U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILMA I. LEVTZOW and DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, Boise, ID

Docket No. 97-2442; Submitted on the Record;
Issued November 5, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability commencing April 8, 1996 causally related to her accepted December 9, 1994 employment-related injury; and (2) whether the Office of Workers' Compensation Programs refusal to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

On December 9, 1994 appellant, then a 56-year-old purchasing agent, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on December 9, 1994 she was on her way to work when her feet slipped on some ice on a walkway leading from the parking lot into her employing establishment when she fell and landed on her buttocks and back very hard, causing a bruised tailbone area and a compression fracture of the spine. Authorization for examination and/or treatment (Form-CA-16) was approved by the employing establishment on December 9, 1994.

The Office accepted appellant's claim for a lumbosacral strain and noted that appellant had concurrent disability and/or degenerative changes not due to the injury. The Office also stated that "while some physicians speculated that [the] claimant may have sustained a compression fracture secondary to the slip and fall on [December 9, 1994], no medical evidence on file gives [a] rationalized opinion supporting that [the] claimant sustained a compression fracture secondary to the fall on [December 9, 1994]." Appellant states that he was unable to work from December 9, 1994, the day the incident occurred, through the day she retired on January 14, 1995. In a handwritten note to the file on May 9, 1996, the Office found that there was no medical treatment in the instant case since September 9, 1995, noted that appellant's December 9, 1994 accepted lumbosacral strain should have resolved over a year ago and closed appellant's claim.

Appellant filed a notice of recurrence of disability and claim for continuation of pay/compensation (Form CA-2a) on May 13, 1996, alleging that she sustained a recurrence of

disability due to her December 9, 1994, accepted employment-related lumboscral strain. In the notice of recurrence of disability appellant states:

> "I wear a back brace on any day that I have to stand and do manual labor. I have daily taken medication for pain for 16 to 17 months."
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> * * *
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> "I have been unable to get any follow-up care from the original doctor except renewals of an anti-inflammatory prescription (Cataflam), after an exam[ination] by my [appellant's] family doctor, he stated follow-up x-rays are definitely indicated, and possible other care/tests/exam[ination]s."

By letter dated June 11, 1996, appellant explained she had retired and had been told by the Office through the Personnel Office at USDI-BLM, National Interagency Fire Center to file a notice of recurrence of her December 9, 1994 accepted employment-related incident. However, she contends that her back condition never stopped and was a continuation of the December 9, 1994, accepted employment-related incident; that she was still under a physician's care and was still taking prescribed medication for her constant back pain. Appellant then stated that she went to the pharmacist to get a new prescription filled, but had no success. She indicated that the pharmacist had provided her with two letters from the Office dated January 18, and March 18, 1996, refusing to pay for her prescribed medication because of an inactivity of her claim for 180 days. Appellant then wanted to know how her claim could be inactive for 180 days when she was still under a physician's care and on prescribed medication. She stated:

> "I have not returned to work! All papers were already completed for retirement on [January 3, 1995] at the time of this accident. I was unable to work from time of accident through retirement date. I would have been unable to work for months, if I had not retired. I was informed by NIFC Personnel that I should go ahead with the retirement, and it would have no bearing on this accident claim?"
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> * * *
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> "At the present time, financially I need to find at least a part-time job to supplement my retirement pay. There is not much open to me as I cannot stand for even up to an hour. I have applied for temporary employment at sitting type jobs, but have not been sent out yet."

Additionally, appellant attached two previously filed letters dated May 13 and April 8, 1996, and a copy of a June 11, 1996 report of the medical expenses incurred intermittently from December 16 through March 4, 1996.

In a decision dated July 22, 1996, the Office denied appellant's claim finding that she failed to establish a causal relationship between her recurrence of disability and her accepted employment-related lumbosacral strain of December 9, 1994. In an accompanying memorandum, the Office stated:

