⁴ The Office should request a rationalized medical opinion on the question of whether appellant's medical treatment beginning October 25, 1993, or her spinal fusion performed on July 6, 1994 are causally related to her March 9, 1986 employment injury, either from appellant's attending physician or from a second opinion physician.

The decisions of the Office of Workers' Compensation Programs dated August 17 and January 18, 1995 are set aside and the case remanded to the Office for further action consistent with this decision of the Board, to be followed by a *de novo* decision.

Dated, Washington, D.C.
February 10, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member

⁴ *John J. Carlone*, 41 ECAB 354 (1989); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.2b (April 1993) provides: "[I]f the claimant submits a clear supporting medical opinion, it becomes the [Office's] responsibility to assist the claimant in developing additional evidence, or to develop further the evidence by obtaining a consultation as second opinion."