

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDITH L. COPE and U.S. POSTAL SERVICE,
POST OFFICE, Franklin, Pa.

*Docket No. 97-2276; Submitted on the Record;
Issued May 11, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on April 19, 1996 causally related to the April 21, 1994 employment injury.

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

The facts in this case indicate that on April 21, 1994 appellant, then a 35-year-old window clerk, sustained an employment-related herniated disc at L5-S1 for which she underwent authorized surgery. She returned to her regular work duties on May 1, 1995, was again off work in August and December 1995. Appellant next stopped work on April 19, 1996, returned to limited duty, six hours per day, on June 3, 1996 and stopped again on June 24, 1996. She returned to limited duty, four hours per day, on September 24, 1996, again stopped on November 19, 1996 and has not worked since. By letter dated February 24, 1997, the Office of Workers' Compensation Programs informed appellant of the type evidence needed to support her claim. This was to include a comprehensive narrative report from her physician indicating, *inter alia*, objective findings and explaining how the claimed recurrence of disability was causally related to the April 21, 1994 employment injury. By decision dated May 21, 1997, the Office denied the claim. In the attached memorandum, the Office noted that appellant had been advised of the necessity of submitting additional medical evidence because the medical reports of record suggested that her symptoms were from the L4-5 area which had not been accepted as employment related and that objective studies did not reveal pathology to account for her symptoms.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the recurrence of the disabling condition for which compensation is

sought is causally related to the accepted employment injury.¹ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.² Causal relationship is a medical issue³ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

In the present case, the Office accepted that on April 21, 1994 appellant sustained an employment-related herniated disc at L5-S1. The relevant medical evidence includes a May 2, 1994 magnetic resonance imaging (MRI) scan of the lumbar spine which demonstrated a prominent disc herniation at L5-S1 and a mild protrusion at L4-5. A December 16, 1994 computerized tomography (CT) scan of the lumbar spine revealed central and left lateral disc bulges and protrusion at L5-S1 and minimal diffuse disc bulge at L4-5. Likewise, a December 16, 1994 myelogram of the lumbar spine revealed central disc bulges at L4-5 and L5-S1 which produced small anterior extradural defects.

Dr. Barry L. Riemer, a Board-certified orthopedic surgeon, examined appellant for the employing establishment and, in an August 5, 1996 report, noted findings on examination and advised that she exhibited L4-5 symptoms and stated:

“[Appellant] has objective evidence of pathology. At this time she is significantly stiff, and I do not see her being a candidate for the workplace. I cannot tell clearly what is going on with her at this time. Apparently she has a negative MRI scan yet she has signs of radiculopathy. She might be a good candidate for a myelogram to look more clearly at the [L]4-5 disc. There is a very rare person who will have radicular findings as I see here and a negative MRI scan.”

Dr. John F. Steele, appellant's treating Board-certified orthopedist, performed L5-S1 laminectomy on January 6, 1995 and submitted numerous Office form reports, in which he opined that appellant could not work her regular job and checked the “yes” box, indicating that her condition was employment related, stating that her condition was “directly related to employment activity.” In a report dated August 12, 1996, Dr. Steele diagnosed questionable L4-5 disc on the right and spinal stenosis.

¹ *Kevin J. McGrath*, 42 ECAB 109 (1990); *John E. Blount*, 30 ECAB 1374 (1974).

² *Frances B. Evans*, 32 ECAB 60 (1980).

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁴ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Initially, the Board finds that when a physician's opinion on causal relationship merely consists of checking "yes" to a form question, such opinion has little probative value and is insufficient to establish causal relationship.⁵ Nonetheless, the record in this case contains MRI, CT and myelographic findings of L4-5 disc pathology dating back to 1994, the date of appellant's accepted herniated disc at L5-S1. Both Dr. Steele and Dr. Riemer advised that appellant had findings consistent with L4-5 disc disease. Furthermore, Dr. Riemer seemed unaware of the 1994 MRI findings. While their reports lack detailed medical rationale sufficient to discharge appellant's burden of proof to establish by the weight of reliable, substantial and probative evidence that she sustained a recurrence of disability beginning April 19, 1996, this does not mean that they may be completely disregarded by the Office. It merely means that their probative value is diminished.⁶ Under such circumstances, the reports are sufficient to require further development of the record.⁷ It is well established that proceedings under the Federal Employees' Compensation Act⁸ are not adversarial in nature⁹ and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹⁰ Only in rare instances where the evidence indicates that no additional information could possibly overcome one or more defects in the claim is it proper for the Office to deny a case without further development.¹¹ The Board therefore finds that the medical evidence taken as a whole is sufficiently supportive of appellant's claim to warrant further development of the evidence.¹² After such further development as is deemed necessary, the Office shall issue a *de novo* decision.¹³

⁵ See *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁶ See *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *John J. Carlone*, 41 ECAB 354 (1989). The Board notes that the case record does not contain a medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case for a second opinion evaluation.

⁸ 5 U.S.C. §§ 8101-8193.

⁹ See, e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

¹⁰ See *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.800.5c (April 1993).

¹² See *John J. Carlone*, *supra* note 7; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.5b (September 1993); see also at Chapter 2.810.8a (April 1993).

¹³ The Board notes that, concurrently with her appeal to the Board, appellant requested reconsideration with the Office and requested review of the written record by the Branch of Hearings and Review. The Board and the Office, however, may not have concurrent jurisdiction over the same issue in the same case. *Douglas E. Billings*, 41 ECAB 880 (1990). Furthermore, the record contains a schedule award claim. This is not before the Board as the Office has not issued a merit decision on this claim. Additionally, appellant submitted evidence to the Office subsequent to the Office's May 21, 1997 decision. The Board cannot consider this evidence as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated May 21, 1997 is hereby set aside and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, D.C.
May 11, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member