U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLORIA J. DUYCK and DEPARTMENT OF THE AIR FORCE, SELFRIDGE AIR NATIONAL GUARD BASE, Mich.

Docket No. 97-751; Submitted on the Record;
Issued January 19, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that her disability after December 2, 1996 was causally related to her accepted April 20, 1993 employment injury.

In the present case, the Office of Workers' Compensation Programs has accepted that appellant, a secretary, sustained lumbar spine strain and herniated disc at L4-5 while bending over to pick up mail on April 20, 1993. The record indicates that appellant has also been diagnosed with bilateral carpal tunnel syndrome and a cervical condition, which were not causally related to her federal employment. Following placement in a vocational rehabilitation program, appellant returned to work on September 24, 1996 at a private employer, Mt. Clemons Hospital, as an environmental worker performing light housekeeping duties.

On December 20, 1996 appellant advised the Office that she had stopped work on December 2, 1996 after twisting her back, while pulling on a headboard in the performance of her private employment. By decision dated January 30, 1997, the Office denied appellant's claim for disability benefits after December 2, 1996. The Office found that appellant had sustained a new injury on December 2, 1996 while employed in private industry and that the evidence of record failed to demonstrate a causal relationship between the injury of April 20, 1993 and the claimed disability after December 2, 1996.

The Board finds that appellant has not established that her disability after December 2, 1996 was causally related to her April 20, 1993 employment injury.

In the present case, appellant is essentially alleging that after her December 2, 1996 injury while working for a private employer, her accepted low back conditions again disabled her. Appellant is, therefore, claiming that while she did sustain a new injury on December 2, 1996, her disability after December 2, 1996 was consequential to her April 20, 1993 injury.

In discussing how far the range of compensable consequences is carried, once the primary injury is causally connected with the employment, the Board has adopted the consequential injury rule as stated by Professor Larson notes in his treatise, *The Law of Workers' Compensation.*[1]

> "When the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of 'direct and natural results' and of claimant's own conduct as an independent intervening cause.
>
> "The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury."[2]

Thus, it is accepted that once the work-connected character of any condition is established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.[3] If a member weakened by an employment injury contributes to a later fall or other injury, the subsequent injury will be compensable as a consequential injury. If further complication flows from the compensable injury, *i.e.*, so long as it is clear that the real operative factor is the progression of the compensable injury, with an exertion that in itself would not be unreasonable under the circumstances, the condition is compensable.[4]

The issue, therefore, is whether appellant's disability after December 2, 1996 is compensable as a "direct and natural" result of the April 20, 1993 employment injury. Applying the principles noted above, the Board finds that the triggering episode for appellant's claimed disability was the December 2, 1996 incident wherein appellant twisted her back while pulling a headboard from a bed. Appellant has not submitted any medical evidence, which discusses the accepted employment injury, the December 2, 1996 headboard incident and thereafter explains with medical rationale how the December 2, 1996 injury was a progression of the accepted employment injury.[5]

Appellant was seen by her treating physician, Dr. John V. Corbett, a Board-certified orthopedic surgeon, on December 10, 1996. Dr. Corbett stated that appellant had pulled a head board on a bed while at work on December 2, 1996 and twisted her back. He indicated that she was having rather severe pain and had not worked since then. Dr. Corbett noted that appellant had undergone a preemployment physical before she began her employment in September 1996

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[1] Larson, *The Law of Workers' Compensation* § 13.00.

[2] *See also John R. Knox*, 42 ECAB 193 (1990). *Id.* at § 13.11.

[3] *Dennis J. Lasanen*, 41 ECAB 933 (1990).

[4] *Robert W. Meeson*, 44 ECAB 834 (1993).

[5] *See Sandra Dixon-Mills*, 44 ECAB 882 (1993).

and the doctor who examined her had opined that appellant should be able to return to work. Dr. Corbett stated, however, that with appellant's past history, she probably shouldn't have returned to the job that she did. He opined that most of appellant's symptoms were coming from the "preexisting conditions" in both her lower spine and upper spine. Although Dr. Corbett's report is generally supportive of appellant's claim that her disability after December 2, 1996 was causally related to her previous, presumably employment-related conditions, Dr. Corbett did not explain his opinion with medical rationale. In this case, appellant twisted her back on December 2, 1996 while pulling on a headboard. He did not explain why appellant's disability after December 2, 1996 was due to a progression of appellant's accepted employment-related conditions, rather than to a worsening produced by the headboard incident, an independent nonindustrial cause.

In a report dated December 10, 1996, Dr. Robert E. M. Ho, a Board-certified neurosurgeon, stated appellant's diagnoses, which were the same diagnoses as he had noted in a report dated September 10, 1996. He noted that appellant had attempted to return to work in a hospital. Dr. Ho concluded that while working appellant lifted a head-board from a bed, twisted and noted the onset of lower back pain. Currently, he noted that appellant had low back pain in the lumbar area with pain down both legs, more severe on the left side and cervical symptoms with pain in both shoulders and arms. Dr. Ho stated that appellant's current "injury" was an aggravation of her preexisting work-related injury. Dr. Ho's opinion that the December 2, 1996 injury caused an aggravation of appellant's employment-related conditions, without further medical explanation of how appellant's condition progressed, does not establish that the subsequent injury was a direct and natural result of the compensable primary injury. If appellant's private employment caused an aggravation of her previous injury, the worsening or progression of appellant's accepted condition was not due to the accepted injury but rather due to an independent cause.

The medical evidence of record does not establish a progression of appellant's accepted conditions sufficient to cause disability after December 2, 1996. Appellant has, therefore, not submitted the necessary medical evidence to establish that her disability after December 2, 1996 was consequential to her employment injury of April 1993, rather than due to a new injury sustained on December 2, 1996.

The decision of the Office of Workers' Compensation Programs dated January 30, 1997 is hereby affirmed.

Dated, Washington, D.C.
January 19, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member