

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANN PARKER and DEPARTMENT OF THE ARMY,
PERSONNEL CENTER, St. Louis, MO

*Docket No. 99-1076; Submitted on the Record;
Issued September 11, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant's surgery on August 1, 1997 was causally related to her January 28, 1993 employment injury; and (2) whether appellant established that she sustained a recurrence of disability on or after July 16, 1998 causally related to her employment injury of January 28, 1993.

On February 3, 1993 appellant, then a 55-year-old personnel clerk, filed a notice of traumatic injury and claim for compensation alleging that on January 28, 1993 while stooping over microfiche she twisted her back trying to retrieve materials and felt a pain in her mid-back right side. The Office of Workers' Compensation Programs accepted that claim for a lumbar strain. She was treated by Dr. C. Lawrence Elliot, a Board-certified physician specializing in rheumatology and internal medicine. Appellant underwent a computerized tomography (CT) scan of the lumbar spine on February 6, 1993, which revealed disc degeneration and apophyseal joint degenerative arthritis at L4-5 and L5-S1. She was off work from January 29 to April 15, 1993. On April 16, 1993 appellant returned to work for six hours a day with restrictions of no lifting, bending or prolonged sitting. She subsequently retired on February 3, 1995.

On July 15, 1998 appellant filed a claim alleging a recurrence of disability. She did not identify the nature of her condition on her Form CA-2a.

In a (Form CA-20a) attending physician's report dated August 23, 1993, Dr. Elliot indicated that appellant sustained a severe lumbar strain on January 28, 1993 for which she received muscle strengthening exercises and analgesics. He noted that appellant's permanent effects would include muscle spasm and limited range of motion. Dr. Elliot opined that appellant was able to perform limited duty with restrictions but also classified her medical condition as "guarded."

The Office referred appellant for a medical evaluation with Dr. John K. Kenney, a Board-certified orthopedic surgeon. In reports dated September 21 and November 12, 1993, Dr. Kenney advised that appellant suffered from degenerative disc disease at L4-5, L5-S1. Reviewing the February 6, 1993 CT scan, he was unable to confirm a disc herniation. Dr. Kenney indicated that appellant was morbidly obese and that a back brace would not be beneficial. He recommended that appellant discuss her significant weight problem with her primary physician.¹ Dr. Kenney stated that there was no need for surgical intervention or more diagnostic studies and concluded that appellant could work an eight-hour shift.

In a report dated June 12, 1997, Dr. Richard S. Gahn, an anesthesiologist, advised that he had examined appellant at the request of Dr. Ronald C. Hertel, a Board-certified orthopedic surgeon. Dr. Gahn noted that appellant developed low back pain radiating into the left extremity on June 8, 1997. He reported physical findings and diagnosed lumbar radiculopathy, acute low back pain and probable herniated disc L4-5. Dr. Gahn prescribed steroid injections, which were conducted on June 19 and 26, 1997. He also recommended further imaging studies if appellant's pain persisted.

A magnetic resonance imaging (MRI) scan of the lumbar spine was performed on July 18, 1997 and revealed a large right paramedial disc herniation at L4-5 and a smaller left paramedial disc herniation at L5-S2. It was noted that the L4-5 disc herniation resulted in spinal stenosis.

On July 31, 1997 appellant underwent a mini lumbar laminotomy. She subsequently underwent a full lumbar laminotomy for herniated disc at L4-5 on August 1, 1997. In a discharge summary from St. Mary's Health Center dated August 7, 1997, Dr. Hertel diagnosed herniated nucleus pulposus, L4-5 on the left, exogenous obesity and hypertension.

In treatment notes dated from August 7 and September 18, 1997, Dr. Hertel reported that appellant continued to have pain and weakness in her left lower limb as well as pain in her buttocks following her August 1, 1997 surgery. He indicated that appellant had difficulty ambulating and used a walker.

