

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHARON D. WEIMAR and U.S. POSTAL SERVICE,
POST OFFICE, Portland, ME

*Docket No. 98-1338; Submitted on the Record;
Issued May 11, 2000*

DECISION and ORDER

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

The issue is whether appellant has any continuing disability causally related to her accepted employment injuries subsequent to September 15, 1993.

On February 21, 1993 appellant filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she injured her lower back and right ankle when she slipped and fell on ice in the parking lot. The Office of Workers' Compensation Programs accepted the claim for a thoracic and dorsal sprain and right ankle sprain. Appellant returned to work intermittently from March 1 through September 11, 1993, when she stopped working. The Office paid appropriate compensation through September 15, 1993.

In a report dated August 18, 1993, Dr. Jane M. Glass diagnosed chronic low back pain, that appellant was weepy and depressed and that her "subjective complaints are far out of line with objective findings which are minimal at best."

In a letter dated September 15, 1993, Dr. Glass indicated that she began treating appellant on June 22, 1993, recommended physical therapy, which was discontinued on August 2, 1993 as appellant had reached maximum benefit from ongoing symptoms and had reached a plateau in her symptoms. By report dated September 15, 1993, Dr. Glass released appellant to working eight hours per day with restrictions.

In a report dated March 24, 1994, Dr. Victor M. Parisien,¹ noted appellant's medical and employment injury history and that he saw her on March 8, 1994. Physical examination revealed normal straight leg raising, normal sensation, appellant was able to walk on her toes and heels and that there was "some pain on flexion and especially on getting up from the flexed position." Dr. Parisien diagnosed degenerative spondylolisthesis at L4-5 which was aggravated by the

¹ An attending Board-certified orthopedic surgeon.

February 1993 employment injury and a bulging disc at L5-S1. As to appellant's ability to work, he concluded that it would "take at least another three months before she can return to any kind of productive work."

On April 14, 1994 appellant filed a claim for continuing compensation on account of disability (Form CA-8) requesting compensation for the period October 11, 1993² through April 16, 1994.

By letter dated May 2, 1994, the Office advised appellant that the medical evidence she had provided was insufficient to establish that she was disabled or entitled to continuing compensation for the period indicated.

In treatment notes dated May 10, 1994, Dr. Parisien noted that appellant had a good range of motion on physical examination and that appellant noted pain on "assuming the upright position from flexion and on extension and right bend."

By letter dated June 13, 1994, Dr. Parisien concluded that appellant was totally disabled from working as she had pain on lifting and bending, an inability to sit for more than 10 minutes, could not do her housework and was depressed. Regarding physical findings, he noted that appellant had "considerable tenderness at the L4-5 interspace, less at the L5-S1 interspace and her range of motion testing is compatible with her findings of spondylolisthesis." Dr. Parisien opined that appellant's problems were due to her employment injury as appellant "developed right low back pain approximately 15 minutes after the injury" and that appellant has gotten progressively worse since the injury.

In a report dated May 23, 1995, Dr. Donald G. Belliveau,³ based upon an employment and work history, a statement of accepted facts, review of the medical evidence and physical examination, diagnosed degenerative disc disease at L4-5 with facet joint arthritis and mild spondylolisthesis with no bony defect. Dr. Belliveau concluded that it was clear that appellant's complaints were due to degenerative disc disease and facet joint arthritis and not to her February 1993 employment injury. He opined that appellant's employment injury temporarily aggravated her preexisting degenerative spondylosis with degenerative disc disease and that the aggravation resolved within three to six months. Dr. Belliveau opined that appellant had no work-related residual disability due to her underlying accepted employment injury and that appellant's current complaints were due to underlying degenerative disc disease and not to her employment injury.

By decision dated June 22, 1995, the Office denied appellant's claim for continuing compensation after September 15, 1993 finding that the medical evidence did not establish disability due to the accepted employment injury.

² Appellant initially wrote September 15, 1993, but crossed it out and wrote October 11, 1993.

³ A second opinion Board-certified orthopedic surgeon.

Appellant requested reconsideration on June 2, 1996 and by decision dated September 3, 1996, the Office denied modification of its June 22, 1995 decision.⁴

Appellant again requested reconsideration on June 5 and August 29, 1997, and the Office denied modification of its June 22, 1995 decision on November 20, 1997. In support of her June 5 and August 29, 1997 requests for reconsideration, appellant submitted a May 23, 1995 report by Dr. Belliveau, her response to Dr. Belliveau's report, a June 2, 1996 letter from the Social Security Administration (SSA), a statement of eligibility for benefits from the SSA, an SSA determination of eligibility and a November 20, 1995 report by Dr. Michael D. Garnett, a Board-certified psychiatrist.

By report dated November 20, 1995, Dr. Garnett, a Board-certified psychiatrist, diagnosed major depression, chronic pain; status post low back injury. He opined that appellant suffered from major depression since 1993 of moderate to severe degree.

The Board finds that appellant has not met her burden of proof in establishing disability causally related to her accepted employment injury on or after September 15, 1993.

When an employee claims a period of disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed disability for work is causally related to the accepted injury. As part of this burden, appellant must submit rationalized medical evidence based on a complete and accurate factual and medical background showing causal relationship.⁵ An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on appellant's unsupported belief of causal relation.⁶ In this case, appellant has the burden of submitting medical evidence establishing total disability for work subsequent to September 15, 1993. The Board finds that appellant did not submit such evidence.

