

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIE McWILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, MO

*Docket No. 00-2214; Submitted on the Record;
Issued October 26, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained a consequential lower back condition in the performance of duty causally related to her accepted, March 7, 1995 employment injury.

On March 7, 1995 appellant, a 49-year-old window clerk, slipped on some wet steps and fell on her right leg. She filed a claim for benefits on the date of injury. By decision dated August 8, 1995, the Office of Workers' Compensation Programs denied the claim, finding that appellant did not submit evidence sufficient to establish that she sustained an injury in the performance of duty. By letter dated August 14, 1995, appellant requested reconsideration. By decision dated October 6, 1995, the Office set aside the previous decision and accepted the claim for right distal tibia fracture and surgery for closed reduction and removal of the external fixator. Appellant missed work from March 8 through October 23, 1995 and was released to return to work on limited duty on October 24, 1995. Appellant missed work intermittently and was reassigned to a modified distribution clerk job on July 20, 1996.

On January 30, 1997 appellant filed a claim based on Form CA-1 traumatic injury for a herniated disc at L4-5. She stated on the claim form that "I fell on my back side" on March 7, 1995 ... as a result of this fall, I have ruptured disc in my back." Appellant has not returned to work since January 29, 1997.

On February 21, 1997 appellant underwent a microdiscectomy and foraminotomy at L4-5, on the right.

In a report dated December 22, 1998, an Office medical adviser, Dr. David D. Zimmerman, reviewed the medical evidence in the case file and, after noting that appellant had sustained an injury to her right foot on March 7, 1995, noted that there was no mention of back pain in the record until July 4, 1996. Dr. Zimmerman stated that on this date appellant was

reported as having developed back pain that radiated into her left leg while she was walking more than she normally did at a VP fair.¹ He opined:

“The back problems as demonstrated by diagnostic studies and subsequent surgical intervention [were] not caused, aggravated [,] accelerated or precipitated by the injury of [March 7, 1996]. The back pain complaint did not arise until really 16 months later when she was walking more than usual at a fair.”

In response to a January 6, 1999 Office questionnaire, Dr. Russell Chlysta, Board-certified in internal medicine and appellant’s treating physician, indicated in handwritten notations dated February 2, 1999 that appellant’s herniated disc at L4-5 was a consequence of the March 7, 1995 employment injury. Dr. Chlysta stated that appellant was unable to work as a result of her back condition. He also submitted a work capacity evaluation dated February 2, 1999 in which he indicated that appellant was totally disabled from all forms of employment. In addition, Dr. Chlysta submitted numerous treatment notes from March 17 through October 29, 1998.

On February 23, 1999 the Office determined there was a conflict in the medical evidence between Drs. Zimmerman and Chlysta regarding whether appellant’s lower back condition and herniated disc at L4-5 were a consequence of the accepted, March 7, 1995 employment injury, and it therefore referred appellant to Dr. Bernard C. Randolph, Board-certified in physical medicine and rehabilitation, for an independent medical examination.

In a report dated March 28, 1999, Dr. Randolph, after stating findings on examination, reviewing the medical history and the statement of accepted facts, stated:

“With regard to the lumbar spine, [t]he history shows that this problem did not become prominent until approximately July 1996. The record following the fall in 1995 reveals no evidence that she was experiencing significant back or radicular symptoms at that time. She even acknowledges that it was not until approximately July 1996 that she reported having significant back and radiating symptoms to her obstetrician-gynecologist. Therefore, it is my opinion that her lumbar disc herniation did not occur as a result of her fall in March 1995.

“[Appellant] does have preexisting and longstanding lumbar degenerative disc disease. She even acknowledges experiencing low back pain from time to time prior to the fall in March 1995. As a natural consequence of the degenerative process, persons can experience disc herniation. One does not have to be involved in significant trauma to develop a lumbar disc herniation. Such appears to be the case with [appellant].”

¹ This statement evidently refers to an unsigned August 1, 1996 report which states, “[Appellant] is a 51-year-old postal clerk, who was well until July 4, 1996. She was at the VP fair and walking around more than usual. For the next several days she had pain in her back, pain in her left buttock and then pain down her left leg to the calf. Now the pain has also gone into the right.”

By decision dated June 11, 1999, the Office denied appellant's claim for failure to meet her burden of proof in establishing that her lower back condition was a consequence of her previously accepted March 7, 1995 employment injury.

By letter dated July 1, 1999, appellant requested an oral hearing, which was held on November 16, 1999. In support of her request, appellant submitted a November 16, 1999 report from Dr. Chlysta, who, after noting that appellant had injured her right tibia during the March 7, 1995 work incident, stated:

“[Appellant's] immobility and the use of a walker resulted in undue torque and strain on her back which accelerated degenerative disc disease and caused her ruptured L4-5 disc. Her L4-5 disc was a direct result of her fall on March 7, 1995.”

By decision dated February 9, 2000, an Office hearing representative set aside the Office's June 11, 1999 decision. The hearing representative found that Dr. Randolph had not been specifically asked to consider whether appellant's current back condition had been aggravated, accelerated or exacerbated as a consequence of the months of rehabilitation from the March 7, 1995 employment. The hearing representative therefore remanded the case back to the district office for referral to Dr. Randolph to consider the issue of consequential injury as outlined by Dr. Chlysta, and, after any further development of the medical evidence, to issue a *de novo* decision.

