

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAMELA A. HARDY and U.S. POSTAL SERVICE,
POST OFFICE, Atlanta, GA

*Docket No. 98-2372; Submitted on the Record;
Issued March 1, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issues are: (1) whether the condition for which appellant underwent surgery on February 20, 1996 was causally related to the employment incident of November 24, 1995; and (2) whether the disability for which appellant claims compensation is causally related to her November 24, 1995 employment injury.

In a decision dated June 3, 1998, a hearing representative of the Office of Workers' Compensation Programs found that the medical evidence lacked sufficient rationale to establish that appellant's claimed disability was a result of her accepted employment injury on November 24, 1995. The hearing representative further found that the weight of the medical evidence established that appellant's surgery on February 20, 1996 was not causally related to the accepted employment injury. The hearing representative affirmed the Office's August 28, 1997 decision denying appellant's claim.

The facts of this case are well set forth by the hearing representative and are hereby incorporated by reference. Briefly, on August 23, 1995, appellant underwent a right-sided L5-S1 laminectomy and microdiscectomy unrelated to her federal employment. On November 24, 1995 she lifted a 10-pound package in the course of her federal employment and felt pain radiating down her left side. The Office accepted that she sustained an employment injury. After conservative care and a number of diagnostic tests, appellant underwent a left-sided L5-S1 laminectomy on February 20, 1996.

The Board finds that this case is not in posture for a determination of the issues presented. There is an outstanding conflict in medical opinion necessitating referral to an impartial medical specialist pursuant to 5 U.S.C. § 8123(a).

In his operative note of February 20, 1996, Dr. W. Knox Kinlaw, Jr., appellant's attending neurosurgeon, reported a postoperative diagnosis of ruptured lumbar disc, L5-S1 left. On December 23, 1996 he reported as follows:

“[Appellant] was admitted to DeKalb Medical Center in August of 1995. At that time, MRI [magnetic resonance imaging] revealed a right sided herniated disc. She underwent operation on the right side.

“She made an uneventful recovery and returned to work. She lifted a heavy box and had the onset of pain down the left side. She underwent the appropriate studies revealing impingement on the left side. In my opinion, there was no relationship between the right sided disc herniation in August 1995 and the development of a ruptured disc on the left side. I feel that this was strictly related to her job.”

On July 30, 1996 Dr. James M. Alday, Jr., an orthopedic surgeon and Office referral physician, reported as follows:

“(1) It is my opinion that the surgery of February 20, 1996 was performed as an exploratory spinal surgery which, in general, is ill advised; however, it is my opinion that [appellant] is a totally reliable patient who present a clinical history of a left radiculopathy with a known abnormal disc at L5-S1 and who had benefited very significantly from previous disc surgery. In this particular situation, I feel the surgery of February 20, 1996 is reasonable and appropriate.

“(2) It is further my opinion that the condition for which surgery was performed is not a result of the injury of November, 1995.”

In a supplemental report dated October 18, 1996, Dr. Alday added the following:

“Findings reported in the operative note of February 26, 1996 (sic) are, in my opinion, most consistent with documented past history of HNP [herniated nucleus pulposus] at the same level with surgical decompression of that level in August 1995. The operative note describes disc degeneration and disc space narrowing which are not acute events; and are therefore causally, most probably, the result of herniated disc and surgery of August 19, 1995 and not the event of November 24, 1995.”¹

Appellant's physician, Dr. Kinlaw, and the Office referral physician, Dr. Alday, thus disagree on whether the operative findings in February 1996 are employment related. Dr. Kinlaw reported his belief that there was no relationship between appellant's ruptured disc on the left and the right-sided herniation in August 1995, that the findings were strictly related to appellant's employment. Dr. Alday held the opposite view: that the operative findings in February 1996 were most consistent with the past history of a right-sided herniation in August 1995, and that the surgery in February 1996 was not a result of the injury of November 1995.

¹ Dr. Kinlaw did not relate the disc degeneration and disc space narrowing to appellant's employment.

Section 8123(a) of the Federal Employees' Compensation Act provides in part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."²

To resolve the conflict in opinion between Drs. Kinlaw and Alday, the Office shall refer appellant, together with the medical record and a statement of accepted facts, to an appropriate impartial specialist. In preparing the statement of accepted facts, the Office must consider that on April 4, 1996 it advised appellant as follows: "According to our records, your claim was accepted for lumbosacral strain and lumbar HNP." The Office must also consider that its FECA nonfatal summary form, CA-800, shows that on March 25, 1996 (following the February 20, 1996 surgery and postoperative diagnosis of ruptured lumbar disc, L5-S1 left) the Office approved appellant's claim for the conditions of HNP and lumbosacral strain. The conditions for which the Office has approved appellant's claim do not appear in the statement of accepted facts dated May 30, 1996 but should appear on the statement of accepted facts provided to the impartial medical specialist. The Office shall request that the impartial medical specialist provide a well-reasoned opinion on whether the incident of November 24, 1995 caused or contributed to the condition for which appellant underwent surgery on February 20, 1996. The specialist should also provide a well-reasoned opinion on whether the disability for which appellant seeks compensation is causally related to the November 24, 1995 employment injury. After such further development of the evidence as may be necessary, the Office shall issue an appropriate final decision on appellant's claim.

The June 3, 1998 and August 28, 1997 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.
March 1, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

² 5 U.S.C. § 8123(a).