

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA A. MORRIS and U.S. POSTAL SERVICE,
POST OFFICE, Capitol Heights, MD

*Docket No. 00-2063; Submitted on the Record;
Issued August 27, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that she sustained an aggravation of a preexisting low back condition causing disability commencing May 15 or August 17, 1992, causally related to her part-time light-duty work performed between April 12 and August 17, 1992.

This is appellant's second appeal before the Board on this issue. In the prior appeal, the Board affirmed the Office of Workers' Compensation Programs' decisions dated December 23, September 4 and May 20, 1996, finding that appellant failed meet her burden of proof to submit rationalized medical evidence necessary to establish her claim.¹ The facts and circumstances of the case are clearly detailed in the Board's prior decision and are hereby incorporated by reference.

By letter dated June 19, 1998, appellant requested reconsideration and submitted a June 19, 1998 report from Dr. John B. Theobalds, a Board-certified family practitioner, who noted that on May 15, 1992 appellant presented with excruciating pain in her lower back "as a result of an old injury," that "[t]he type of work she was required to do bending over in a chair to retrieve information from forms in boxes weighing over 10 pounds stacked 3 or 4 high aggravated this old injury," and that appellant "was given work duties that was (sic) strictly against my restrictions to require her to work." Dr. Theobalds noted that appellant "returned to work on June 17, 1992 feeling much better but was not able to perform full duty." He noted that she was given restrictions on lifting more than 10 pounds and on prolonged bending, stooping, sitting and reaching overhead. Dr. Theobalds indicated that appellant returned to his office on August 17, 1992 with severe lower back pain "because the restrictions on her limitations were not carried out." He noted that appellant was told to lift more than 10 pounds from a stooping, standing, bending and overhead position, and he opined that any one of these conditions alone was enough to aggravate a back that was already in spasms. Dr. Theobalds opined that

¹ Docket No. 97-907 (issued June 3, 1998).

appellant's "continuing disability and symptomatology is a direct result of the employment factors as related to May 15 and August 17, 1992 in which she was forced to work outside of her medical condition (sic). Also, the accident on February 22, 1993 was an added factor."²

By decision dated July 15, 1998, the Office denied modification of the prior decision finding that the evidence submitted was insufficient to warrant modification.³ The Office found that Dr. Theobald failed to include a specific confirmed diagnosis.

By letter dated February 16, 1999, appellant requested reconsideration of the July 15, 1998 decision. She submitted several reports from Dr. Hampton J. Jackson, a Board-certified orthopedist. In a report dated June 23, 1998, Dr. Jackson noted that appellant presented complaining of continuing lower back symptomatology radiating to the left dating from a 1992 work incident. He noted that "[a]fter the injury on August 17, 1992, which might be considered an aggravation, she has not been able to work." Dr. Jackson diagnosed "Lumbar disc and spinal segmental injury, L5-S1, dating back to 1976 and aggravated by incident in 1992 [and] nerve root impairment, right S1," and opined that appellant was not fit for any gainful employment. By report dated July 24, 1998, he noted that when appellant stopped work in 1992 it was because of her bad back and because they could not find proper duties for her. Dr. Jackson noted that appellant did fairly well with rest and avoidance of lifting, but that since 1998 her pain was worsening. He opined, "All the medical evidence I have points to a continuous impairment of the lower back on a regular basis dating back to August 17, 1992." An October 23, 1998 report indicated continuing symptoms noted significant back spasm, sciatic list to the right and a positive straight leg raising test. A November 13, 1998 report discussed appellant's right hand pathology and noted continuing back tenderness and spasm and a positive straight leg raise. A January 29, 1999 report noted lower back spasm on examination with restricted motion, indicated that appellant's condition had not changed since June 1998 and stated:

"This lower back condition is related to the aggravation caused by duties she was required to do at work which were duties she was not supposed to be doing according to her light-duty restrictions. Although she was only working 4 hours a day, she was repeatedly asked to lift objects more than 10 pounds, repeated bending and stooping. These type of activities aggravated her back to the point where she could not continue past 1992. Her back condition remains the same today."

By decision dated May 21, 1999, the Office denied modification of the July 15, 1998 decision finding that the evidence submitted in support was insufficient to warrant modification. The Office found that Dr. Jackson's report did not provide a rationalized discussion of causal relation with an August 17, 1992 incident and that there was no evidence of record that indicated appellant was forced to work outside her restrictions.

² While attending an oral hearing regarding her compensation claim on February 22, 1993 appellant fell to the floor with an impact to her low back after sitting in a three-legged (broken) chair.

³ The Office incorrectly stated that it was denying modification of the Board's June 3, 1998 decision. The proper decision for which modification was denied was the Office's September 4, 1996 decision. A decision by the Board is final as to the subject matter appealed and such decision is not subject to review, except by the Board. *See* 20 C.F.R. § 501.6(c).