In a report dated April 7, 2000, Dr. Randolph reviewed Dr. Chlysta's November 16, 1999 report and the statement of accepted facts, and opined that appellant's back condition was not caused, substantially aggravated or accelerated by the period of rehabilitation following her tibia fracture in 1995. He stated:

“As I indicated in my original report, she has significant lumbar degenerative disc disease, which is evidenced by the exam[ination] and the imaging studies. As a part of the natural history, a lumbar degenerative disease and disc herniations do occur. They can occur without episodes of discrete trauma but simply as an end point in the degenerative cascade. Given the length of time from [appellant's] trauma in March 1995 to the point at which she began to develop lower extremity symptoms, I cannot connect the herniated disc which occurred, and the trauma, which occurred more than a year before. Furthermore, there is nothing unusual about the type of rehabilitation which she had or about the activities which she was involved in during the year following her fracture which would have accelerated the degenerative process or significantly aggravated the degenerative process causing the herniated disc.”

By decision dated May 11, 2000, the Office, based on Dr. Randolph's independent medical opinion which represented the weight of the medical evidence, found that appellant's lower back condition was not a consequence of her accepted March 7, 1995 employment injury.

The Board finds that appellant has not established that she sustained a consequential lower back condition in the performance of duty causally related to her accepted March 7, 1995 employment injury.

The basic rule respecting consequential injuries as expressed by Larson is 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 likewise arises out of the employment, unless it is the result of an independent intervening cause attributed to claimant’s own intentional conduct.”² The subsequent injury “is compensable if it is the direct and natural result of a compensable primary injury.”³ With regard to consequential injuries, the Board has stated that where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury, even though nonemployment related, is deemed, because of the chain of causation, to arise out of and be in the course of employment and is compensable.⁴ However, an employee who asserts that a nonemployment-related injury was a consequence of a previous employment related one has the burden of proof to establish that such was the fact.⁵

In this case, appellant alleged that her lower back condition and herniated disc at L4-5 for which she underwent surgery on February 21, 1997 are a consequence of and causally related to her accepted employment injury of March 7, 1995. With respect to the March 7, 1995 employment injury, the Office accepted that appellant sustained a right distal tibia fracture and approved surgery for closed reduction and removal of the external fixator.

Due to a conflict in the medical evidence regarding whether appellant’s back condition and herniated disc at L4-5 was a consequential injury causally related to the accepted March 7, 1995 employment injury, appellant was referred to Dr. Randolph, a Board-certified orthopedic surgeon, for an independent medical examination, who opined in a March 28, 1999 report that her current back condition was not causally related to the March 7, 1995 employment injury. Relying on Dr. Randolph’s opinion, the Office denied compensation based on a claimed consequential injury in its June 11, 1999 decision. Appellant requested a hearing, and an Office hearing representative set aside the June 11, 1999 decision and remanded the case to the district office in order for Dr. Randolph to consider whether appellant’s current back condition had been aggravated, accelerated or exacerbated as a consequence of the months of rehabilitation from the March 7, 1995 employment injury. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁶

² Larson, *The Law of Workmen’s Compensation* § 13.00.

³ *Id.* at § 13.11.

⁴ *Jessie Johnson, Jr.*, 39 ECAB 945, 950 (1988); *Marie Denhart*, 32 ECAB 1168, 1170 (1981).

⁵ 43 ECAB 1034 (1994); *Theron J. Barham*, 34 ECAB 1070, 1076 (1983).

⁶ *Aubrey Belnavis*, 37 ECAB 206 (1985); 5 U.S.C. § 8123(a).

In his April 7, 2000 report, Dr. Randolph stated that appellant's back condition was not caused, substantially aggravated or accelerated by the period of rehabilitation following her tibia fracture in 1995. He advised that, consistent with the condition's natural progression, a lumbar degenerative disease and disc herniations can occur without incidents of discrete trauma. Dr. Randolph stated that in light of the length of time between the March 1995 work incident and the date on which she began to develop lower back symptoms, he was unable to connect the herniated disc and the trauma which occurred more than a year before. He also stated that there was nothing unusual about the type of rehabilitation which appellant underwent that would have accelerated the degenerative process or significantly aggravated the degenerative process causing the herniated disc. In a decision dated May 11, 2000, the Office found that Dr. Randolph's opinion on remand represented the weight of the medical evidence, and found that appellant's back condition and herniated disc at L4-5 was not a consequence of the accepted March 7, 1995 employment injury.

The Board finds that Dr. Randolph's opinion is sufficiently probative and well rationalized to merit the special weight accorded a referee medical examiner. Therefore, the Office properly relied on Dr. Randolph's opinion that appellant's back condition and herniated disc at L4-5 was not causally related to and therefore not a consequence of her accepted March 7, 1995 employment injury. Accordingly, the Office's finding that his opinion represented the weight of the medical evidence in its May 11, 2000 decision was correct.

The decision of the Office of Workers' Compensation Programs dated May 11, 2000 is affirmed.

Dated, Washington, DC
October 26, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member