U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY L. HOLT and DEPARTMENT OF LABOR, OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION & MANAGEMENT, Washington, DC

Docket No. 98-190; Submitted on the Record;
Issued January 3, 2000

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM, BRADLEY T. KNOTT

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained a recurrence of disability causally related to her May 15, 1991 employment injury; and (2) whether appellant met her burden of proof in establishing that she sustained an emotional condition causally related to factors of employment.

On May 15, 1991 appellant, then a 53-year-old fiscal operations assistant, sustained an acute exacerbation superimposed on long-standing disc disease of the lower back.[1] She stopped work that day, received appropriate continuation of pay and compensation and returned to work for four hours per day, five days per week on January 13, 1992. Appellant continued to receive wage-loss compensation for four hours per day. On June 12, 1992 she retired on disability. On February 8, 1994 appellant filed a recurrence claim, stating that she sustained a recurrence of disability in June 1992 causally related to the May 15, 1991 employment injury. She also stated that she had become depressed due to pain from the employment injury.[2] Following further development, by decision dated May 23, 1994, the Office of Workers' Compensation Programs denied that appellant sustained a recurrence of disability or an emotional condition causally related to the May 15, 1991 employment injury. Appellant timely requested a hearing that was held on August 6, 1996. In an October 31, 1996 decision, an Office hearing representative affirmed the prior decision. She, through counsel, requested reconsideration and submitted additional medical evidence. By decision dated July 9, 1997, the Office denied modification of its prior decision. The instant appeal follows.

[1] The record indicates that on August 17, 1978 appellant sustained an employment-related an acute muscular and ligamentous strain of the paralumbar region and strain of the left ankle which resolved without symptoms.

[2] Appellant had previously called the Office requesting information and was informed that she needed to file a recurrence claim. By letter dated January 3, 1994, the Office informed appellant of the type of information needed to support such a claim.

Initially, the Board finds that appellant failed to establish that she sustained a recurrence of total disability on June 12, 1992.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.[3]

Causal relationship is a medical issue[4] 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.[5]

The medical evidence relevant to appellant's condition in June 1992 consists of a June 3, 1991 magnetic resonance image scan of the lumbar spine which demonstrated early disc degeneration at the L4-5 level with slight circumferential bulge and no evidence of disc herniation of spinal stenosis. In a February 5, 1992 report, Dr. Peter A. Moskovitz, a Board-certified orthopedic surgeon, advised that appellant was unable to complete a four-hour work schedule secondary to back pain and emotional distress. He stated that she had lumbar radicular pain syndrome with chronic pain on a predominantly nonorganic basis with no demonstrable residual radiculopathy or neuropathy. He continued:

> "Every effort has been made to offer [appellant] alternative work conditions as well as train her for a return to work using functional capacities evaluation and job retraining and work hardening. All efforts have failed and [appellant] remains intolerant of any return to gainful employment. According to [appellant's] reports on examination today, efforts to modify her activities, alter her job requirements and accommodate her lumbar radicular pain syndrome have been to no avail."

In a March 25, 1992 report, Dr. E.N. Koulizakis, a Board-certified orthopedic surgeon who provided a second-opinion evaluation for the Office, advised that appellant reported that she had problems with her back since a work injury in 1978. He diagnosed degenerative disc disease of the lumbar spine which had been aggravated on occasions by work and was further

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[3] *Mary A. Howard*, 45 ECAB 646 (1994); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

[4] *Mary J. Briggs*, 37 ECAB 578 (1986).

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

complicated by depression which made her "less able to cope with the underlying relative minimal physical problem." He continued:

> "I am not certain what the relationship of her accident of May 15, 1991 has with her present continuing problems. [Appellant] indicated to me that her pain had increased prior to the fall and she had called Dr. Moskovitz and had an appointment arranged prior to that accident, to be evaluated for her back. This indicates to me that [she] has an ongoing problem from the injury of 1978. I do not believe it is going to improve in the future unless her depression is significantly altered..... As far as the spine is concerned it appears to be relatively stable."

Dr. Eric G. Dawson, a Board-certified orthopedic surgeon, provided a March 5, 1993 report in which he related the history of the 1978 and 1991 injuries. He noted findings on examination and diagnosed a central L4-5 disc rupture with secondary degenerative changes and chronic inflammation in response to the employment injury and concluded that she was unable to work.

Appellant also submitted numerous reports from Dr. Dawson's partner, Dr. Hampton J. Jackson, a Board-certified orthopedic surgeon, who continually advised that she was totally disabled and had been since June 1992.

Following the submission of appellant's recurrence claim, by letter dated January 26, 1994, the Office referred appellant, along with a statement of accepted facts, a set of questions, and the medical record, to Dr. James Cobey, who is Board-certified in neurology and psychiatry, for a second-opinion evaluation. In a February 7, 1994 report, Dr. Cobey concluded:

> "On review of all the notes in her chart, I believe that [appellant] has no significant organic problem in her back. The degeneration she has on the MRI [scan] is very minimal. [She] is depressed. [Appellant] said she did well when she went to a psychiatrist and would like to see one again. [Her] underlying problem is depression, probably developed while she was working. The increasing spasm she has in her back is secondary to some reactive problems from working. Therefore it is my impression that [appellant] is totally disabled from work because of chronic depression. Since her spasms started before the 1991 injury, I doubt if that injury caused any significant problem, though it may have bothered her for a few months. I believe that her back spasms are caused by her underlying psychological problems and not from any objective back problems."

