

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA M. WHITEHEAD and DEPARTMENT OF VETERANS
AFFAIRS, MEDICAL CENTER, Northport, N.Y.

*Docket No. 97-933; Submitted on the Record;
Issued November 12, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish a recurrence of disability on April 26, 1995 causally related to her accepted lumbosacral sprain of December 15, 1991.

On December 15, 1991 appellant, then a 43-year-old licensed practical nurse, sustained an injury to her low back after restraining a patient as a result of her federal employment. The Office of Workers' Compensation Programs accepted appellant's claim for lumbosacral sprain.

Review of the claim file indicates that appellant suffered recurrences of disability on August 6, 1992 and April 28, 1993, which the Office accepted as causally related to the original work injury of December 15, 1991.

On May 10, 1995 appellant filed a Form CA-2a, notice of recurrence of disability, claiming that her original work injury caused a recurrence of disability on April 26, 1995. Appellant indicated that she was working in a limited-duty capacity at the time of the alleged recurrence.

By decision dated August 11, 1995, the Office denied the recurrence claim on the grounds that the medical evidence was insufficient to establish that appellant's claimed condition of April 26, 1995 was causally related to her work injury of December 15, 1991.

Appellant disagreed with this decision and a hearing was held before the Branch of Hearings and Review. By decision dated December 5, 1995, the Office hearing representative affirmed the August 11, 1995 decision. The hearing representative found that the medical evidence of record did not establish that appellant's current symptoms were related to the December 15, 1991 work injury previously accepted by the Office.

By separate letters dated May 10, 1996, which the Office received May 16, 1996, appellant and Deborah G. Helprin, appellant's attorney, requested reconsideration and submitted

additional evidence. The evidence submitted consisted of (1) a March 28, 1996 medical report from Dr. Phillip Fyman, a Board-certified internist; (2) an April 2, 1996 medical report from Dr. Jimmy Lim, a Board-certified orthopedic surgeon, and Arthur Rotter, a registered physicians assistant; (3) a June 29, 1995 computer tomography (CT) scan report, which reports a small disc herniation at L5-S1 and posterior spinal fusion defect at S1 level (4) a January 23, 1992 CT scan of lumbar spine report, which suggests a central herniation at L5-S1 and notes some degenerative changes (5) a May 12, 1995 magnetic resonance imaging (MRI) report which reports a small L5-S1 herniation (6) a March 19, 1996 electromyography (EMG) report, which reports no evidence of radiculopathy, but notes findings suggestive of bilateral sciatic neuropathy, right more than left and (7) a June 29, 1995 myelogram report which reports a ventral extra-dural defect at L5-S1 which lateralizes slightly to the left.

In his March 28, 1996 report, Dr. Fyman noted that appellant was initially seen on October 8, 1995 for treatment of low back pain radiating to the right leg. He noted that the pain began in 1991 when appellant tried to restrain a patient. While the pain never resolved completely, appellant was able to work. On April 30, 1995 the pain became more severe and began radiating down the right leg. Because of this severe pain, Dr. Fyman noted that appellant has not been able to work, except for brief periods, when she tried light duty. Dr. Fyman noted that even light duty was too painful and appellant had to stop work. He noted that the May 12, 1995 MRI and the June 29, 1995 CT scan revealed a herniated L5-S1 disc. Dr. Fyman diagnosed a lumbar radiculopathy caused by the herniated L5-S1 disc. He then opined that the April 1995 exacerbation of low back pain radiating to the legs was a direct result of the initial episode of low back pain in 1991. Dr. Fyman stated that clinically, appellant herniated her disc in 1991, based on her symptoms. On April 30, 1995 the flare-up of pain was due to this herniated disc.

In his April 2, 1996 medical report, Mr. Rotter noted that appellant was initially seen on December 15, 1991 complaining of severe back pain, which resulted from restraining a patient at work. Mr. Rotter provided a history of appellant's chief complaint arising from the incident of December 15, 1991 and noted that appellant was seen by him and disabled on three occasions for approximately 70 days, for exacerbation of pain, which was the direct cause of the injury of December 15, 1991. Mr. Rotter noted that he had been treating appellant on a regular basis since her initial injury and it was, therefore, his recommendation that due to an intermittent complaint through the course of treatment, appellant's complaints were directly related to the injury sustained on December 15, 1991. He noted that the MRI studies of January 31, 1992 and May 12, 1995 demonstrated a disc herniation at L5-S1. EMG study performed for the lower extremities was suggestive of bilateral sciatic neuropathy. Mr. Rotter opined that appellant's condition was directly related to the injury she sustained on December 15, 1991. He stated "she has intermittent exacerbation of pain, however, she failed to respond to her treatment; therefore, a full evaluation was performed. The patient's pain and symptoms were resolved only on a few occasions. The accident of December 15, 1991 is a direct contributor to this patient's back pain and disc herniation."

By decision dated May 28, 1996, the Office denied appellant's reconsideration request as the evidence submitted in support of the request was insufficient to warrant a merit review. The Office found that the evidence submitted in support of the application for review was repetitious

of information previously considered and that the reports merely repeated the opinions already contained in the file. The Office noted, for future reference, that the CT report and the myelogram both indicated that appellant had “posterior spinal fusion defect,” which indicated that appellant has a major preexisting back condition which required surgery at some time in the past.