By letter dated March 20, 2000, appellant, through her representative, requested reconsideration of the May 21, 1999 decision. She submitted some physical therapy reports, a magnetic resonance imaging (MRI) scan report and an additional report from Dr. Jackson. In a report dated March 7, 2000, Dr. Jackson noted that MRI scans obtained after August 17, 1992 showed a change from a February 1992 MRI and pre-1992 MRI scans. He opined that postinjury studies demonstrate “significant compression at L5-S1 in compression of the right S1 nerve root,” noted that “[s]ince the first study after her injury in the summer of August 1992 she has continued increase in back pain and symptoms,” and opined that MRI scans performed on November 12, 1992, January 12, 1994, February 1, 1995 and March 1, 2000 “certainly indicate a severe back problem aggravated by the injury at work in 1992 ... involving the disc and then later involving the facets.” Dr. Jackson opined that appellant was not fit for any gainful employment.

By decision dated March 30, 2000, the Office denied modification of the May 21, 1999 decision, finding that the evidence submitted in support was insufficient to warrant modification. The Office found that Dr. Jackson merely reported MRI study results and gave a conclusory opinion, and that he failed to identify specifically implicated factors of employment which caused the worsening of appellant’s condition and failed to provide a discussion on the pathophysiology involved in this claimed causal relation.

The Board finds that this case is not in posture for decision.

In the present case, appellant’s treating physician, Dr. Theobalds, noted that on May 15, 1992 appellant presented with excruciating lower back pain “as a result of an old injury,” and indicated that the type of work she was required to do, bending over in a chair and lifting over 10 pounds, aggravated her old injury. He opined that appellant’s work duties were outside of his recommended work restrictions, that when she returned to work on June 17, 1992 she had improved, but that on August 17, 1992 she returned to his office because her physical work restrictions were not carried out, particularly with respect to lifting over 10 pounds. Dr. Theobalds opined that appellant’s continuing disability and symptomatology was a direct result of her employment factors from May 15 to August 17, 1992 where she was required to work outside her medical restrictions.

Dr. Jackson, a Board-certified orthopedist, noted that, after appellant’s injury on August 17, 1992, which could be considered an aggravation, she was unable to work. He noted appellant’s underlying condition as lumbar disc and spinal segmental injury at L5-S1 which dated back to 1976 and which was aggravated by the 1992 incident and right S1 nerve root impairment, and he opined that appellant was disabled for work. In subsequent reports, Dr. Jackson noted that appellant stopped work in 1992 because of her bad back and because the employing establishment could not find proper duties for her. He opined that all medical evidence pointed to continuous low back impairment on a regular basis dating from August 17, 1992, that appellant manifested with significant back spasm with restricted motion, sciatic list to the right and a positive straight leg raising test. Dr. Jackson opined that appellant’s lower back condition was related to the aggravation caused by her duties, which were not in accordance with her light-duty restrictions. He stated that appellant was repeatedly asked to lift objects weighing more than 10 pounds, that she was required to perform repeated bending and stooping, and that these types of activities aggravated her back to the point that she could not continue past 1992.

Dr. Jackson further noted that MRI scanning performed after August 17, 1992 showed a change from a February 1992 and pre-1992 MRIs. He opined that postinjury studies demonstrated significant compression at L5-S1 in compression of the right S1 nerve root and that studies in November 1992, January 1994, February 1995 and March 2000 certainly indicated a severe back problem aggravated by the injury at work in 1992 involving the disc and then later involving the facets. Dr. Jackson opined that appellant was not fit for gainful employment.

This medical evidence supports that in the summer of 1992 appellant experienced an aggravation of her preexisting low back condition causally related to her light-duty job requirements.

Proceedings under the Federal Employees' Compensation Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁴ This holds true in an aggravation claim as well as in initial traumatic injury and occupational illness claims. In the instant case, although none of appellant's treating physicians' reports contain rationale sufficient to discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that she sustained an aggravation of a preexisting low back condition at some point between May 15 and August 17, 1992, causally related to her part-time light-duty work performed between April 12 and August 17, 1992, they constitute substantial, uncontradicted evidence in support of appellant's claim and raise an uncontroverted inference of causal relationship between her allegedly disabling complaints and periods of disability and her employment, that is sufficient to require further development of the case record by the Office.⁵ Additionally, there is no opposing medical evidence in the record.

Therefore, the case will be remanded to the Office for compilation of a statement of accepted facts and development of questions to be addressed, to be followed by a referral to an appropriate specialist for a rationalized opinion on whether appellant sustained a 1992 aggravation of her preexisting low back condition.

⁴ *William J. Cantrell*, 34 ECAB 1223 (1983).

⁵ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

Consequently, the decisions of the Office of Workers' Compensation Programs dated March 20, 2000 and May 21, 1999 are hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, DC
August 27, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member