In an August 19, 1996 report, Dr. Moskovitz advised:

> "[Appellant] was under my care from May 16, 1991 to June 17, 1992. To the best of my knowledge, [she] retired from gainful employment in June of 1992.
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> "It is my considered medical opinion to within a reasonable degree of medical certainty that [appellant] was totally disabled from gainful employment in June 1992. She was suffering from physical impairments related to her lumbar spine

and a spraining injury of the lumbar spine superimposed on spondylosis. She was also under treatment for reactive depression, the disability from which had no antecedents or correlates prior to her injury of May 15, 1991.

> "It is therefore my opinion that [her] ongoing impairments and resulting disability were not related to any event or condition that did not arise as a result of the work-related injury that occurred on May 15, 1991. That opinion was current on June 17, 1992 at the time that I last saw [her] and at the time that she retired from gainful employment."

The medical evidence in this case does not support that appellant sustained a recurrence of disability causally related to the accepted employment injury. While Drs. Dawson and Jackson advised that appellant had been totally disabled since June 1992, she was not seen in their office until March 1993. Dr. Moskovitz provided no explanation of why appellant could not perform the limited-duty position which was sedentary in nature. As appellant failed to submit rationalized medical evidence that identified specific employment factors that caused her to stop work on June 12, 1992, she failed to discharge her burden of proof and the Board finds that she failed to establish a recurrence of disability.

The Board finds, however, that this case is not in posture for decision regarding whether appellant established that she sustained an emotional condition causally related to employment factors.

It is an accepted principle of workers' compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause.[6] As is noted by Professor Larson in his treatise: "[O]nce the work-connected character of any injury, has been established the subsequent progression of the condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause."[7]

The medical evidence in this case relevant to appellant's emotional condition includes an October 2, 1991 report in which Dr. Jeremy Waletzky, who is Board-certified in psychiatry and neurology, noted that he had seen appellant on several occasions and diagnosed major depressive disorder and lumbosacral joint difficulty, rule out somatoform pain disorder. He concluded that she was not ready to return to work.

In a February 5, 1992 report, Dr. Moskovitz advised that appellant could not work due to back pain and emotional distress. Dr. Koulizakis, in a March 25, 1992 report, stated that appellant's condition was further complicated by depression which made her less able to cope with her underlying physical problem, concluding that she would not improve unless her depression was significantly altered.

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[6] Larson, *The Law of Workmen's Compensation* § 13.00; *see also Stuart K. Stanton*, 40 ECAB 859 (1989); *Charles J. Jenkins*, 40 ECAB 362 (1988).

[7] *Id*. at § 13.11(a).

Dr. Joseph C. Boschulte, a psychiatrist, provided a July 27, 1993 report in which he advised:

> "[Appellant] ... suffered two back injuries incapacitating her for work after rehabilitative efforts. The pain, the suffering, the relative loss of independent functioning, the resulting change in self perception and the severe depression ensuing as a direct result of the above has now made her limitation global. Thus, her depression as a result-consequence of the injury and its sequelae, compounds her overall illness as additive as well as aggravating. The overall picture is of an individual who is totally disabled for work and who needs an ongoing treatment both psychiatrically as well as for the orthopedic problem."

In an October 18, 1993 report, Dr. Jackson advised that appellant's depression was associated with her painful condition which was a consequence of the May 15, 1991 injury. In his February 7, 1994 report, Dr. Cobey, who provided a second-opinion evaluation for the Office, concluded that appellant was totally disabled because of chronic depression.

Dr. John A. Mirczak, a Board-certified psychiatrist, provided a psychiatric evaluation dated April 23, 1996 in which he noted the history of injury and advised that appellant's pain was purely subjective and noted that her depression worsened after May 1991. In a July 31, 1996 report, Dr. Mirczak stated that the persistent presence of pain and presence of severe depressive symptomatology were well established. He concluded that the initial trauma in 1978 resulted in the onset of lower back pain which was exacerbated by the May 15, 1991 injury which increased the intensity of pain and depression "to the magnitude of disability for occupational and even domestic functioning."

Dr. Moskovitz provided an August 19, 1996 report in which he advised that appellant's depression was related to the May 15, 1991 employment injury and, in a March 27, 1997 report, Dr. Jackson advised that the employment injury caused pain and depression to the degree that appellant could not work.

Applying the principles noted above regarding a consequential injury, the Board finds that the medical reports taken as a whole constitute sufficient evidence in support of appellant's claim to require further development by the Office as they provide support that appellant's pain condition and depression are causally related to the May 15, 1991 employment injury. Although these reports are insufficient to discharge appellant's burden of establishing that her condition and disability on or after June 12, 1992 was causally related to the May 15, 1991 employment injury, in the absence of medical evidence to the contrary, the reports constitute sufficient evidence in support of appellant's claim to require further development of the record by the Office.[8] It is well established that proceedings under the Federal Employees' Compensation Act[9] are not adversarial in nature[10] and while the claimant has the burden to establish entitlement

[8] *See John J. Carlone*, 41 ECAB 354 (1989).

[9] 5 U.S.C. §§ 8101-8193.

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

to compensation, the Office shares responsibility in the development of the evidence.[11] On remand the Office should compile a statement of accepted facts and refer appellant, together with the complete case record and questions to be answered, to a Board-certified specialist for a detailed opinion on the relationship of appellant's pain condition and depression and the May 15, 1991 employment injury. After such development as the Office deems necessary, a *de novo* decision shall be issued.

The decisions of the Office of Workers' Compensation Programs dated July 9, 1997 and October 31, 1996 are hereby affirmed in part and vacated in part and the case is remanded to the Office for further proceedings.

Dated, Washington, D.C.
January 3, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[11] *See Dorothy L. Sidwell*, 36 ECAB 699 (1985).