

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JILL O. DUNIGAN and DEPARTMENT OF JUSTICE,
DRUG ENFORCEMENT ADMINISTRATION, Chicago, Ill.

*Docket No. 96-1866; Submitted on the Record;
Issued September 2, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that her current back condition is causally related to her accepted employment injuries.

The Board has duly reviewed the case record and concludes that the case is not in posture for a decision.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a fracture of the left fibula on September 6, 1982. Appellant subsequently filed a claim for recurrence of disability indicating that on October 28, 1982 she injured her back in a training class. Appellant later filed a notice of occupational disease alleging that she suffered from a herniated disc beginning September 25, 1982 due to factors of her employment. The Office accepted the claim for a herniated disc L5-S1 on February 8, 1984 and appellant received compensation for total temporary disability beginning April 6, 1983. Appellant returned to work on August 1, 1989 in the private sector as a workers' compensation investigator.

On November 1, 1990 appellant submitted a letter indicating that she had suffered a recurrence of disability. Appellant indicated that she experienced intermittent spasms on the lower right side of her abdomen and cramps in her calves. She also noted shooting pains in her left calf and the same pains from the outside left ankle to the middle of her leg. She stated that these pains turned to numbness and that another shooting pain moved from behind her left knee to her inside thigh around the sciatic nerve into her left abdomen. She also noted a shooting pain from her left instep to her groin and that her carotid artery felt that it was going to burst. She stated that Dr. McCarthy attributed this pain to a back problem and that by October 20, 1990 she could barely walk due to back pain and the other pain described. Appellant indicated that Dr. Hilliard E. Slavick, a Board-certified psychiatrist and neurologist and appellant's treating physician, diagnosed degenerative disc disease at L3, L4, L5 and S1. Appellant noted pain in

her right hip, buttocks, and lower abdomen. She indicated that she had sciatic pain down her right thigh.

On January 12, 1996 the Office informed appellant of the type of evidence needed to establish a recurrence of disability, including the requirement of rationalized medical opinion addressing whether there was a causal relationship between the current condition and the original injury. Appellant was given 30 days to respond.

On January 18, 1996 Dr. Slavick examined appellant. He stated that on December 26, 1995 appellant bent forward to reach a medicine chest and experienced excruciating back pain and locking of her low back. Subsequently, Dr. Slavick indicated that appellant experienced low back pain and locking of the low back. He indicated that his neurologic examination revealed diffuse muscle spasms within the entire right lumbosacral paraspinal muscles with some additional spasm on the left. Dr. Slavick noted that motor strength was reduced, especially proximally. He recorded that appellant walked slowly and limped in the right extremity. Dr. Slavick found that her lumbar posture was tilted to the right and that there was a positive right straight leg raise at 45 degrees. He also indicated that reflexes were slightly reduced at the right knee compared to the left. Dr. Slavick diagnosed acute lumbosacral sprain. He stated that the possibility of a central disc herniation, facet joint locking, and spinal lumbar stenosis is suggested based on her history and examination. Dr. Slavick opined that this was an exacerbation of her previous degenerative lumbosacral disc disease and lumbar degenerative arthritis. He concluded that, “[T]his all began with the accident of September 25, 1982 and her current symptoms are related to the previous injury.”

On February 1, 1996 the Office referred the case, along with a statement of accepted facts, to Dr. Richard H. Sidwell, a Board-certified orthopedic surgeon, for a second opinion examination.

On February 8, 1996 appellant wrote that she experienced a recurrence of disability on December 26, 1995 when she bent over at a bathroom sink. She noted that her symptoms continued on December 30, 1995 as she moved clothes from a clothes dryer. Appellant then described her condition again.

On February 20, 1996 Dr. Sidwell examined appellant. He indicated that he reviewed the entirety of the medical record and appellant’s history of injury, including the recent alleged recurrence of disability. Dr. Sidwell recorded appellant’s symptoms of back pain and noted that a magnetic resonance imaging revealed a three millimeter right paracentral protrusion of L4-L5 disc, a two millimeter left paracentral protrusion of L4-L5, a desiccation of disc levels L3 through S1 with vacuum degeneration of L5/S1, and no spinal stenosis. He stated that on examination the back appeared normal, but that appellant complained of pain to the touch in the mid-spine area. He stated that forward flexion was moderately restricted to 60 degrees and that extension was minimally restricted to 20 degrees. The rest of his physical examination rendered normal results. Dr. Sidwell diagnosed myofascial strain superimposed on chronic back pain syndrome based upon the objective and subjective findings and his review of the record. He opined that this diagnosed condition was not related to factors of appellant’s federal employment either by direct cause, aggravation, precipitation, or acceleration. He stated that the magnetic resonance imaging findings were not related to the accepted work injury, but due to general wear

and tear on the spine. Dr. Sidwell stated that appellant's disability was due to chronic degenerative changes in the lumbar spine unrelated to any specific injury in 1982. He based this conclusion on his opinion that these changes were typical of chronic spondylosis of the entire lumbar spine. Finally, he stated that there were no objective physical findings or subjective complaints that could be related to a disc pathology at L5-S1.

By decision dated March 1, 1996, the Office denied the claim for a recurrence of disability because the evidence failed to establish that appellant's current back condition was causally related to factors of her employment. In an accompanying memorandum, the Office noted that it credited the well-rationalized opinion of Dr. Sidwell over that of Dr. Slavick on the basis that the latter physician was unaware of appellant's preexisting degenerative disc condition and failed to explain his opinion.

Where appellant claims a recurrence of disability to an accepted employment-related injury, she has the burden of establishing by the weight of the reliable probative evidence that the recurrence of the condition for which she seeks compensation is causally related to the accepted employment injury.¹ As part of this burden, appellant must submit rationalized medical opinion evidence based on a complete and accurate factual and medical background showing a causal relationship between the current condition and the accepted employment-related injury.

In the instant case, Dr. Slavick, appellant's treating physician and a Board-certified psychiatrist and neurologist, and Dr. Sidwell, the referral physician and a Board-certified orthopedic surgeon, submitted conflicting opinions regarding the issue of whether appellant's current condition was causally related to her accepted employment injuries. Both physician's based their opinions on a thorough review of the medical record, including the objective evidence, and on their physical examinations. Each physician explained their opinion in light of these factors. Moreover, Dr. Slavick indicated that he was indeed aware of appellant's preexisting degenerative condition. When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Federal Employees' Compensation Act,² to resolve the conflict in the medical opinion.

As an unresolved conflict exists in the medical opinion evidence, this case must be remanded to the Office for referral to an impartial medical specialist. After such further development as necessary, the Office shall issue a *de novo* decision.

¹ See *Henry L. Kent*, 34 ECAB 361 (1982); *Dennis E. Twadzik*, 34 ECAB 536 (1983).

² 5 U.S.C. § 8123(a); see *Martha A. Whitson (Joe D. Whitson)*, 36 ECAB 370 (1984).

The decision of the Office of Workers' Compensation Programs dated March 1, 1996 is hereby set aside and the case is remanded to the Office for further development consistent with this opinion.

Dated, Washington, D.C.
September 2, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member