U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KRISTINE V. LATTIMER and DEPARTMENT OF LABOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, Boston, MA

Docket No. 99-527; Submitted on the Record;
Issued May 16, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on or about August 27, 1996, causally related to her November 18, 1994 employment injury.

The Board has duly reviewed the case record on appeal and finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability causally related to her November 18, 1994 employment injury.

Appellant sustained a lower back injury in the performance of duty on November 18, 1994 when she was moving, lifting and unpacking boxes weighing up to 30 pounds. She ceased working on November 23, 1994 and returned to her regular duties as a fiscal officer on November 29, 1994. The Office of Workers' Compensation Programs accepted appellant's claim for lumbar strain and she received appropriate wage-loss compensation for intermittent absences from work through July 1995.

By letter dated August 27, 1996, appellant requested that her claim remain open for medical treatment and additional compensation for the time required to obtain treatment. She explained that she continued to experience pain in her back following her initial injury in 1994 and that since recently returning to work in July 1996 she had experienced increased pain.[1]

On September 11, 1996 the Office advised appellant of the need for additional factual and medical information in order to render a determination regarding her claim for recurrence. The Office noted that, while the claim had been accepted for lumbar strain, the medical evidence of record indicated that appellant had a preexisting condition of lumbar scoliosis as well as chronic lumbar problems stemming from a 1993 lifting incident at home. Appellant was

[1] Appellant was off work for approximately nine months between October 1995 and July 1996 due to respiratory problems.

specifically asked to submit medical evidence addressing the impact her preexisting back problems may have had on her current condition.

By letter dated September 27, 1996, appellant acknowledged that she sustained a back injury at home in 1993 and that she had been advised that she had scoliosis at the time she sought treatment for her 1993 injury. She further indicated that the low back pain she was currently experiencing was the result of her 1994 employment injury, which in her opinion had never healed. Appellant advised that a narrative report from her treating physician would be forthcoming. Additionally, she submitted reports dated February 28 and March 27, 1996 from Dr. Ronald Fine, a Board-certified internist specializing in pulmonary diseases and occupational health.[2] Appellant also submitted massage therapy treatment records covering the period February 9 through August 23, 1996.

By decision dated October 21, 1996, the Office denied appellant's claim on the basis that the evidence failed to demonstrate that the claimed recurrence was causally related to the accepted injury of November 18, 1994. The Office subsequently denied modification on two separate occasions. In its most recent merit decision dated August 26, 1998, the Office explained that the record lacked a reasoned medical opinion establishing a causal relationship between her current condition and her previously accepted employment-related condition of lumbar strain.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.[3] This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.[4] The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[5] In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury

[2] Dr. Fine is employed by the U.S. Department of Health and Human Services. His opinion was solicited by the Department of Labor for the purpose of determining whether to grant appellant's request for reasonable worksite accommodations. While Dr. Fine's reports primarily address appellant's respiratory condition, he also noted that appellant had been treated for chronic low back strain/pain syndrome and chronic left knee discomfort. Dr. Fine further noted that appellant's back and knee conditions were not likely to resolve in the near future and that her personal orthopedic physicians had recommended that appellant avoid stooping, squatting, awkward postures, repetitive lifting and lifting greater than 25 pounds.

[3] *Robert H. St. Onge*, 43 ECAB 1169 (1992).

[4] Section 10.121(b) of the Code of Federal Regulations provides that, when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a detailed medical report. The physicians report should include the dates of examination and treatment, the history given by the employee, the findings, the results of x-ray 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. 20 C.F.R. § 10.121(b).

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

must support the physician's conclusion of a causal relationship.[6] Moreover, the physician's conclusion must be supported by sound medical reasoning.[7] While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[8]

Initially, the Board notes that Dr. Fine's reports are of limited probative value inasmuch as he did not provide a history of appellant's 1994 employment injury nor did he mention appellant's preexisting back problems. His February 28, 1996 report merely noted that appellant had previously been treated for "chronic low back strain/pain syndrome." Furthermore, while Dr. Fine indicated that appellant's back condition was not likely to resolve in the near future, he provided no explanation for the basis of his opinion. Consequently, his reports provide little, if any, probative information regarding the cause and extent of appellant's current condition.[9]

Subsequent to the Office's initial denial on October 21, 1996, appellant submitted a January 10, 1997 report from her then treating physician, Dr. John Davies, a Board-certified orthopedic surgeon.[10] In response to a series of questions posed by the Office, Dr. Davies indicated that appellant's current symptoms were mainly discomfort in the left buttocks, sometimes spreading into her thigh and occasionally at the thoracolumbar junction. He further indicated that appellant "report[ed] that her lumbar strain with referred buttock and back pain started after the … lifting injury at work in [November 1994]…." With regard to appellant's prior back injury, Dr. Davies commented as follows: "Apparently [appellant] recovered with the help of physical therapy and massage following the [July 1993] sprain of her thoracolumbar spine at home." However, he further noted that the "original condition of the thoracolumbar junction sprain is possible to have recurrence."

