U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLAUDIA SMITH and DEPARTMENT OF EDUCATION, REGION IX SPECIAL EDUCATION, San Francisco, CA

Docket No. 00-1126; Submitted on the Record;
Issued March 13, 2001

DECISION and ORDER

Before BRADLEY T. KNOTT, A. PETER KANJORSKI, PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability due to her April 30, 1998 employment injury, commencing October 4, 1999.

The Office of Workers' Compensation Programs accepted appellant's claim for contusions of both knees, bilateral knee arthroscopy, and strains of the neck, right ankle and left shoulder. On October 4, 1999 appellant, then a 62-year-old loan analyst, filed a claim for a recurrence of disability, alleging that on October 4, 1999 she sustained a recurrence of disability.

Appellant stated that, since her April 30, 1998 employment injury, she had to get up from her desk to walk and stretch her arms and move her neck because the pain in her neck and back "never" left her. She stated that she also had pain in her knees which "really got worse" after the October 4, 1999 fall, and that her left knee swelled and gave way when she stood up.

By letter dated November 3, 1999, the Office informed appellant that additional evidence was necessary to establish her claim, including a physician's opinion explaining the relationship between her current disability and the original injury.

In an attending physician's report dated October 29, 1999, Dr. Jesse H. Dohemann, an internist, diagnosed degenerative arthritis of the knee and cervical sprain, checked a "yes" box that the conditions were work related, and opined that appellant was totally disabled.

By decision dated December 9, 1999, the Office denied the claim, stating that appellant did not establish that her current disability was causally related to the original injury.[1]

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[1] On January 14, 2000 appellant requested reconsideration of the Office's decision before the Office and submitted additional evidence. By decision dated March 13, 2000, the Office denied appellant's request for modification. Because the Office issued its March 13, 2000 decision after appellant appealed to the Board on January 24, 2000, the Office's March 13, 2000 decision is null and void as the Office and the Board may not have simultaneous jurisdiction over the same case. *See Noe L. Flores*, 49 ECAB 344, 346 n.1 (1998). Further, the Board

The Board finds that appellant failed to establish that she sustained a recurrence of disability due to the April 30, 1998 employment injury, commencing October 4, 1999.

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.[2] 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.[3] An award of compensation may not be made on the basis of surmise, conjecture, or speculation or an appellant's unsupported belief of causal relation.[4]

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.[5] In discussing how far the range of compensable consequences is carried, once the primary injury is causally connected with the employment, Professor Larson states:

> "When the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of 'direct and natural results' and of claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury."[6]

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cannot review the new evidence appellant submitted with her reconsideration request to the Office as the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision which, in this case, is the December 9, 1999 decision. *See Linda P. Perren*, 49 ECAB 246, 247 n.1 (1997).

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

[3] *See Nicolea Bruso*, 33 ECAB 1138 (1982).

[4] *See William S. Wright*, 45 ECAB 498, 503 (1994).

[5] Larson, *The Law of Workers' Compensation* § 13.00; *Charlotte Garrett Smith*, 47 ECAB 562, 564 (1996).

[6] *Id.* at § 13.11.

Thus, it is accepted that once the work-connected character of any condition is established, the "subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause."[7]

In this case, appellant did not submit any rationalized medical opinion explaining how the recurrence of disability on October 4, 1999 was causally related to the April 30, 1998 employment injury. The only medical evidence appellant submitted postdating the October 4, 1999 fall was Dr. Dohemann's October 29, 1999 attending physician's reports in which he checked the "yes" box that appellant's diagnosed condition of degenerative arthritis of the knee and cervical sprain were work related. The Board has held that a physician's opinion indicating a causal relationship between an employee's condition and the employment by checking "yes" on a medical form is, without explanation or rationale, of little probative value.[8] Further, Dr. Dohemann did not mention the October 4, 1999 fall in his report.

Other medical evidence in the record such as the August 10 and February 2, 1999 medical reports of appellant's treating physician, Dr. Jeffrey L. Halbrecht, a Board-certified orthopedic surgeon, and progress notes dated August and September 1998 predate the October 4, 1999 fall. While these reports provide some evidence of bridging symptoms, they do not specifically address whether the fall constituted a recurrence of the April 30, 1998 employment injury. Similarly, none of the medical evidence appellant submitted addressed whether the October 4, 1999 fall might constitute an intervening injury. Although the Office advised appellant of the evidence that was necessary to submit to establish her claim, appellant was not responsive to the request. She therefore has failed to establish her claim.

[7] *Id*. at § 13.11(a); *see also Stuart K. Stanton*, 40 ECAB 859 (1989).

[8] *See Bernard Snowden*, 49 ECAB 144, 151 (1997).

The December 9, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 13, 2001

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member