U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LONEILY M. JONES and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Lake City, FL

Docket No. 99-796; Submitted on the Record;
Issued July 17, 2000

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant's back surgery and disability for work after January 9, 1995 are causally related to her January 19, 1994 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

The Board has duly reviewed the case record in this appeal and finds that the Office properly denied appellant's claim for compensation benefits after January 9, 1995 on the grounds that the evidence of record was insufficient to establish any medical condition or disability causally related to appellant's January 19, 1994 employment injury.

On February 3, 1994 appellant, then a 53-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on January 19, 1994 she injured her neck and back while assisting a patient. She did not stop work. Appellant first sought medical treatment for the work incident on January 31, 1994 and was diagnosed with a cervical and lumbar strain by Dr. Luis L. De Lerma. Dr. De Lerma stated that, in addition to her diagnosed strains, x-rays performed that day revealed degenerative changes of the cervical and lumbar spine, spondylosis and spondylolisthesis. He also stated that appellant had a herniated disc removed in 1987 and reported having been partially symptomatic since that time. Dr. De Lerma prescribed medication and physical therapy and placed appellant on light-duty status. Appellant subsequently began treatment with Dr. Michael MacMillan, a Board-certified orthopedic surgeon, who, in a series of reports beginning March 10, 1994, diagnosed multi-level cervical disc protrusions and lumbar stenosis, which he noted appellant believed to have been exacerbated by her work injury. On January 9, 1995 appellant underwent extensive back surgery for correction of L4-5 spinal stenosis and L4-5 spondylolisthesis.

The Office accepted appellant's claim for cervical and lumbar strains.

On June 12, 1995 appellant filed a Form CA-7 alleging that she was totally disabled during the period January 9, 1995 through the present. She asserted that her January 19, 1994 work injury seriously aggravated her preexisting cervical and lumbar spine conditions, resulting in her need for surgery and in her subsequent disability.

On July 13, 1995 the Office referred appellant for a second opinion evaluation with Dr. Howard P. Hogshead, a Board-certified orthopedic surgeon. In a report dated August 7, 1995 and in a supplemental report dated August 8, 1995, Dr. Hogshead diagnosed status post lumbar decompressive laminectomy and fusion, L4-5 for first degree spondylolisthesis and spinal stenosis at that level, multi-level cervical spondylosis and mild to moderate residual left L5-S1 radiculopathy. He noted that appellant had a history of prior lumbar injury requiring a lumbar laminectomy in 1987 and that she also had evidence of preexisting lumbar degenerative spondylolisthesis and spinal stenosis. Dr. Hogshead opined that there was no objective evidence to verify a material worsening of appellant's preexisting spinal conditions due to her January 19, 1994 employment injury and no evidence to support a connection between her employment injury and her subsequently diagnosed condition and associated surgery.

By decision dated August 28, 1995, the Office found the evidence of record insufficient to establish that appellant was totally disabled during the claimed period, due to her January 19, 1994 employment injury. On March 25, 1996 and March 25, 1998 appellant requested reconsideration of its decisions. In merit decisions dated May 1, 1997 and June 23, 1998, the Office found the newly submitted evidence and arguments insufficient to warrant modification of the Office's prior decision. By letter dated October 21, 1998, appellant again requested reconsideration of the Office's prior decision and submitted additional evidence in support of her request. In a decision dated November 19, 1998, the Office found the newly submitted evidence insufficient to warrant reopening appellant's claim for merit review.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, and that the claim was filed within the applicable time limitation of the Act.[2] The claimant also has the burden of establishing by the weight of the reliable, probative and substantial evidence that the disability for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.[3]

In this case, the relevant medical evidence submitted by appellant consists of several medical reports from Dr. Michael MacMillan, in which the physician attempted to draw a connection between appellant's current condition on and after January 9, 1995 and her January 19, 1994 employment injury. In a report dated July 10, 1995, Dr. MacMillan stated:

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

> "On January 1, 1995 [appellant] underwent decompression and fusion of her lumbar spine. The decompression was required because of severe narrowing of the patient's spinal canal. Fusion of the lumbar spine was performed for an entirely different separate reason. At the time of surgery the patient was found to have marked arthritic degeneration and hypermobility of her spine. She therefore had clinical instability.
>
> "Apparently there is some reluctance to relate her spinal problem to a prior work-related injury. I agree that the patient's spinal stenosis may not be a consequence of her injury, but there is a reasonable association between her hypermobility and facet degeneration and her prior injury. Please review her records in light of my view."

