

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRENDA HINSHAW and U.S. POSTAL SERVICE,
POST OFFICE, Spokane, WA

*Docket No. 99-226; Submitted on the Record;
Issued November 1, 2000*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has met her burden of proof in establishing that she developed cervical and hip conditions causally related to her accepted employment injury.

The Board has duly reviewed the case on appeal and finds it not in posture for decision.

Appellant, a distribution clerk, filed a traumatic injury claim alleging that on January 16, 1989 she injured her low back in the performance of duty. The Office of Workers' Compensation Programs accepted her claim for lumbar strain on November 14, 1989. Appellant's attending physician performed a bilateral L4-5 laminectomy and L5-S1 discectomy on August 1, 1990. Appellant returned to light-duty work on December 3, 1990. She underwent an L4 to sacrum fusion on May 9, 1994. On September 27, 1996 the Office denied appellant's claim for hip and cervical conditions causally related to her employment injury. She requested an oral hearing on October 25, 1996. Appellant testified at her oral hearing on June 25, 1997 and by decision dated October 3, 1997 and finalized October 6, 1997, the hearing representative denied appellant's claim for a hip and neck condition causally related to her accepted employment injury.¹

It is an accepted principle of workers' compensation law 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 which is attributable to the employee's own intentional conduct. As is noted by Larson in his treatise on workers' compensation, once the work-connected character of any injury has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an

¹ Following the hearing representative's decision, appellant submitted additional new evidence. As the Office did not review this evidence in reaching a final decision, the Board will not consider this evidence on appeal. 20 C.F.R. § 501.2(c).

independent nonindustrial cause and so long as it is clear that the real operative factor is the progression of the compensable injury, associated with an exertion that in itself would not be unreasonable under the circumstances.²

In regard to appellant's claim for a hip condition causally related to her accepted employment injury, the Board finds that there is no rationalized medical evidence addressing the causal relationship between appellant's accepted lumbar strain and her hip condition. She stated that her left hip "popped" and caused her pain beginning in 1991. Several physicians have examined appellant since that time and concluded that appellant's hip condition was due to a soft tissue problem unrelated to her employment injury. In a report dated August 31, 1993, Dr. William E. Bronson, a Board-certified orthopedic surgeon, noted appellant's history of injury and stated that when her back hurt her right leg appeared to shorten. He stated that this leg condition was due to her low back. However, in his more recent reports following appellant's second back surgery, Dr. Bronson stated that etiology of the hip condition was unclear. As he no longer supports a causal relationship between appellant's left hip condition and her employment injury, there is no medical evidence in support of such a relationship and appellant has failed to meet her burden of proof to establish that she developed a left hip condition as a consequence of her accepted employment injury.

Appellant also alleged that she developed a cervical condition as a consequence of her accepted employment injury. Dr. Kathleen L. Meyer, a Board-certified neurosurgeon, completed a report on November 11, 1991 noting that appellant had neck and back pain with paraspinous muscle spasm bilaterally. She stated that it was most likely that appellant's upper back and neck conditions were related to the posture she adopted to accommodate low back pain. On November 21, 1991 Dr. Meyer again stated that appellant's upper back and neck symptoms were related to postural changes made to "accommodate and diminish her lower back symptoms."

The Office referred appellant for a second opinion evaluation. In a report dated February 22, 1996, Drs. Scott V. Linder, a Board-certified orthopedic surgeon and Barbara G. Jessen, a Board-certified neurologist, noted appellant's history of injury and that she underwent cervical surgery in May 1995. They performed a physical examination and diagnosed herniated L5-6 cervical disc treated by extensive conservative measures followed by L5-6 disc excision and fusion but leading to present pseudarthrosis with continued symptoms. Drs. Linder and Jessen stated, "The connection of her cervical problems to the industrial low back injury is unclear to these examiners..." In response to a request from the Office, Dr. Linder submitted a report dated May 9, 1996. He stated that there was no reason to relate appellant's cervical problems to the low back injury and that they could not determine any relationship between appellant's neck and low back conditions at the time of their evaluation.

² *Clement Jay After Buffalo*, 45 ECAB 707, 715 (1994).

At the oral hearing, appellant submitted testimony from Dr. Bronson. In response to an inquiry from appellant's attorney, he explained how appellant's accepted low back condition and resulting surgeries contributed to the development of her neck condition. Dr. Bronson stated:

"The spine is analogous to links in a chain and because of her low back condition, we were forced to fuse two of the links in her low back, which requires more mobility in her thoracic and cervical spine to make up for the loss of motion in her low back. So, it puts further strain in her cervical spine."

* * *

"It forces the movement that normally would be distributed better throughout the entire spine, to be localized in the neck, so those repetitive motions are greater and the forces are greater and the wear and tear on the disc is greater."

Dr. Bronson concluded that at least some portion of appellant's neck condition was due to her employment. He stated that appellant had a degenerative disc and that this condition was due to "the initial injury, or repetitive nature of the work she was doing..."

The Board finds that there is an unresolved conflict of medical opinion evidence in this case regarding whether appellant's cervical condition resulted as a consequence of her accepted employment injury. In his testimony at the oral hearing on June 25, 1997, Dr. Bronson opined that appellant's degenerative cervical disc was impacted by the accepted employment-related injury and surgeries to her low back. He provided a medical explanation of how these conditions were related. On the other hand, the Office referral physicians, Drs. Linder and Jessen, stated that there was no reason to relate appellant's cervical condition to her accepted employment injury. Section 8123(a) of the Federal Employees' Compensation Act,³ provides, "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." Due to the unresolved conflict of medical opinion evidence on the issue of whether appellant's cervical condition developed as a consequence of her accepted low back injury and surgeries, on remand the Office should refer appellant, a statement of accepted facts and a list of specific questions to an appropriate Board-certified physician to determine whether appellant sustained a cervical condition as a result of her accepted employment injury. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision.

³ 5 U.S.C. §§ 8101-8193, 8123(a).

The October 6, 1997 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for further development consistent with this opinion.

Dated, Washington, DC
November 1, 2000

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member