U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NELVA J. RUCKMAN and U.S. POSTAL SERVICE,
POST OFFICE, Wadsworth, Ohio

Docket No. 96-1698; Submitted on the Record;
Issued June 4, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant met her burden of proof in establishing that she had residuals of her employment injury after July 2, 1993.

On September 14, 1990 appellant, then a 49-year-old rural carrier, filed a claim alleging that she injured her back on September 11, 1990. Appellant stopped work on September 12, 1990. The Office of Workers' Compensation Programs accepted appellant's claim for subluxation of the spine at the L4 level but indicated that appellant needed to submit a medical report from a physician concerning the causal relationship between the diagnosed condition and factors of her federal employment. On October 27, 1990 appellant returned to limited-duty work for four hours a day. She gradually began working four to six hours a day and was working six hours a day consistently by March 23, 1991. On March 20, 1991 the Office advised appellant that it had approved her compensation benefits through March 8, 1991 and that she should submit claims for continuing compensation for lost wages with medical documentation for any further benefits. Dr. K.L. Lehman, a chiropractor and appellant's treating physician, released her to full-time limited-duty work effective March 16, 1992. Appellant received appropriate compensation through this date.

On April 30, 1992 appellant was referred to Dr. Joseph B. Paley, a Board-certified orthopedic surgeon and Office referral physician, for examination and an opinion regarding whether appellant's claimed condition was causally related to factors of her federal employment, whether she had any residuals from her accepted injury and whether there were any restrictions on her employment activities. In a report dated May 12, 1992, Dr. Paley indicated that appellant had sustained a lumbosacral strain at the time of the employment incident and that she had recovered from this injury. He concluded that she did not require any further medical treatment.

In a report dated November 8, 1993, Dr. Lehman questioned the Office's failure to pay medical bills related to appellant's continuing injury. He noted that appellant was working 8 hours a day in limited duty with restrictions on lifting over 15 pounds and that she had not

returned to her date-of-injury position. In a letter dated December 7, 1993, the Office responded to Dr. Lehman's inquiry and found that appellant was not entitled to medical benefits after July 2, 1993 based on Dr. Paley's report. It indicated that the reports by Dr. Lehman were not sufficient to establish that appellant was either still partially disabled or required limited work. The Office noted that if appellant disagreed with its determination she should submit detailed medical evidence.

Appellant submitted a report dated January 31, 1994 from Dr. Lehman who reiterated appellant's history of injury and medical care. He noted that appellant had not returned to her date-of-injury job, that despite participating in a work-hardening program appellant continued to have pain in her low back and right leg depending on her activities and that her condition had "exacerbated and remissed" over the past two years. Dr. Lehman provided a current diagnosis of lumbosacral sprain creating a discopathy of L4 with subluxation of L4 and segmental dysfunction at the L4-5 motor unit. He concluded that rotary stress could not be tolerated due to the protruding disc with the segmental instability, that her condition was directly related to her initial injury and that she had a permanent impairment.

Appellant also submitted a report dated March 2, 1994 by Dr. John A. McCulloch, a Board-certified orthopedic surgeon. He noted that appellant sustained a back injury in September 1990 and "likely had a disc herniation at that time" at the L4-5 level. Based on x-rays findings and history, he diagnosed degenerative disc disease at the L4-5 and L5 to S1 with annular bulging at the L4-5 and a "lytic spondylo" at the L5 at the left. Dr. McCulloch believed that appellant should be confined to limited duties with her current restrictions for 40 hours a week. He concluded that appellant should not try to "step up" her regular duties and that she should try to lessen the intervals of chiropractic intervention.

In a decision dated January 19, 1995, the Office denied appellant's claim for compensation on the grounds that the medical evidence failed to establish any residuals from her September 11, 1990 employment injury. In the memorandum accompanying the decision, the Office accorded Dr. Paley's opinion determinative weight and did not mention the other medical reports of record.

In a decision dated March 14, 1996, an Office hearing representative affirmed the Office's January 19, 1995 decision on the grounds that the weight of the medical evidence was with the report by Dr. Paley. He found that Dr. Paley's report was entitled to determinative weight as he had superior credentials and that Dr. McCulloch's report did not address appellant's current condition or relate it to appellant's employment injury.

The Board finds that this case is not in posture for decision and must be remanded for further evidentiary development.[1]

[1] The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed her appeal with the Board on May 10, 1996, the only decision before the Board is the Office's March 14, 1996 decision. *See* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.[2] The Board has held that the mere fact that a disease or condition manifests itself during a period of employment does not raise an inference of causal relationship between the condition and the employment.[3] Neither the fact that the condition became apparent during a period of employment nor appellant's belief that employment caused or aggravated her condition is sufficient to establish causal relationship.[4] While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,[5] neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[6]

In the present case, the Office accepted that appellant sustained a subluxation of the spine at the L4 level and that this injury was causally related to her employment injury of September 11, 1990. Thereafter, appellant received appropriate compensation including medical benefits through July 2, 1993. In a letter dated December 7, 1993, the Office advised appellant that the medical evidence she submitted was insufficient to establish that her claimed continuing condition was causally related to her employment injury. Over a year later in a decision dated January 19, 1995, the Office advised appellant that her claim was denied and based its decision on a report by Dr. Paley that was written in May 1992. However, appellant had submitted probative medical evidence that was contemporaneous with the Office's January 1995 determination that she had not established a causal relationship between her claimed residuals after July 1993 and the accepted employment injury. Dr. Lehman indicated that appellant's current condition was directly related to her employment injury and Dr. McCulloch provided a number of diagnoses which caused appellant continued restrictions and inferred that the diagnosed condition was related to her history of injury. While the reports by Drs. Lehman and McCulloch are not sufficient to establish that appellant's residual disability is causally related to factors to her accepted employment injury, these reports are sufficient to require further development of the evidence, especially in light of the lack of contemporaneous medical evidence supporting the Office's denial of appellant's claim.[7] In view of the more recent medical evidence from appellant that was in conflict with the opinion by Dr. Paley which had been written over two years before the Office's January 1995 decision according it determinative weight, this case must be remanded for further development of the evidence.

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[2] *Williams Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537, 538-39 (1953).

[3] *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

[4] *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

[5] *See Kenneth J. Deerman*, 34 ECAB 641 (1983).

[6] *See Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

[7] *Cf. Larry B. Thorn*, 38 ECAB 344 (1987).

The Board notes that when an employee initially submits supportive factual and/or medical evidence which is not sufficient to carry the burden of proof, the Office must inform the claimant of the defects in proof and grant at least 30 calendar days for the claimant to submit the evidence required to meet the burden of proof. The Office may undertake to develop either factual or medical evidence for determination of the claim.[8] It is well established that proceedings under the Act are not adversarial in nature,[9] and while the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.[10] The Office has the obligation to see that justice is done.[11]

On remand, the Office should further develop the evidence by providing Dr. McCulloch with a statement of accepted facts and requesting that he submit a rationalized medical opinion on whether the diagnosed conditions are causally related to factors to her employment injury and whether appellant has any residual disability from the diagnosed conditions. After such development as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated March 14, 1996 is set aside, and this case is remanded for further proceedings consistent with his decision.

Dated, Washington, D.C.
June 4, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

[8] 20 C.F. R. § 10.11(b); *see also John J. Carlone*, 41 ECAB 354 (1989).

[9] *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985); *Michael Gallo*, 29 ECAB 159 (1978).

[10] *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

[11] *William J. Cantrell*, 34 ECAB 1233 (1983).