By letter dated June 20, 1996, which the Office received August 14, 1996, appellant requested reconsideration and submitted an addendum of the April 2, 1996 medical report from Dr. Lim and Mr. Rotter and an addendum of the March 28, 1996 medical report from Dr. Fyman.

In a July 12, 1996 letter, Dr. Fyman stated that “As I stated in the (original letter), I feel that [appellant’s] pain is due to her herniated lumbar discs that was a result of an accident at work. It is highly unlikely that a congenital problem contributed significantly to this, since the pain began at the time of the accident and the congenital problem has been present for years.”

In a June 28, 1996 letter, Dr. Lim and Mr. Rotter stated that he was aware of appellant’s congenital condition of posterior spinal fusion defect and opined that this condition was not a contributing factor to her current medical condition and symptoms. He stated that appellant was originally evaluated on December 15, 1991 and thought to have diagnosis of lumbar strain/sprain, but it was later determined to be a disc herniation at L5-S1.

By decision dated November 8, 1996, the Office stated that it reviewed appellant’s claim on the merits but that the evidence submitted in support of the application was not sufficient to warrant modification of the decision dated August 11, 1995.

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

Where an employee alleges that he sustained a recurrence of disability due to an accepted employment-related injury, the employee has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disabling condition, for which compensation is sought is causally related to the accepted employment injury.¹ As part of this burden, the employee must submit rationalized medical evidence based upon a complete and accurate factual and medical background showing a causal relationship between the current disabling condition and the accepted employment-related condition.²

In the instant case, the Office accepted that appellant sustained a lumbosacral strain at work on December 15, 1991. Appellant claimed a recurrence of disability commencing April 26, 1995 was a result of the December 15, 1991 injury. In support of her claim, appellant submitted medical reports from Dr. Fyman and Mr. Rotter, which, while supportive of her claim, are insufficient to establish her claim.

¹ *Kevin J. McGrath*, 42 ECAB 109 (1990).

² *Herman W. Thorton*, 39 ECAB 875, 887 (1988); *Henry L. Kent*, 34 ECAB 361, 366 (1982); *Steven J. Wagner*, 32 ECAB 1446 (1981).

Although Dr. Fyman opined that the April 1995 exacerbation of low back pain was related to the initial episode of low back pain in 1991 in his March 28, 1996 report and makes reference to the congenital problem in his July 12, 1996 addendum, those reports are insufficient to establish a causal relationship between appellant's alleged recurrence of disability commencing April 26, 1995 and her prior employment-related lumbosacral strain of December 15, 1991 as they are not sufficiently well rationalized. In his March 28, 1996 report, Dr. Fyman stated that clinically, appellant herniated her disc in 1991, based on her symptoms and that the flare-up of pain on April 30, 1995 was due to this herniated disc. To merely state that a condition is related is not considered well rationalized. Dr. Fyman did not provide sufficient medical reasoning in support of his opinion. Likewise, in his July 12, 1996 addendum, Dr. Fyman indicated that it was highly unlikely a congenital problem contributed significantly to her current pain (in April 1995) since the pain began at the time of the accident and the congenital problem has been present for years. The addendum, however, does not state or provide any clarification on how appellant's current condition was a result of employment factors or the employment injury of December 15, 1991 and how such factors caused appellant's current condition.

Additionally, Mr. Rotter's reports of April 2 and June 28, 1996 are insufficient to establish a causal relationship between appellant's alleged recurrence of disability and her prior employment-related lumbosacral strain of December 15, 1991 as they are not sufficiently well rationalized. In his April 2, 1996 report, Mr. Rotter noted that the MRI studies of January 31, 1992 and May 12, 1995 demonstrated a disc herniation at L5-S1. Mr. Rotter, however, failed to discuss and explain what affect the findings from the CT scan of January 24, 1992 and June 29, 1995, which showed spina bifida occulata in the lower spine with some degenerative changes as well as posterior spinal fusion defect at the S1 level have upon appellant's current complaints. Moreover, in his addendum of June 28, 1996, Mr. Rotter opines that appellant's congenital condition of posterior spinal fusion defect was not a contributing factor to her current medical condition and symptoms, but fails to provide sufficient medical reasoning in support of his opinion or note the findings from the CT scans of January 24, 1992 and June 29, 1995.

The Board notes that while the March 28 and April 2, 1996 medical reports and respective addendums by Dr. Fyman and Mr. Rotter are insufficient to establish a causal relationship between appellant's alleged recurrence of disability commencing April 26, 1995 and her prior employment-related lumbosacral strain on December 15, 1991, the reports constitute sufficient evidence to require further development of the record by the Office.³ Thus, the Board will set aside the Office's decisions dated November 8 and May 28, 1996 denying modification of appellant's recurrence claim and remand the case to the Office for further development.

The Office should refer appellant, along with the case record and a statement of accepted facts, to an appropriate medical specialist for a well-rationalized opinion, based on a complete and accurate factual and medical background, regarding the causal relationship between the alleged recurrence of disability and the accepted condition of lumbosacral strain. The Office

³ See *John J. Carlone*, 41 ECAB 354 (1989). The Board notes that in this case the record contains no medical opinion contrary to appellant's claim.

should thereafter issue a *de novo* opinion on appellant's entitlement to compensation under the Federal Employees' Compensation Act.

The Office of Workers' Compensation Programs' decisions dated November 8 and May 28, 1996 are hereby set aside and the case remanded for further development to be followed by a *de novo* opinion in accordance with this decision of the Board.

Dated, Washington, D.C.
November 12, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member