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[6] For the importance of bridging information in establishing a claim for a recurrence of disability, *see Robert H. St. Onge*, *supra* note 3; *Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Richard McBride*, 37 ECAB 748 (1986).

[7] *See Robert H. St. Onge*, *supra* note 3.

[8] *Norman E. Underwood*, 43 ECAB 719 (1992).

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

[10] Dr. Davies initially began treating appellant approximately five months after her November 18, 1994 employment injury. In addition to his most recent report dated January 10, 1997, the record also includes a May 1, 1995 report, wherein he noted a history of injury on November 18, 1994 when appellant was "unloading cartons and twisting to put them on another table, as well as lifting another box in close quarters at work." Dr. Davies also reported that appellant had pain located in the left lumbosacral region, radiating into the buttock and posterior thigh and sometimes spreading into the left anterior thigh or the right side of appellant's low back. He diagnosed left lumbosacral strain and noted that appellant's prognosis was good. At the time, Dr. Davies recommended that appellant undergo additional physical therapy and avoid heavy lifting with twisting of her low back. With respect to appellant's prior injury of July 1993, he noted that appellant had pain at the thoracolumbar junction, which responded to physical therapy. Dr. Davies also indicated that x-rays taken at the time showed slight thoracolumbar scoliosis. The record also includes his treatment notes for December 1, 1995 and February 9, 1996, wherein appellant is noted to have complained of low back pain.

In an effort to distinguish appellant's 1993 and 1994 back injuries, Dr. Davies provided the following explanation: "Her current condition is primarily different from the previous injury of [July 1993], although she has some mild residual symptoms from that date. In [July 1993] [appellant] apparently had a sprain of the thoracolumbar junction of her spine. The [November 1994] injury was more of a strain of the lumbar spine. The two disabilities are not directly connected, in my opinion." Additionally, regarding the impact of appellant's preexisting scoliosis on her current condition, Dr. Davies stated: "[a]lthough scoliosis of [appellant's] mild degree is not generally associated with back discomfort, it may slightly increase the discomfort." He further indicated that "[appellant's] slight left thoracolumbar scoliosis ending at L-1 would not seem to be a major factor in the causation of her current lumbosacral strain."

Dr. Davies' January 10, 1997 report is deficient for a number of reasons. First, although he expressed the opinion that the "two disabilities are not directly connected," he did not clearly indicate the factors that enabled him to distinguish the effects of appellant's 1993 and 1994 back injuries. Additionally, Dr. Davies acknowledged that it was possible for appellant to have a recurrence of her 1993 thoracolumbar junction sprain and he further noted that her current symptoms included discomfort "occasionally at the thoracolumbar junction." Another cause for concern is the fact that he did not treat appellant for her 1993 injury and he did not begin treating appellant until five months after her November 1994 injury. As such, it appears that Dr. Davies' opinion regarding the differing effects of the two injuries was based in large part on the history provided by appellant. In closing, he suggested that reference be made to his "detailed" office notes of September 20, 1996 for further elucidation of his opinion regarding appellant's current condition, her history of separate injuries, her treatment program and causal factors. The record, however, does not include a copy of Dr. Davies' September 20, 1996 office notes. The absence of a clear rationale coupled with the apparent limited underlying documentation seriously undermines the probative value of his January 10, 1997 opinion.[11]

The record also includes undated treatment notes from Dr. Frederick W. Dekow, a Board-certified internist. He reported that appellant presented him with complaints of persistent pain, localized in the lumbosacral area with radiation to the left buttock. Dr. Dekow diagnosed low back pain of musculoskeletal origin with slight left sciatic component and concluded that the pain was a result of appellant's injury in 1994. He further commented that appellant's pain was chronic and would wax and wane in intensity. Additionally, Dr. Dekow advised appellant not to undergo repetitive lifting of more than 10 pounds. He also noted that appellant exhibited some rightward scoliosis of the lumbothoracic area that may predispose her to preexistent or continued low back pain.

Dr. Dekow's report is similarly deficient in that he provided little rationale for his conclusion. Furthermore, the only reference to appellant's 1993 injury was as follows: "[Appellant] also complained of some thoracocolumnar *(sic)* discomfort that was a residual from an injury that occurred at home in 1993." Consequently, Dr. Dekow's opinion is of limited probative value.[12]

[11] *George Randolph Taylor*, *supra* note 9.

[12] *Id.*

The only other relevant evidence consists of treatment notes dated December 17, 1997 and January 21, 1998 from Dr. Jerry L. Knirk, a Board-certified orthopedic surgeon. These treatment notes, however, do not assist appellant in meeting her burden of proof inasmuch as he concluded that he "really [did not] have a good answer for her pain." The fact that the etiology of a disease is unknown or obscure neither relieves appellant of the burden of establishing a causal relationship by the weight of the medical evidence nor does it shift the burden of proof to the Office to disprove an employment relationship.[13]

As appellant failed to provide rationalized medical opinion evidence establishing a causal relationship between her accepted injury of November 18, 1994 and her claimed recurrence of August 27, 1996, the Office properly denied appellant's claim for compensation.

The August 26, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
May 16, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member

[13] *Judith J. Montage*, 48 ECAB 292, 294-95 (1997).