

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA J. MAGRAFF-HOLDER and DEPARTMENT OF THE
TREASURY, INTERNAL REVENUE SERVICE, Chicago, IL

*Docket No. 00-548; Submitted on the Record;
Issued February 15, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a back condition causally related to her December 2, 1996 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing.

On December 2, 1996 appellant, then a 58-year-old security assistant, filed a traumatic injury claim alleging that she injured her right ankle, left arm and low back on that date when she reached to open a door and fell. Her claim was accepted for a left shoulder contusion and right ankle sprain.

By decision dated March 5, 1997, the Office denied appellant's claim for disability on and after December 3, 1996.¹ By decisions dated June 9 and October 8, 1997, the Office denied modification of its March 5, 1997 decision. By decision dated February 15, 1998, the Office denied appellant's request for reconsideration. By decision dated June 8, 1998, the Office denied appellant's request for a hearing. By decisions dated December 23, 1998 and August 26, 1999, the Office denied modification of its March 5, 1997 decision. By decision dated September 23, 1999, the Office denied appellant's request for a hearing.

In notes dated November 19, 1996, Dr. Nancy Zamora, appellant's attending Board-certified internist, noted that appellant was complaining of right hip pain radiating to the knee and ankle. Dr. Zamora noted that appellant had recently recovered from a stress fracture to the right foot.

In a scheduling form dated November 25, 1996, a medical technician gave a history of "R [right] leg pain down to ankle. No back pain."

¹ Appellant filed requests for reconsideration on March 8, July 25 and December 21, 1997, September 25, 1998 and June 9, 1999.

In a report dated November 27, 1996, regarding a magnetic resonance imaging (MRI) scan of the lumbar spine performed the previous day, Dr. J.R. Jester, a radiologist, indicated that appellant had been referred for severe low back pain. He indicated that the MRI revealed a right lateral protrusion of the L5-S1 intervertebral disc with probable nerve root impingement.

In a report dated December 6, 1996, Dr. Fred H. Geisler, appellant's attending Board-certified neurosurgeon, related that appellant experienced some back discomfort in November 1996 which extended into her right hip. He stated that appellant was off work for two weeks and returned to work on December 2, 1996 at which time she opened a door at work, fell and sustained a contusion of the left shoulder and right ankle. Dr. Geisler noted that an MRI scan revealed a left L5-S1 foraminal disc. He indicated that appellant would be disabled for four weeks.

In a report dated December 20, 1996, Dr. Geisler diagnosed low back pain and an L5-S1 foraminal disc and checked the block marked "yes" indicating that the condition was causally related to appellant's employment. He indicated that appellant was totally disabled.

In a report dated February 14, 1997, Dr. Geisler stated that appellant's low back condition "was caused by slipping and falling in her office while responding to a bell ringing on December 2, 1996." He provided findings on examination, diagnosed increased musculoskeletal discomfort in her low back and recommended that appellant remain off work for two weeks.

In a report dated February 21, 1997, Dr. Geisler diagnosed "low back pain from fall" and checked the block marked "yes" indicating that the condition was causally related to the December 2, 1996 employment injury. He indicated that appellant would be disabled for two months.

In a report dated March 7, 1997, Dr. Geisler related that appellant returned to work on December 2, 1996 after being off work for two weeks because of right hip discomfort and opened a door at work and fell. He stated that the incident caused injuries to appellant's right ankle, left shoulder and low back. Dr. Geisler stated, "Because the onset of her back pain was temporally related to the fall which occurred at work on December 2, 1996, I would attribute that fall as the cause of the current discomfort in her back."

In a report dated March 17, 1997, Dr. Geisler provided findings on examination and stated his impression of musculoskeletal disorder of the low back with possible lumbar radiculopathy.

In a report dated April 4, 1997, Dr. Geisler related that an MRI revealed some degenerative disc disease and possible right foraminal bulging disc at L5-S1. He stated that the electromyogram was suspicious for right L4-5 lumbar radiculopathy but there was no evidence of neuropathy. Dr. Geisler provided findings on examination and diagnosed resolving musculoskeletal discomfort.

In a report dated April 9, 1997, Dr. Geisler indicated that appellant could perform regular work as of April 7, 1997.

In a report dated July 9, 1997, Dr. Geisler related that appellant had chronic low back pain but her condition had improved. He provided findings on examination and diagnosed resolving musculoskeletal discomfort.

In a report dated December 9, 1997, Dr. Geisler stated that his December 6, 1996 report contained a transcription error which he had corrected with his initials. He stated, “[Appellant] stated that she experienced right hip pain in mid November 1996 and the initial onset of back pain started on December 2, 1996 as a result of a fall at work.”

In a report dated January 26, 1998, Dr. Geisler related that appellant was seen for chronic low back pain. He provided findings on examination and stated, “It is my impression that [appellant] has chronic low back pain secondary to degenerative disease, which was activated into a clinical syndrome by a fall at work on December 2, 1996.”

In an affidavit dated March 12, 1999 and an earlier undated affidavit, Dr. Geisler related that, when he examined appellant on December 6, 1996, she complained of pain to her shoulder, ankle and back. He stated that he originally reported that appellant suffered back discomfort in November 1996 but that was a mistake because he had misread a report from Dr. Zamora. Dr. Geisler stated that appellant’s fall at work on December 2, 1996 caused injuries to her shoulder, ankle and back and he had diagnosed right-sided radiculopathy, which he explained was a neuromuscular disorder caused by an inflamed nerve emanating from the spinal cord. Dr. Geisler stated that his diagnosis was consistent with the fall appellant had at work on December 2, 1996.

In an affidavit dated May 27, 1999 and an earlier undated affidavit, Dr. Zamora, appellant’s attending Board-certified internist, stated that on November 19, 1996 she examined appellant for complaints of hip pain and that appellant had no complaints of back pain at that time. She stated that appellant presented in her office on December 2, 1996 with complaints of back pain after a fall at work on that date. Dr. Zamora indicated that her treatment notes had been misread.

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

The Board notes that, while none of the reports of appellant’s attending physicians are completely rationalized, they are consistent in indicating that the employment injury on December 2, 1996 either caused or aggravated a back condition. Therefore, while the reports are not sufficient to meet appellant’s burden of proof to establish her claim, they are sufficient to require the Office to further develop the medical evidence and the case record.²

Accordingly, the case must be remanded to the Office for further evidentiary development regarding the issue of whether appellant’s employment injury on December 2, 1996 caused a back condition or aggravated a preexisting back condition. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

² See Robert A. Redmond, 40 ECAB 796, 801 (1989).

In light of the Board's resolution of the first issue in this case the Board finds that it is unnecessary to address the second issue.

The decisions of the Office of Workers' Compensation Programs dated September 23 and August 26, 1999 are set aside and the case is remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
February 15, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member