U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL A. REX and DEPARTMENT OF AGRICULTURE, FOREST SERVICE, ELDORADO NATIONAL FOREST, Placerville, Calif.

Docket No. 96-1662; Submitted on the Record;
Issued May 27, 1998

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT, A. PETER KANJORSKI

The issues are: (1) whether appellant established that she sustained a recurrence of disability on June 21, 1995 causally related to her May 6, 1994 employment injury; and (2) whether the Office of Workers' Compensation Programs abused its discretion by denying merit review of appellant's claim.

The facts in this case indicate that on May 9, 1994 appellant sustained an employment-related concussion and cervical strain in a motor vehicle accident for which she received approximately 49 hours of continuation of pay. On June 21, 1995 she submitted a recurrence claim, contending that she continued to have neck and lower back pain from the May 9, 1994 employment injury. By letter dated July 21, 1995, the Office informed her of the type of information needed to support her recurrence claim.

The relevant medical evidence indicates that appellant was initially seen in the emergency room where x-rays of the cervical spine were negative. On June 8 and July 11, 1994 she was treated by Dr. Linda Baryliuk, a Board-certified internist, who diagnosed concussion and whiplash. She next saw Dr. Baryliuk on June 15, 1995. In a June 21, 1995 report, Dr. Baryliuk stated that appellant's daughter, a physical therapy aide, would like to do therapy on appellant for recurring neck and lower back spasm due to the May 1994 motor vehicle accident. She noted that appellant exercised regularly, took Motrin and used ice packs "off and on." Examination revealed the cervical area to be nontender. There were two tender triggers that caused pain to radiate down the buttocks. Appellant was given an injection in the hip area and referred to physical therapy. In an August 18, 1995 report, Dr. Baryliuk diagnosed cervical and low back pain and recommended physical therapy.

By decision dated September 21, 1995, the Office denied appellant's claim on the grounds that the record did not contain a report from a physician that explained how her current condition was causally related to the employment injury.

On November 20, 1995 appellant requested reconsideration and submitted an October 30, 1995 report from Dr. Baryliuk who noted the history of injury and stated that she had first seen appellant on May 9, 1994 when she diagnosed status-post concussion and whiplash and prescribed medication and physical therapy. When seen on July 11, 1994 appellant reported that her upper back and neck problems had resolved quickly but that her low back "continued to give her modest pain but she felt that this was improving." Examination revealed full range of motion in the lumbar area with mild tenderness to palpation in the L5-S1 paraspinous areas. Straight-leg raising was normal. Dr. Baryliuk's diagnosis at that time was status-post cervical and lumbar strains. She reported that she next saw appellant on June 15, 1995 when she diagnosed myofascial pain. She last saw appellant on August 18, 1995 when appellant reported neck pain and examination revealed a trigger point in the right upper back. Dr. Baryliuk again diagnosed myofascial pain. In answer to specific questions, the physician concluded that appellant reported that she continued to be symptomatic in her neck and lower back, exacerbated by work and routine activities such as driving and gardening, that she had been released to return to work with no restrictions on May 10, 1994, and opined that whiplash injuries "sometimes lead to prolonged myofascial pain but this is usually not permanent."

In a merit decision dated November 28, 1995, the Office denied appellant's claim on the grounds that the medical evidence failed to establish a causal relationship between the May 6, 1994 employment injury and her current condition. On February 26, 1996 appellant requested reconsideration and submitted medical reports dated June 8, 1994 and February 8, 1996 from Dr. Baryliuk.

In the February 8, 1996 report, Dr. Baryliuk advised that "in a significant percentage of people," including appellant, injuries such as those she sustained in the employment-related motor vehicle accident, lead to subacute and chronic back pain and muscle spasms, usually diagnosed as myofascial pain syndrome. He stated that it was unclear why this occurs, that she found no other event or etiology to explain appellant's condition, and that she was "obligated to rely on [appellant's] historical details to make the diagnosis."

By decision dated April 4, 1996, the Office denied appellant's request on the grounds that the medical evidence submitted was repetitious and noted that appellant did not seek medical care from July 21, 1994 to June 15, 1995.

The Board finds this case is not in posture for decision.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.[1] This burden includes the condition necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is

[1] *Kevin J. McGrath*, 42 ECAB 109 (1990); *John E. Blount*, 30 ECAB 1374 (1974).

causally related to the employment injury and supports that conclusion with sound medical reasoning.[2]

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between his or her claimed condition and employment.[3] Causal relationship is a medical issue,[4] and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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, must be one of reasonable medical certainty, 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.[5] Moreover, neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[6]

In this case, the Office accepted that appellant sustained an employment-related cervical strain and concussion in a motor vehicle accident. Her treating physician, Dr. Baryliuk, provided a February 8, 1996 report in which she advised that, while it was unclear why this occurs, injuries such as that appellant sustained in the employment-related motor vehicle accident lead to subacute and chronic back pain and muscle spasms, usually diagnosed as myofascial pain syndrome. While Dr. Baryliuk's report is insufficient to establish entitlement, the fact that they contain deficiencies preventing appellant from discharging her burden does not mean that they may be completely disregarded by the Office. It merely means that their probative value is diminished. As Dr. Baryliuk indicated that appellant's myofascial pain syndrome was employment related, her opinion is sufficient to require further development of the record.[7] It is well established that proceedings under the Act[8] are not adversarial in nature,[9] and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[10] On remand the Office should refer appellant to an

[2] *Frances B. Evans*, 32 ECAB 60 (1980).

[3] *Donald W. Long*, 41 ECAB 142 (1989).

[4] *Mary J. Briggs*, 37 ECAB 578 (1986).

[5] *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

[7] *See John J. Carlone*, 41 ECAB 354 (1989). The Board notes that the case record does not contain a medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case for a second opinion evaluation.

[8] 5 U.S.C. § 8101 *et seq.*

[9] *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

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

appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether appellant's myofascial pain syndrome is employment related. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.[11]

The decisions of the Office of Workers' Compensation Programs dated April 4, 1996, November 28 and September 21, 1995 are hereby set aside and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, D.C.
May 27, 1998

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[11] In view of the Board's disposition of the merits of appellant's claim, the issue of whether the Office abused its discretion in denying merit review is moot.