

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of COLEEN G. MOORE and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Madison, WI

*Docket No. 97-920; Submitted on the Record;
Issued August 5, 1999*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained any disability after February 3, 1993 due to her accepted employment-related back injury; and (2) whether appellant has met her burden of proof to establish that she sustained any disability causally related to her accepted employment-related back and vaginal conditions during the period February 26 through August 20, 1993.

On November 17, 1989 appellant, then a mail processor, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained rectocele and cystocele stress as a result of pushing a heavy loaded "GAPC" from the "OCR" area to the main loading dock.

By decision dated January 31, 1990, the Office of Workers' Compensation Programs found the evidence of record insufficient to establish that appellant's condition was caused by factors of her employment. In a letter dated February 20, 1990, appellant requested an oral hearing before an Office representative.

By decision dated March 12, 1991, the hearing representative found that appellant had submitted sufficient evidence to warrant further development by the Office. Accordingly, the hearing representative vacated the Office's decision and remanded the case to the Office for further development.

By letter dated October 11, 1991, the Office accepted appellant's claim for vaginal vault prolapse. The Office also accepted appellant's claim for aggravation of chronic disc syndrome, and authorized sacrospinous fixation and posterior vaginal repair.

By letter dated January 6, 1993, the Office referred appellant along with a statement of accepted facts, a list of specific questions and medical records to Dr. Michael D. Plooster, a Board-certified orthopedic surgeon, for a second opinion examination to determine whether

appellant's preexisting back condition was aggravated by her accepted November 17, 1989 employment injury. By letter of the same date, the Office advised Dr. Plooster of the referral.

By letter dated June 3, 1993, the Office advised Dr. Everett L. Roley, a Board-certified obstetrician and gynecologist, and second opinion physician, that it had received a report from an orthopedist. The Office requested that Dr. Roley determine whether appellant had any partial or total disability due to her accepted employment injury.

On July 1, 1993 appellant filed a claim for continuing compensation on account of disability (Form CA-8) for the period February 26 through May 28, 1993. By letter dated September 28, 1993, the Office advised appellant to submit additional factual and medical evidence supportive of her claim. Previously, on August 25, 1993 appellant filed a Form CA-8 for the period May 5 through August 20, 1993.

In letters dated October 18, 1993 and March 17, 1994, the Office again requested that Dr. Roley determine whether appellant had any disability causally related to her accepted employment injury accompanied by a statement of accepted facts, Dr. Plooster's February 3, 1993 medical report revealing that appellant's back condition was not caused by her employment-related back condition and a list of specific questions. In a July 20, 1994 response letter, Dr. Roley stated that appellant's vaginal condition had resolved as a result of surgery and that he had no comment on appellant's back condition inasmuch as he was not an expert in that field of medicine.

By decision dated May 30, 1996, the Office found the evidence of record sufficient to establish that the incident occurred at the time, place and in the manner alleged, but insufficient to establish that appellant's back condition continued after February 3, 1993. The Office further found the medical evidence of record insufficient to establish that appellant sustained any disability causally related to her November 17, 1989 employment injury during the period February 26 through August 20, 1993.¹

In an August 28, 1996 letter, appellant, through her counsel, requested reconsideration of the Office's decision accompanied by medical evidence. By decision dated October 8, 1996, the Office denied appellant's request for modification based on a merit review of the claim.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish she sustained any disability after February 3, 1993 due to her accepted employment-related back injury.

An employee seeking benefits under the Federal Employee's Compensation Act² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the

¹ Appellant filed a claim for a schedule award on February 20, 1996. By decision dated July 10, 1996, the Office granted appellant a schedule award for a five percent permanent loss of use of the vagina for the period November 7, 1994 through January 17, 1995.

² 5 U.S.C. §§ 8101-8193.

United States” within the meaning of the Act and that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴ In order to establish her claim, appellant must submit rationalized medical opinion evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the period of disability.⁵

In this case, appellant has failed to submit rationalized medical evidence establishing that she sustained any disability after February 3, 1993 due to her accepted employment-related back injury. To determine whether appellant had any residuals of her accepted employment-related back injury, the Office referred appellant to Dr. Plooster. In a February 3, 1993 medical report, he provided a history of appellant’s November 17, 1989 employment injuries, medical treatment and complaints. Dr. Plooster indicated his findings on physical and objective examination. He diagnosed degenerative lumbar disc and facet joint disease, and acute vaginal prolapse with rectocele and cystocele. Dr. Plooster stated that any disability sustained by appellant due to her vaginal condition should be addressed by her gynecologist. He opined that appellant sustained a musculoligamentous type of sprain which accelerated beyond normal a preexisting degenerative condition of her lower back. This aggravation of a preexisting condition was most likely only a temporary aggravation of a condition which was likely to progress anyway without the inciting event. Dr. Plooster explained that “[t]his opinion is based on the fact that [appellant] had serious injuries to her back in 1957 and had significant back pain in the 1970’s which required hospitalization. Appellant was told that she had [a] herniated disc which further reinforces the severity of those injuries.” He stated that x-rays taken in his office on the date of appellant’s examination demonstrated severe degenerative changes in the spine that were a culmination of many years of stress to the spine. Dr. Plooster explained that these changes were most likely to have been present at the time of injury. He noted that appellant’s deep pain that was characterized as a labor pain may have some gynecological basis, but that he was not an expert in that field of medicine to determine whether appellant’s previous surgery would cause her current back pain. Dr. Plooster then strongly opined that appellant’s current back pain was related to a degenerative condition which was present prior to the 1989 employment injury. He then opined that based on this, appellant’s temporary aggravation of a chronic condition reached full healing within six months after the injury and that her current complaints were due to the preexisting condition and/or her gynecological situation which contributed to some of her back pain symptoms. Dr. Plooster concluded that appellant could work with specific physical restrictions. He further concluded that appellant’s gynecological disability may have some overlap in the low back and perineal pain problem, but that he was not able to comment on this disability.

³ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

⁴ *Ruthie M. Evans*, 41 ECAB 416 (1990); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *James Mack*, 43 ECAB 321 (1991).

Appellant has alleged that Dr. Plooster's medical opinion is based on an inaccurate medical history. Specifically, appellant has alleged that she was not involved in an automobile accident in 1957 and that she was not hospitalized in a military hospital. Appellant has failed to submit any evidence to substantiate these allegations. Regarding her history of back problems, Dr. Plooster stated in his medical report, that appellant was involved in a motor vehicle accident while in the United States Marine Corp. Dr. Plooster commented that "[appellant] states that she was hospitalized in Ocean Side, California after the injury occurred at the Camp Pendleton Facility. She states that she healed up from this initial injury and was able to continue in her military duties." Dr. Plooster further commented that "[appellant] states that she had the recurrence of low back pain problems in the 1970's. At one point in time she was hospitalized at the Veterans Administration Hospital in Madison and was diagnosed as having a herniated disc. She was treated nonsurgically." Thus, it appears that Dr. Plooster recorded appellant's medical history based on her own statements.

The record reveals the medical treatment notes of Dr. Timothy P. Murphy, a family practitioner and appellant's treating physician, covering the period January 14, 1993 through April 14, 1994 and indicating appellant's various back conditions. These treatment notes are insufficient to satisfy appellant's burden because they failed to address the cause of appellant's back conditions or disability.

Further, Dr. Murphy's March 11, 1993 medical notes provided that appellant had back pain secondary to her injury and degenerative joint disease. His May 4, 1994 medical notes indicated that appellant's back problems started several years ago during a work-related back injury. Dr. Murphy's medical notes failed to explain how or why appellant's back condition or disability was caused by her accepted employment-related back injury. Therefore, they are insufficient to satisfy appellant's burden.

Additionally, in a January 28, 1994 medical report, Dr. Murphy provided appellant's medical treatment and her need to be evaluated by an orthopedic surgeon. He failed to address whether appellant had a back condition or any disability caused by her accepted employment-related back injury. Thus, his medical report is insufficient to establish appellant's burden.

The rationalized medical report of Dr. Plooster constitutes the weight of the medical evidence relative to the issue of whether appellant had any continuing disability after February 3, 1993 as the other medical evidence of record does not either address the central issue in this case or provide any medical rationale to support causal relation. Consequently, appellant has not satisfied her burden of proof in establishing that she sustained any disability after February 3, 1993 due to her accepted employment-related back injury.

The Board further finds that appellant has failed to meet her burden of proof to establish that she sustained any disability causally related to her accepted employment-related back and vaginal injuries during the period February 26 through August 20, 1993.

In the present case, appellant has failed to submit any medical evidence establishing that she was totally disabled during the period February 26 through August 20, 1993 due to her accepted employment-related injuries or the subsequent approved surgeries for her vaginal condition.

Regarding appellant's back condition, the medical notes of Dr. Murphy covering the period February 26 through August 20, 1993 failed to either address whether appellant was totally disabled due to her employment-related back condition or to provide any medical rationale explaining the causal relationship between appellant's disability and accepted employment injury. Further, Dr. Murphy's October 14, 1993 disability certificate indicating that appellant missed partial or whole days from work secondary to her back condition during the period February 26 through May 28, 1993 is insufficient to establish appellant's burden because it failed to indicate a diagnosis and to discuss whether or how the diagnosed condition was caused by appellant's November 17, 1989 employment-related back injury.⁶ In addition, Dr. Murphy's March 3, 1993 medical report merely revealed appellant's physical restrictions.

Regarding appellant's vaginal condition, Dr. Roley indicated in a June 11, 1993 response letter to the Office's June 3, 1993 letter that he had not seen appellant since February 21, 1992. Further, the record reveals that Dr. Roley did not examine appellant again until October 29, 1993, which occurred subsequent to the alleged period of total disability. Thus, there is no medical evidence of record indicating that appellant was totally disabled due to her employment-related vaginal condition during the period February 26 through August 20, 1993.

Because appellant has failed to submit rationalized evidence establishing that she was totally disabled due to her November 17, 1989 back and vaginal employment-related injuries during the period February 26 through August 20, 1993, she has failed to satisfy her burden of proof.

⁶ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

The October 8 and May 30, 1996 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
August 5, 1999

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member