

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARTHA R. McQUEEN and DEPARTMENT OF THE NAVY,
U.S. NAVAL AIR WEAPONS STATION, Point Mugu, Calif.

*Docket No. 97-55; Submitted on the Record;
Issued September 21, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has established that she sustained a neck and shoulder condition, causally related to her August 8, 1994 employment injury; and (2) whether the Office of Workers' Compensation Programs properly determined that appellant had no residuals of her accepted lumbosacral strain injury after March 21, 1996.

On December 1, 1994 appellant, then a 29-year-old secretary, filed a claim alleging that on August 8, 1994 as she backed over a box, the heel of her shoe got caught in her pant leg and she fell on her buttocks and lower back. She was treated on the date of injury by the branch dispensary and the treating physician indicated that she was not disabled for work. Appellant did not stop work.

In support of her claim, appellant submitted a November 25, 1994 employing establishment dispensary note from Dr. Rex Davis, an employing establishment physician, which noted that appellant was being seen for a three-month follow-up of lower back and buttocks pain. Dr. Davis noted that appellant's range of motion was normal, that she had right-sided complaints upon bending, but that no muscle strain was noted and that there was objectively little to go on.

A December 30, 1994 form report from Dr. William P. Rajala, a Board-certified internist, noted appellant's history that she backed over a box and fell to her buttocks and lower back on August 8, 1994, that her subjective complaints included mid and low back pain and neck pain, noted that she injured herself on August 8, 1994, recovered, but then had an exacerbation over Thanksgiving weekend and noted that her pain was worse when she sat for a long period of time. He diagnosed cervical strain and lumbosacral strain and recommended Ibuprophen and stretching exercises. He also noted that appellant was able to perform her usual work.

A January 6, 1995 form report from Dr. Rajala noted the diagnoses cervical strain and lumbosacral strain, but provided no further information.

A January 20, 1995 form report from Dr. Rajala noted that appellant's neck was a little better but that her lower back was still causing some discomfort if she stood for a long period of time. He recommended stretching exercises.

In a March 2, 1995 progress note, Dr. Rajala noted that appellant's back still bothered her and that appellant complained of a pinching sensation in her left buttock area, which seemed to come on when she sat for long periods of time. He diagnosed persistent lumbosacral strain, but noted that appellant was able to function at her job full time.

In an April 11, 1995 form report, Dr. Rajala diagnosed left sciatica and cervical strain and indicated that appellant's lower back was much better after two visits to a chiropractor and exercising at the gym. He further noted that appellant's neck pain was also much better, but that she still had occasional discomfort. In a narrative note that date, Dr. Rajala noted that appellant's left buttock pain was much improved, that appellant had been going to the gym three times per week and had been seeing a chiropractor and massage therapist which had helped. He indicated that her cervical pain had also improved but was occasionally uncomfortable.

On May 5, 1995 the Office accepted that appellant sustained lumbosacral strain.

In a May 26, 1995 form report, Dr. Rajala diagnosed cervical strain and lumbosacral strain and noted that the lumbosacral strain was almost fully resolved but that the cervical spine still caused discomfort at times.

A December 27, 1995 form report from Dr. Rajala diagnosed cervical strain and noted that appellant had worsening neck pain when her head was turned while trying to read a computer screen or while using a keyboard. A December 27, 1995 narrative note diagnosed persistent cervical and trapezius muscle strain, indicated that appellant's neck pain had gotten worse and noted that appellant had not been able to see her chiropractor for quite some time.

On February 2, 1996 appellant filed a claim for recurrence of disability indicating that she was not claiming a recurrence of disability, but that her original injury had been continuous. She described her condition as soreness in her lower back and neck and indicated that she had to take short breaks to relax her muscles. Appellant claimed that her pain had been continuous with little or no break in discomfort and with more pain occurring in her neck, shoulders and lower back.

On March 11, 1996 appellant answered some Office questions about her claimed recurrence of disability noting that she had been in an automobile accident on January 12, 1996 and immediately afterward experienced increased lower back pain and neck pain for two to three weeks. She claimed that the auto accident aggravated her previous injuries but noted that she had experienced little or no break in neck and back pain since the date of her original injury in August 8, 1994.

By decision dated March 21, 1996, the Office rejected appellant's recurrence of disability claim finding that the fact of injury regarding appellant's neck and shoulder condition had not been established as there was no factual evidence in the record to show that she injured her neck or shoulders when she fell on her low back and buttocks on August 8, 1994. The Office further

found that there was no objective evidence of her accepted condition of lumbosacral strain and indicated that her claim for continuing benefits for that condition was rejected.

By letter dated May 23, 1996, appellant requested reconsideration and in support she submitted a May 3, 1996 narrative report from Dr. Rajala. Dr. Rajala stated that appellant tripped over an object on August 8, 1994 and developed back pain and to a lesser extent cervical pain. He stated that she had an exacerbation of pain in late November. He opined that in reviewing her situation her pain never fully resolved from her August injury and, therefore, opined that it was a continuation of her work injury. Dr. Rajala noted that appellant's pain had been getting worse prior to her January 1996 motor vehicle accident, so that even if it made things worse, it was not the true cause of all of her problems.

Also submitted were some duplicate medical reports and a December 6, 1994 report from Dr. Rajala, which noted that appellant had recurrent back and neck pain. Dr. Rajala noted that appellant told him that she injured her back on August 8, 1994 and developed back pain. No neck injury was noted or recounted by appellant. Dr. Rajala did not discuss the origins of appellant's subsequently noted neck pain.