In the present case, appellant slipped and fell on ice on February 21, 1993 and the Office accepted her claim for a thoracic and dorsal sprain and right ankle sprain. On September 15, 1993 Dr. Glass, appellant's attending physician released appellant to return to work. With regard to alleged periods of disability, thereafter, appellant has the burden of proof to establish a causal relationship between appellant's continuing disability on and after September 15, 1993 and her February 21, 1993 employment injury.⁷

⁴ The Office denied appellant's request for an oral hearing by letter decision dated August 14, 1995, on the basis that the request was untimely based upon a postmark of July 26, 1995. On September 15, 1995 appellant appealed the denial of her request for a hearing which the Office denied on October 31, 1995. Appellant reiterated her request for a hearing by letter dated November 26, 1995, which was again denied by the Office on December 29, 1995.

⁵ See *Armando Colon*, 41 ECAB 563 (1990).

⁶ *Ausberto Guzman*, 25 ECAB 362 (1974).

⁷ *Donald Leroy Ballard*, 43 ECAB 876, 882 (1992).

Although appellant has submitted medical evidence in support of her claim, the evidence submitted is insufficient to establish a causal relationship between her condition and disability subsequent to September 15, 1993 and her February 21, 1993 employment injury. The evidence submitted by appellant does not include rationalized medical opinion evidence needed to establish a causal relationship between her condition and disability subsequent to September 15, 1993 and her February 21, 1993 employment injury. Appellant, therefore, has not established that her condition and disability subsequent to September 15, 1993 were causally related to her accepted employment injury.

In support of recurrence of disability claim, appellant submitted various reports from Dr. Parisien, a May 23, 1995 report by Dr. Belliveau, her response to Dr. Belliveau's report, a June 2, 1996 letter from the SSA, a statement of eligibility for benefits from the SSA, an SSA determination of eligibility and a November 20, 1995 report by Dr. Garnett.

Dr. Parisien diagnosed degenerative spondylolisthesis at L4-5 which was aggravated by the February 1993 employment injury and a bulging disc at L5-S1. The physician also noted that a physical examination revealed normal straight leg raising, normal sensation, appellant's ability to walk on her toes and heels and that there was "some pain on flexion and especially on getting up from the flexed position." In treatment notes May 10, 1994, Dr. Parisien noted that appellant had a good range of motion on physical examination and that appellant noted pain on "assuming the upright position from flexion and on extension and right bend." On June 13, 1994 Dr. Parisien concluded that appellant was totally disabled from working due to her pain on lifting and bending, her inability to sit for more than 10 minutes, her inability to do her housework and the fact that she was depressed. While he opined that appellant's problems were due to her employment injury as appellant "developed right low back pain approximately 15 minutes after the injury" and that appellant has gotten progressively worse since the injury, Dr. Parisien failed to support his opinion by either medical rationale or objective evidence. Without any explanation or rationale for the conclusion reached, Dr. Parisien's reports are insufficient to support continuing disability due to her February 21, 1993 employment injury.⁸

Dr. Garnett's November 20, 1995 report is similarly insufficient to support any continuing disability due to appellant's accepted employment injury. In his report, Dr. Garnett diagnoses major depression since 1993 and status post low back injury, but offered no opinion as to the cause of appellant's disability or whether it was related to her accepted employment injury. Thus, this opinion is insufficient to establish that appellant had any continuing disability causally related to her accepted February 21, 1993 employment injury.

In a social security form SSA-831-U3, appellant was approved for disability benefits effective September 30, 1993. The primary diagnosis was affective/mood disorders with a secondary diagnosis of spondylolisthesis of L4-5 disc space. Appellant contends that the certificate is probative on the issue of whether she continues to be disabled due to her accepted employment injury. However, the Board has held that the determinations of other administrative agencies establishing entitlement to benefits under the Federal Employees' Compensation Act (FECA) do not establish entitlement to benefits under the FECA. The findings of the SSA are

⁸ *Lucrecia M. Nielson*, 41 ECAB 583 (1991).

not determinative of disability under the FECA, as the SSA and FECA have different standards of medical proof on the question of disability. Under the FECA, for a disability determination, appellant's injury must be shown to be causally related to an accepted injury or factors of her federal employment. Under the SSA, conditions which are not work related may be considered in rendering a disability determination.⁹ Furthermore, while the social security certificate indicates that appellant was disabled, it does not contain medical rationale addressing the crucial issue of causal relationship in this case and is, therefore, irrelevant to appellant's claim.¹⁰

The evidence of record does not include a reasoned medical opinion explaining how or why appellant's February 21, 1993 employment injury caused or contributed to appellant's disability subsequent to September 15, 1993. In fact the only reasoned medical opinion, Dr. Belliveau's report, negates a causal relationship between appellant's disability and her accepted February 21, 1993 employment injury. He noted appellant's disability was due to her underlying degenerative disc disease, which was temporarily aggravated by the accepted employment injury. The evidence of record, therefore, is insufficient to establish that appellant's disability was causally related to her February 21, 1993 employment injury.

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between her claimed disability and her employment.¹¹ The Board, therefore, finds that appellant has not met her burden of proof to establish that her disability subsequent to September 15, 1993 was causally related to her February 21, 1993 employment injury.

⁹ *Daniel DeParini*, 44 ECAB 657 (1993).

¹⁰ *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

¹¹ *See Donald W. Long*, 41 ECAB 142 (1989).

The decision of the Office of Workers' Compensation Programs dated November 20, 1997 is hereby affirmed.

Dated, Washington, D.C.
May 11, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member