In an accompanying attending physician's report (Form CA-20), Dr. MacMillan indicated that appellant's condition was caused or aggravated by her employment by placing a check mark in the box marked "yes." The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history is of diminished probative value. Without any explanation or rationale for the conclusion reached, such a report is insufficient to establish causal relationship.[4] Inasmuch as Dr. MacMillan failed to provide, either in his CA-20 form report or his July 10, 1995 narrative report, sufficient explanation as to how appellant's hypermobility and facet degeneration were aggravated by her employment injury, these reports are insufficient to establish appellant's burden.

Further, appellant submitted a November 10, 1997 medical report from Dr. MacMillan in which he attempted to further explain his conclusions, stating:

> "I have reviewed the report of the injury sustained by [appellant] on January 19, 1994 and the subsequent radiograph report. Her complaints and findings are consistent with spinal instability and spinal stenosis.
>
> "Therefore the care which I have rendered for her is related to her January 19, 1994 accident."
>
> By report dated May 22, 1997, Dr. MacMillan stated:
>
> "[Appellant] was treated for facet degeneration. Although the cause of this condition is multifactorial, it is clear from this patient's history and medical findings that her employment incident incited her symptoms to increase. The aggravation of these symptoms is what caused her to stop working."

While Dr. MacMillan again concluded that appellant's condition beginning January 9, 1995 was causally related to her prior work injury, he again failed to provide the necessary medical reasoning to support his opinion. The mere fact that a disease or condition manifests

[4] *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease or condition became apparent during a period of employment nor the belief of appellant that the disease or condition was caused or aggravated by employment conditions, is sufficient to establish causal relation.[5] As Dr. MacMillan failed to provide adequate medical rationale explaining how or why appellant's disability was caused or aggravated by her January 19, 1994 employment injury, his reports are insufficient to establish appellant's burden.

By letters dated November 1, 1994 and May 17, 1995, and in the decisions dated May 1, 1997 and June 23, 1998, the Office explained to appellant the type of medical evidence necessary to establish her claim that her surgery on January 9, 1995 and subsequent disability were causally related to her January 19, 1994 employment injury. Because appellant has failed to provide sufficient medical evidence, the Office properly denied appellant's claim for disability compensation benefits for the period beginning January 9, 1995.

The Board further finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of her claim on November 19, 1998, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

Following the decision dated June 23, 1998, appellant requested that the Office reconsider her case. In support of this request for reconsideration, appellant, through counsel, counsel submitted copies of three articles discussing the role of lumbar facet joints in spinal stability, post decompression lumbar instability, and anatomic changes of the spinal canal and intervertebral foramen associated with lumbar segmental instability. In the letter requesting reconsideration, counsel stated that the purpose of these articles was to explain Dr. MacMillan's references to facet degeneration and lumbar instability. Excerpts from publications are of general application and are not determinative of whether a claimant's condition is causally related to her employment.[6] Textual evidence has little probative value in resolving medical questions unless a physician shows the applicability of the general medical principles discussed in the text to the specific factual situation at issue in the case.[7]

Section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of his or her claim under 5 U.S.C. § 8128(a) by written request to the Office identifying the decision and the specific issues within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.[8] Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least

[5] *Charles E. Evans*, 48 ECAB 692 (1997); *Patrick H. Hall*, 48 ECAB 514 (1997)

[6] *See Ronald M. Cokes*, 46 ECAB 967 (1995).

[7] *Ruby I. Fish*, 46 ECAB 276 (1994).

[8] 20 C.F.R. § 10.138(b)(1).

one of the requirements listed in section 10.138(b)(1) will be denied by the Office without review of the merits of the claim.[9]

The Office in denying appellant's application for review properly noted that as appellant neither raised substantive legal questions not previously considered by the Office nor submitted relevant probative evidence supportive of her claim, appellant's arguments and new evidence did not require a reopening of the case for merit review.

The decisions of the Office of Workers' Compensation Programs dated November 19 and June 23, 1998 are hereby affirmed.

Dated, Washington, D.C.
July 17, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[9] 20 C.F.R. § 10.138(b)(2).