

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROSALINDE LINDNER and DEPARTMENT OF AGRICULTURE,  
FOOD SAFETY & QUALITY SERVICE, Minneapolis, MN

*Docket No. 00-2028; Submitted on the Record;  
Issued May 15, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained a recurrence of disability on June 24, 1999 causally related to her March 15, 1997 injury.

On March 15, 1997 appellant, then a 60-year-old food inspector, injured her back when she slipped and fell on grease in the performance of duty. She did not stop work.

Initial medical treatment records indicated that appellant was treated for right lower quadrant abdominal pain, low back and left shoulder pain. Included in these records were progress notes from May 12 to 30, 1997 from Dr. Charles McGraw, Board-certified in family practice, who advised that, since falling, appellant had a contusion, "probably" of the nerve with a deep bruise to the bone where the axillary nerve is. Dr. McGraw also indicated that appellant had L5-S1 radiculopathy with neuritic pain in the left shoulder with a possible contusion and history of hypertension. Additionally, he noted that appellant had low back pain secondary to degenerative disc disease with hypertrophic arthritic changes with some early spinal stenosis. Also included was a May 19, 1997 magnetic resonance imaging (MRI) scan performed by Dr. John W. Steely, a Board-certified radiologist, which showed that appellant did not have lumbar spinal stenosis, disc herniation or neural compression. Dr. Steely indicated that appellant's lumbar alignment appeared normal and that areas of high T1 and T2 signal intensity in the L1 and L2 vertebral bodies to the left of midline and L5 vertebral body to the right of midline consistent with incidental vertebral hemangiomas of no clinical significance. He also noted that there was no compression fracture or paraspinal lesion. Additionally, Dr. Steely indicated that appellant had no lumbar spinal stenosis, disc herniation or neural compression, degenerative end-plate spurring and posterior element hypertrophy at T11-12 which caused extradural deformities without distal cord compression and mild degenerative facet arthritis at L4-5 and L5-S-1. In a June 23, 1997 attending physician's report, Dr. McGraw checked a box "yes" to indicate that appellant's condition was employment related.

The Office of Workers' Compensation Programs accepted appellant's claim for low back contusion.<sup>1</sup>

In a June 24, 1999 emergency room record, a physician, whose name was illegible, noted that appellant slipped a while back on a piece of fat and fell on cement.

In progress notes from June 25 to July 22, 1999, a physical therapist indicated that appellant had pain in the left scapular area.

In a July 1, 1999 progress note, Dr. Daniel D. Buss, Board-certified in orthopedic surgery, indicated that appellant worked as a meat inspector in packing and was seen in the emergency room on June 24, 1999 for interscapular pain on the left. Dr. Buss diagnosed interscapular tendinitis on the left, uncomfortable to direct palpation with good range of motion and no crepitus.

In a September 8, 1999 work restriction note, Dr. Buss indicated that appellant could only lift 15 pounds from the table top to the shoulder and 3 pounds above the shoulder. He also indicated that she should not have any repetitive use above the shoulder and no outstretched reaching. In his September 8, 1999 report, Dr. Buss noted that appellant had a chief complaint of left posterior neck and upper back pain directly related to the medial border of her scapula. He indicated that she had a history of some mild neck pain and stiffness, which seemed to come and go somewhat with the posterior scapula and posterior upper back pain. Dr. Buss also noted that it was a gradual onset which began in June, gradually getting worse with work when she was doing repetitive activities, such as flipping over meat objects in her job as a meat packing inspector for the federal government. He assessed periscapular pain versus cervical disc disease.

In a September 16, 1999 report of workability, Dr. Timothy Garvey, Board-certified in orthopedic surgery, indicated that appellant could not bend at the waist, could not lift more than 10 pounds from the waist to the shoulder and could not lift from the floor to the waist.

In a September 16, 1999 report, Dr. Garvey indicated that appellant had a history of chronic aching with work-related activities. He indicated that appellant was driving in June and had intense acute pain in the thoracic spine that made her feel like she was having a heart attack. Dr. Garvey noted that appellant complained of pain at the left parascapular and infrascapular regions and was having more aching coming into the thoracolumbar junction. He also noted that appellant had a history of a fall at work a few years ago. Dr. Garvey's physical examination of the anterior-posterior and lateral thoracic spine films revealed multilevel thoracic spondylosis with what appeared to be a superior end-plate compression fracture of the T8 vertical body and he diagnosed thoracic compression fracture and/or thoracic spondylosis.

On September 22, 1999 appellant filed a notice of recurrence alleging that on June 25, 1999 she had a recurrence of her March 15, 1997 injury. She asserted that she must avoid bending at the waist, she could not lift more than 10 pounds from the waist to the shoulders or lift from the floor to the waist. Appellant stopped work on September 20, 1999.

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<sup>1</sup> On a yellow handwritten undated post-it, the Office indicated that they would accept a back contusion.

In a September 29, 1999 attending physician's report, Dr. Garvey checked the box "yes" regarding whether the condition was caused or aggravated by an employment injury and noted, "see notes."

In October 6, 1999 progress notes, Dr. Garvey indicated that the MRI scan of the thoracic spine taken on September 6, 1999 showed that appellant had a compression fracture at T7 with the same homogenous signal as the other vertebral bodies. He noted that T9 had an altered signal with a high signal intensity on the T1-type images on the posterior half of the body but added that further laboratory evaluation was needed.

On November 5, 1999 the Office advised appellant of the type of factual and medical evidence needed to establish her recurrence claim for a recurrence of disability on June 25, 1999.