A January 6, 1995 narrative report noted that appellant's neck pain had definitely improved but was aggravated when appellant turned her head. Dr. Rajala diagnosed cervical strain, improved but still not back to normal and lumbosacral strain, nearly resolved.

In a March 21, 1995 report from Dr. Rajala which stated that appellant's lower back pain was getting worse at that time. He indicated that appellant found it difficult to sit for prolonged periods due to left buttock pain and neck pain and he diagnosed left buttock pain with some symptoms of sciatica, low back pain and cervical strain.

A September 5, 1995 form report from Dr. Rajala diagnosed lumbar strain and noted that appellant had intermittent episodes of pain.

A December 27, 1995 report from Dr. Rajala stated that appellant's neck pain had gotten much worse again. He diagnosed persistent cervical and trapezius muscle strain.

A February 6, 1996 report from Dr. Rajala noted that appellant's neck and back were still bothering her when she turned her head. He diagnosed persistent cervical strain and lumbar strain, exacerbated by motor vehicle (accident).

A February 28, 1996 form report from Dr. Rajala diagnosed cervical strain and trapezius muscle strain with radiculopathy and did not discuss appellant's low back. In an accompanying narrative report he noted that appellant still had discomfort in her right trapezius muscle area and a pressure sensation in her lower back. He additionally diagnosed low back strain, also improved.

By decision dated July 25, 1996, the Office denied appellant request for a review of her case on its merits under 5 U.S.C. § 8128(a) finding that the evidence submitted in support of her request was repetitious of that already in the record and previously considered by the Office.

The Board finds that appellant has failed to establish that she sustained neck or shoulder injury on August 8, 1994.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition, for which she claims compensation was caused or adversely affected by employment factors.¹ This burden includes the submission of a detailed description of the employment factors or conditions, which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.² Further, appellant must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the injury claimed and factors of her federal employment.³ Causal relationship is a medical issue that can be established only by medical evidence.⁴ The Board notes that the fact that a condition manifests itself or worsens during a period of employment does not raise an inference of an employment relationship.⁵

In the instant case, appellant has not alleged that she injured her neck or shoulders when she fell; she has not provided a description of how falling on her low back and buttocks injured her neck, or of how she supposedly sustained cervical strain from the fall. She further did not claim that she sustained neck injury on her claim form. These omissions diminish the veracity of appellant's claim. Further, the medical evidence most contemporaneous to the injury fails to mention any cervical or shoulder injury and fails to note any neck or shoulder symptomatology at the time of examination. This lack of documentation further diminishes the veracity of her claim. Thereafter, reports from Dr. Rajala merely mention that appellant had cervical and trapezius strain, but fail to discuss causal relation. Therefore, these reports do not support that appellant sustained cervical or shoulder injury on August 8, 1994 as alleged. As the evidence of record is devoid of any factual evidence supporting that appellant sustained cervical or trapezius injury on August 8, 1994 and is lacking any rationalized medical evidence discussing causal relation of the August 8, 1994 fall on her low back and the development of cervical and trapezius strain, appellant has failed to establish that she sustained neck or shoulder injury on August 8, 1994.

However, the Board finds that the Office has failed to establish that appellant's accepted condition of lumbosacral strain resolved as of March 21, 1996.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁶ After it has determined that an employee has disability

¹ *Pamela R. Rice*, 38 ECAB 838 (1987).

² *Effie O. Morris*, 44 ECAB 470 (1993).

³ *Steven R. Piper*, 39 ECAB 312 (1987); *see* 20 C.F.R. § 10.110(a).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

⁵ *Paul D. Weiss*, 36 ECAB 720 (1985); *Hugh C. Dalton*, 36 ECAB 462 (1985).

⁶ *Harold S. McGough*, 36 ECAB 332 (1984); *see* Federal (FECA) Procedure Manual, Chapter 2.812.3 (March 1987).

causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁷

In the instant case, the Office has not established by the weight of the reliable, probative medical evidence that appellant's accepted lumbosacral strain condition has completely resolved. None of the medical reports of record indicate that the condition has resolved without residuals; the only medical report of record mentioning that appellant had recovered was the December 30, 1994 form report from Dr. Rajala, which stated that following her injury she recovered, but had exacerbation of symptoms over Thanksgiving weekend. This report identified continuing injury-related residuals and the Office accepted that appellant had lumbosacral strain and paid compensation for periods of disability after the time of this report, indicating that it found that appellant was still suffering from compensable injury-related residuals during those periods following this report. The Office cannot now rely on this single statement that appellant had recovered at some point following her injury but preceding Thanksgiving 1994, to state that appellant's injury had resolved as of March 21, 1996. The medical evidence that appellant submitted subsequent to that report addresses continuing low back symptomatology, which worsens and improves and, which "almost" but not quite seems to resolve but reappears periodically. None of the subsequent medical reports document a complete resolution of appellant's low back condition and the Office has not obtained any medical opinion evidence establishing that appellant's accepted lumbosacral strain has completely resolved without residuals. Therefore, the Office has not met its burden of proof to terminate appellant's entitlement to medical treatment or benefits related to the accepted low back strain condition.

As the Board is reversing part of the Office's March 21, 1996 decision, the issue of whether or not the Office abused its discretion in denying appellant's request for a review of her case on its merits under 5 U.S.C. 8128(a) on July 25, 1996 is moot.

⁷ See *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

Accordingly, the decision of the Office of Workers' Compensation Programs dated March 21, 1996 is affirmed in part as to the issue of whether appellant has established that she sustained neck and shoulder injury on August 8, 1994, but is reversed in part as to whether appellant is entitled to further benefits with respect to her accepted lumbosacral strain condition.

Dated, Washington, D.C.
September 21, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member