> "Emergency room notes indicate claimant had x-rays taken on December 9, 1994 which showed 'very slight superior central compression deformity at L1, age indeterminant.' There was also a 'very slight anterolisthesis of L4 on 5.' The x-ray results were interpreted by Dr. [Peter J.] Angleton, [Board-certified in emergency medicine] who felt [appellant] had a probable old compression fracture and 'probably a more recent, perhaps acute compression fracture at approximately L3.' These diagnoses were speculative, and bear no probative value in this claim. On December 15, 1994 Dr. [John E.] Bishop, [a Board-certified orthopedic surgeon of the spine] stated, 'I have reviewed her x-rays, and I could not see any bony disruption in the area of her major complaint in the low lumbar spine or sacrococcygeal region. There is an end plate deformity at L1 which is presumably old, at least she is not at all tender there. [Dr. Bishop] told her [appellant] that I thought her injuries were "orthopedically stable."' On January 5, 1995 Dr. Bishop diagnosed back strain with 'new or possibly old mild compression fx [fracture].' On March 7, 1995 Dr. Bishop noted, '[appellant] was seen in follow-up for back pain on March 7, 1995. We saw her one week after her injury and flare-up and could find no structural problems, and her symptoms seem to be localized not at an area of questionable old verses fresh compression fracture at L1.' No diagnosis was established on the March 7, 1995 visit.
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> "Claimant's claim was accepted for lumbo/sacral [lumbosacral] strain. While some physicians speculated that claimant may have sustained a compression fracture secondary to the slip and fall on December 9, 1994, no medical evidence on file gives rationalized opinion supporting that claimant sustained a compression fracture secondary to the fall on December 9, 1994.
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> "Claimant last sought medical attention for this injury on March 7, 1995."
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> * * *
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> "Claimant had not provided any medical evidence to support that she continues to suffer residuals of her work injury. Claim for recurrence of disability is further underminded by the lack of documentation of any medical treatment received by claimant since March 7, 1995. Although claimant states that she experienced back pain in these intervening months there is no evidence in the record to substantiate her claim. The absence of documented bridging symptoms, along with lack of current medical report, negates causal relationship. Accordingly, claimant has not met her burden of proof.[1]"

By letter dated August 12, 1996, appellant responded to the statement made by the Office's July 22, 1996 decision, that she last sought medical help on March 7, 1997 by arguing

[1] The Office cited *Herbert Luter*, 26 ECAB 143 (1974) in support of its position.

that: "This is not true! I sought medical help on April 11, May 22, July 18, August 29 and February 21, 1995 from Dr. Bishop and he stated it would not do any good to come to see him. All he did was renew my prescription for Cataflam."

Thereafter, by letter dated November 14, 1996, appellant requested reconsideration of the Office's July 22, 1996 decision and submitted additional evidence including, previously considered evidence. The new evidence consisted of an August 21, 1996 x-ray report from Dr. Paul D. Traughber, a Board-certified radiologist; and an October 7, 1996 medical report from Dr. Christian G. Zimmerman, a neurological surgeon.[2]

In a nonmerit decision on reconsideration dated February 10, 1997, the Office denied appellant's request for review of its July 22, 1996 decision on the grounds that the evidence submitted in support of her application for review was found to be immaterial in nature and insufficient to warrant modification of the prior decision. The Office stated that "neither of the medical reports provided any discussion of a recurrence of the accepted condition in May 1996;" meaning, any discussion of a recurrence of the December 9, 1994 accepted lumboscral strain.[3]

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability commencing May 13, 1996 causally related to her accepted December 9, 1994 employment-related injury.

Under the Federal Employees' Compensation Act,[4] an employee 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.[5] As part of this burden the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition,[6] and supports that conclusion with sound medical reasoning.[7]

Section 10.121(b) provides that when an employee has received medical care as a result of the recurrence, she or he should arrange for the attending physician to submit a medical report covering the dates of examination and treatment, the history given by the employee, the findings, the results of x-rays and laboratory tests, the diagnosis, the course of treatment, the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions, and the prognosis. The

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[2] *Id.*

[3] Following the Office's February 10, 1997 decision on reconsideration appellant submitted additional evidence. However, the Board may not consider such evidence for the first time on appeal. 20 C.F.R. § 501.2(c). This decision does not preclude appellant from having such evidence considered by the Office as part of a reconsideration request.

[4] 5 U.S.C. §§ 8101-8193.

[5] *Dennis J. Lasanen,* 43 ECAB 549, 550 (1992); *Dominic M. DeSacala,* 37 ECAB 369, 372 (1986).

[6] *Kevin J. McGrath,* 42 ECAB 109, 116 (1990).

[7] *Lourdes Davila,* 45 ECAB 139, 142 (1993).

employee should also submit or arrange for the submission of similar medical reports for any examination and/or treatment received subsequent to returning to work following the original injury.[8]

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[9] In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.[10] Neither the fact that appellant's condition became apparent during a period of employment nor appellant's belief that his condition was caused by his employment is sufficient to establish a causal relationship.[11] A physician's opinion on causal relationship is not dispositive simply because it is rendered by a physician.[12]

Appellant has not submitted any rationalized medical evidence which relates her claimed condition to her originally accepted employment injury of lumboscral strain. The only evidence submitted was a copy of appellant's June 11, 1996 medical expenses incurred and her own opinion of who and why her diagnosed condition was causally related the originally accepted injury. As explained by the Office in its July 22, 1996 merit decision on reconsideration, appellant failed to provide any bridging medical evidence to support a causal relationship between appellant's December 9, 1994 accepted lumboscral strain condition and her current diagnosed conditions. Moreover, the record has failed to discuss with rationalized medical opinion evidence whether appellant had a degenerated disk disease prior to the Office's acceptance of her December 9, 1994 employment-related injury of lumboscral sprain. Consequently, appellant has not met her burden of proof in establishing that she sustained a recurrence of disability causally related her December 9, 1994 accepted lumboscral strain. The Office, therefore, properly denied appellant's claim for recurrence of disability.