In a report dated November 18, 1999, Dr. Ensor Transfeldt, Board-certified in orthopedic surgery, indicated that the MRI scan revealed that appellant had a small hemangioma low down in the thoracic spine. Dr. Transfeldt also noted that appellant's protein electrophoresis appeared quite normal. He recommended that appellant return to work. Dr. Transfeldt also indicated that appellant could return to work without any restrictions on December 1, 1999.

On December 6, 1999 Dr. Suzanne Human, Board-certified in family practice, advised that appellant's work restrictions had changed to no lifting more than 40 pounds and no bending or twisting with more than 20 pounds.

On December 9, 1999 the Office advised appellant that she needed to submit a factual statement that included a description of her work duties on return to work following the original injury, a description of her physical condition from her return to work to present, a description of any other illnesses or injuries during this period and an explanation of why she believed her current condition was related to the original injury. Appellant was allotted 30 days.

In a December 16, 1999 report, Dr. Transfeldt diagnosed a mild wedge compression fracture of the mid thoracic spine and indicated that he believed that the fracture was now healed and unlikely to collapse any further. He recommended that appellant "stay off the type of work she has been doing [and] continue with the conditioning exercise program."

In a statement received by the Office on December 20, 1999, appellant stated that when she returned to work, she had to resume her regular inspection duties, which included head inspection on the line, visceral and rail inspection, as well as daily sanitation. She described her duties, which consisted of cutting, palpating, opening, tagging, turning, reaching and climbing on a daily basis in the meat industry as a food inspector. Appellant indicated that she suffered a fracture of her vertebra T8 and noted that it was constant and caused considerable pain. She stated that prior to her fall, she did not have constant pain.

By decision dated January 20, 2000, the Office denied appellant's recurrence of disability claim on the grounds that she failed to establish that her claimed recurrent condition was related to her March 15, 1997 injury.

On February 10, 2000 appellant requested reconsideration.

In a March 23, 2000 report of workability, Dr. Garvey indicated that appellant could only work four hours a day with no lifting from the floor to the waist. Additionally, appellant could not lift more than five pounds from the waist to the shoulder but could move positions at will.

In a March 23, 2000 report, Dr. Garvey indicated that appellant was seen in followup for thoracic pain. He noted appellant's history and indicated that back in June, after working, she drove home and felt that she had significant increasing symptoms, such as if she had a heart attack. Dr. Garvey indicated that x-rays showed a superior end-plate fracture at T8 and the MRI scan showed a hemangioma at T9 and no acute fracture. He also indicated that appellant had multilevel spondylosis. Dr. Garvey addressed the question of whether this was work related by opining: "appellant had a previous thoracic injury in 1997 that was work related and has had heavy bending, twisting and lifting that places her at increased risk for degenerative changes in the thoracic spine, then this would appear to be a work-related injury."

In a May 12, 2000 merit decision, the Office denied modification of its prior decision.

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

While appellant had the burden to establish entitlement to compensation, the Office shares the responsibility in the development of evidence.<sup>2</sup> When an uncontroverted inference of causal relationship is raised, the Office is obligated to request further information from an employee's attending physician.<sup>3</sup>

In reports dating from May 12 to 30, 1997, Dr. McGraw indicated that appellant was treated for right lower quadrant abdominal pain and low back pain, a bruise to the bone where the axillary nerve is and neuritic pain in the left shoulder. The May 19, 1997 MRI scan showed a hemangioma and posterior element hypertrophy at T11 to T12.

In reports from July 1 to September 8, 1999, Dr. Buss diagnosed tendinitis on the left and pain in the medial border of appellant's scapula on the left and upper back pain.

In reports from September 16 to October 6, 1999, Dr. Garvey noted appellant's fall at work from a few years ago and noted that appellant complained of pain at the left parascapular and infrascapular regions and found multilevel thoracic spondylosis with a superior end-plate compression fracture of the T8 vertical body which he diagnosed as thoracic compression fracture and/or thoracic spondylosis. He also checked the box "yes" that appellant's condition was caused or aggravated by an employment injury. In his March 23, 2000 report, Dr. Garvey indicated that "appellant had a previous thoracic injury in 1997 that was work related" and he also noted that appellant had multilevel spondylosis which also appeared to be a work-related injury.

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<sup>2</sup> *Dennis J. Lasanen*, 43 ECAB 549 (1992).

<sup>3</sup> *John J. Carlone*, 41 ECAB 354 (1989).

In reports from November 18 to December 16, 1999, Dr. Transfeldt noted that the MRI revealed a hemangioma low down in the thoracic spine and also diagnosed a small wedge compression fracture of the mid thoracic spine, which was now healed.

In the instant case, while the reports of Drs. McGraw, Steely, Buss, Garvey, Transfeldt and Human are not sufficiently rationalized to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that her current condition or continued need for medical treatment are due to her accepted March 15, 1997 employment injury, they constitute sufficient evidence in support of appellant's claim to require further development of the record by the Office.<sup>4</sup> The Board notes that there is no medical evidence of record refuting a causal relationship between appellant's current condition and her March 15, 1997 employment injury.

On remand, the Office should refer appellant, together with the case record and a statement of accepted facts, for examination by an appropriate specialist. After such further development as the Office deems necessary, it should issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs dated May 12 and January 20, 2000 are hereby set aside and the case remanded for further actions consistent with this decision.

Dated, Washington, DC  
May 15, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member

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<sup>4</sup> See *Horace Langhorne*, 29 ECAB 820 (1978).