Dr. Hertel opined in a September 26, 1997 treatment note that "the possibility of a recurrence of a herniated disc [could] not be completely ruled out." In a subsequent treatment note dated October 9, 1997, Dr. Hertel related that appellant thought her instability and problems with balance was due to weakness in the lower limb and not necessarily a recurrent disc. He noted, however, that an MRI scan performed on October 1, 1997 revealed an abnormality in the form of pressure at the L4-5 nerve root on the left.

In a December 5, 1997 treatment note, Dr. Hertel reported that, since her August 1, 1997 surgery, appellant was able to walk on the heel of her left foot. He noted that appellant was experiencing swelling in the right leg but opined that the swelling would disappear after

¹ The Board notes that, in an August 6, 1993 report, Dr. Kenney related appellant's history of injury as "[the patient] reports that, in January of 1993, she got up from a chair, went to sit down in another chair which was at a lower seat position and at the same time, she sat down and twisted her back."

appellant gained strength in her left leg. Dr. Hertel referred appellant for physical therapy to strengthen her left leg.

In treatment notes dated from April 30 to May 19, 1998, Dr. Riley diagnosed a soft tissue mass over the distal leg on the right, etiology undetermined and advanced osteoarthritis of both the right and left knee with spur formation.

By letter dated September 29, 1998, the Office advised appellant of the kind of factual and medical evidence required to establish her claim for recurrence. The Office specifically requested medical notes from August 6, 1993 to June 12, 1998.²

In a decision dated December 22, 1998, the Office denied appellant's claim for recurrence of disability on the grounds that the medical evidence was insufficient to establish a causal relationship between appellant's continuing medical condition and her surgery of 1997 and the accepted employment injury of January 28, 1993.

The Board finds that appellant failed to establish a recurrence of disability or that surgery for a herniated disc in 1997 was as a result of her January 28, 1993 employment injury.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.³ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁴ 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.⁵

In the instant case, the Office accepted that appellant sustained a lumbar strain when she twisted her back in the performance of duty on January 28, 1993. Appellant was off work until April 16, 1993, at which time she was approved for limited duty by her treating physician. She retired on February 3, 1995. Appellant next filed a claim for a recurrence of disability alleging that she underwent surgical procedures in 1997 for herniated discs related to the original work injury of January 28, 1993. She also contends that she sustained a recurrence of disability due to her original work injury.

² Appellant advised the Office that Dr. Elliot had moved from the state and that her records were therefore not available. The record, however, does not indicate whether appellant made any attempt to locate Dr. Elliot out of state to ascertain whether Dr. Elliot had appellant's records at his new location.

³ *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

⁴ *See Nicolea Brusco*, 33 ECAB 1138 (1982).

⁵ *Ausberto Guzman*, 25 ECAB 362 (1974).

The Board notes that the record is devoid of medical records to establish a bridging of appellant's symptoms between August 1993 and June 1997. The record also fails to establish that appellant's back strain on January 28, 1993 caused any long-lasting, permanent aggravation or material worsening of appellant's preexisting back condition of degenerative arthritis. Although the Office requested a rationalized medical opinion addressing the causal relationship between appellant's continuing back condition and leg complaints and the January 28, 1993 work injury, appellant did not satisfy her burden of proof. She submitted numerous treatment notes from Drs. Hertel, Kenney and Gahn but they offered no opinion that appellant sustained a recurrence of disability due to a herniated disc that was causally related to the work injury of January 28, 1993. The Office has never accepted that appellant sustained a herniated disc as a result of her January 28, 1993 work injury and there is no medical evidence to support such a conclusion. Appellant was advised of the medical evidence required to establish her claim for recurrence of disability but she failed to provide a rationalized medical opinion stating that her herniated disc and requisite surgery was causally related to her January 28, 1993 work injury. The Board therefore finds that, in the absence of rationalized medical evidence to the contrary, it is reasonable to assume that appellant's ongoing back symptoms and left leg complaints as well as the 1993 surgery for a herniated disc were related to her preexisting conditions of degenerative disc disease and arthritis and not her work-related back strain. Thus, the Board finds that the Office properly denied compensation.

The decision of the Office of Workers' Compensation Programs dated December 22, 1998 is hereby affirmed.

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

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member