The Board further finds that the Office, by its February 10, 1997 decision, abused its discretion by refusing to reopen appellant's case for further review on the merits of her claim.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of her claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office.[13] Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value

[8] 20 C.F.R. § 10.121(b).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

[10] *Leslie S. Pope*, 37 ECAB 798, 802 (1986); *cf. Richard McBride*, 37 ECAB 748, 753 (1986).

[11] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[12] *Jean Culliton*, 47 ECAB 728, 735 (1996).

[13] Section 8128(a) provides in relevant part: "The Secretary of Labor may review an award for or against payment of compensation at any time on his [her] own motion or on application."

and does not constitute a basis for reopening a case.[14] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[15]

With her request for reconsideration dated November 14, 1996, appellant submitted a new medical report from Dr. Traughber dated August 21, 1996 and a new medical report from Dr. Zimmerman dated October 7, 1996. In the August 21, 1996 report, Dr. Traughber stated:

> "INDICATION: Traumatic fall one and one-half years ago with low back pain radiating down both legs.
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> "Patient's class 1 anterolisthesis, L4 on L5 has slightly progressed since prior examination. The compression fracture at L1, likewise has evolved to what is now a moderate compression.
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> "Degenerative disk changes in the lower thoracic spine do not appear to be significantly changed. Spondylosis with slight disk space height loss at L3-4 and L4-5, consistent with degenerative disk disease, is likewise not significantly changed.
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> "Partially lumbarized S1 vertebral body again noted. No inflammatory sacroiliitis noted.
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> "Patient has slight progression in degenerative facet changes, particularly from L4 thought S1.
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> "IMPRESSION: Progression in facet arthritis. Slight progression of class 1 anterolisthesis, L4 on L5.
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> "Progression collapse of L1 vertebral, body now with moderate compression. This could be simply evolution of the initial injury rather than representing evidence for new acute injury.
>
> "Unchanged degenerative disk disease, particularly L3 though L5."
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> In the October 7, 1996 medical report, Dr. Zimmerman stated:
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> "[Appellant's] chief complaint is low back and bilateral leg pain. She relates a history of having fallen on the ice in front of her door at work approximately 1.5 years ago. [Appellant] sustained a compression fracture of L1 at that time. The pain has persisted and increased in intensity. She has been managed by use of anti-inflammatories which improve but do not eliminate her pain….
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> "OBJECTIVE FINDINGS: X-rays from Dr. Thomas Young's, [a Board-certified family practitioner] office reveal progressive facet arthritis with progression of anterolisthesis of L4 on L5. She has progressive collapse of L1 vertebral body

[14] *Eugene F. Butler*, 36 ECAB 393 (1979).

[15] *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

with moderation compression at this point. There is, as well, degenerative disk disease of L3 though L5.

"PHYSICAL EXAM[INATION]: Straight leg raises are positive at approximately 40 degrees. Toe walking is negative. Heel walking is positive on the right. DTR: Patellar reflexes are 1+ on the right, 2+ on the left, Achilles reflexes are 2+ and equal bilaterally. Babinskis are down-going. Invertors and evertors are equal and strong bilaterally.

"ASSESSMENT: Progressive Kyphotic deformity L1 through L5. Spondylolisthesis L4 on L5 and pseudoclaudication.

"PLAN: We will pursue preauthorization for CT [computerized tomography scan] melogram of T10-L5 as soon as possible. Patient is to revisit [two] [to] [three] days after the study for results, reevaluation and discussion of options and alternatives."

After a review of the medical evidence submitted on reconsideration, the Board finds that these reports support appellant's contention that she sustained a "lumbar compression fracture related to a fall" causally related to factors of her federal employment, at the same time she sustained her accepted employment-related lumboscral strain of December 9, 1994; and thus, constituting relevant, pertinent and material evidence. As this medical evidence was not previously considered by the Office, the reports are sufficient to require that the Office reopen appellant's case for further review on the merits of her claim.

The decision of the Office of Workers' Compensation Programs dated July 22, 1996 is hereby affirmed; and the decision by the Office dated February 10, 1997, is hereby set aside and the case is remanded to the Office for a review of the merits of appellant's claim under 20 C.F.R. § 10.138(b)(1).

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

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member