

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAMELA I. KRALIK and U.S. POSTAL SERVICE,
POST OFFICE, Royal Oak, MI

*Docket No. 01-598; Submitted on the Record;
Issued January 7, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for hip surgery.

On August 20, 1998 appellant, then a 45-year-old letter carrier, filed a claim alleging that she injured her right leg and low back while continually mounting and dismounting her mail truck. She stated that she first became aware of her condition on August 5, 1998. Appellant did not stop work but returned to a light-duty position, eight hours per day. Her claim was accepted for lumbosacral strain.

Accompanying appellant's claim were various medical records. In a medical report dated December 1, 1998, Dr. Steve R. Geiringer, Board-certified in physical medicine and rehabilitation, indicated a history of appellant's injury and noted he suspected appellant's symptoms were consistent with avascular necrosis. He recommended work restrictions of sitting 4 hours per day, standing the remainder of the day, with 10-minute breaks. Dr. Geiringer's February 2, 1999 report noted the results of the magnetic resonance imaging (MRI) scan which confirmed a diagnosis of avascular necrosis. He indicated that appellant's job of delivering mail, which included jumping down from her truck daily, aggravated her underlying condition, however, he noted there was no way to know what caused the avascular necrosis. The MRI scan dated December 14, 1998 revealed a small right joint effusion, evidence of avascular necrosis in the right hip and diffuse edema in the remainder of the proximal right femur.

In a medical report dated February 25, 1999, Dr. James R. Urbaniak, a Board-certified orthopedist, noted appellant's history as a letter carrier where appellant's current mail route required repeated dismounts from her mail truck during delivery. Dr. Urbaniak diagnosed appellant with avascular necrosis, right femoral head, Stage IV A/1. He indicated that since appellant had no other risk factors, he related the avascular necrosis secondary to trauma to the articular surface and femoral head following repeat jumps from the mail truck. Dr. Urbaniak recommended a free vascularized fibular graft.

The Office referred appellant for a second opinion to Dr. Emmanuel Obianwu, a Board-certified orthopedic surgeon.¹ The Office provided Dr. Obianwu with appellant's medical records, a statement of accepted facts as well as a detailed description of appellant's employment duties.

In a medical report dated April 27, 1999, Dr. Obianwu indicated that he reviewed the records provided to him and performed a physical examination of appellant. He indicated the history of appellant's back and right groin problems and summarized the findings on various diagnostic studies. Dr. Obianwu noted that he did not believe that employment factors were responsible for direct causation, aggravation, acceleration or precipitation of the avascular necrosis. He indicated that the type of work appellant performed would exacerbate the symptoms of the condition. Dr. Obianwu further noted that there was no relationship between appellant's preexisting lumbar disc condition and her right hip problems.

The Office determined that a conflict in medical evidence was present between Dr. Geiringer, appellant's treating physician, who indicated that appellant's condition was aggravated by her employment factors and the second opinion physician, Dr. Obianwu, who indicated that appellant's condition was not caused or aggravated by her employment factors, and referred the case to a referee physician, Dr. B. Bohra, a Board-certified neurologist and orthopedist, to resolve the conflict.

Appellant also submitted a follow-up report from Dr. Geiringer dated July 16, 1999 which document appellant's slightly worse symptoms and reiterated that appellant's employment factors were the causative factors in her condition.

In a medical report dated July 28, 1999, Dr. Bohra indicated that he reviewed the records provided to him and performed a physical examination of appellant. He noted that he reviewed appellant's past x-rays and MRI scan. Dr. Bohra noted objective findings of the cervical spine and upper limbs were negative, lumbosacral spine was negative, no clinical evidence of any herniated disc or nerve root irritation, positive findings were pain in the right hip rotation and positive Fabre test on the right side, pain on flexion of the left hip and no pain on rotation of the left hip. He indicated a diagnosis of Stage III avascular necrosis of the head of the right femur. Dr. Bohra opined that appellant's disease process of avascular necrosis of the head of the femur of the right hip was not caused or aggravated by her employment activities. In support of his opinion, he noted that the radiological findings clearly indicate no evidence of post-traumatic osteoarthritis which would be present if caused by the repeated trauma of jumping from appellant's mail truck onto the ground for 25 years.

Thereafter, appellant submitted several reports from Dr. Geiringer dated October 15, 1999 to April 10, 2000 and Dr. Mark R. Wilson, a specialist in orthopedics, dated April 7, 2000. In his report of October 15, 1999, Dr. Geiringer again indicated that appellant's employment

¹ The Office initially referred appellant for a second opinion to Dr. Larry S. Mathews, a specialist in orthopedics. However, Dr. Mathews was not able to provide a rationalized opinion as to whether appellant's employment factors caused a continuing change to her underlying condition, he indicated that he simply did not know. The Office determined that his report be excluded from the case file. The Office then referred appellant for a second opinion examination to Dr. Obianwu.

factors were the only identifiable cause of her right hip problem of avascular necrosis as appellant had no other risk factors that relate to avascular necrosis. His report of February 2, 2000 indicated that a repeat MRI scan was performed on January 28, 2000 which revealed no worsening of the avascular necrosis of the right femoral head which he believed supported his position that the condition was work related as appellant has been avoiding the offending activity during this period. Dr. Wilson diagnosed appellant with right Stage IV-A avascular necrosis of the femoral head. He noted that appellant's job duties had been modified where she was not traumatizing her hip so much at work, however, he did not indicate that appellant's employment duties caused or aggravated appellant's condition. Dr. Wilson recommended a vascularized fibula grafting for the femoral head.

In a letter dated November 19, 1999, the Office requested Dr. Bohra clarify his opinion with regard to whether appellant's condition of avascular necrosis of the right hip was accelerated or precipitated by appellant's employment duties.

In a supplemental report dated May 26, 2000, Dr. Bohra indicated that appellant's right hip avascular necrosis condition was the result of a natural disease process progression and was not caused aggravated or accelerated by appellant's employment factors. He further noted that although the most recent MRI performed indicated that appellant's disease had not progressed and during this period appellant was not performing her regular employment duties thought to have caused this condition, this conclusion is not correct or substantiated by medical literature. Dr. Bohra indicated that because avascular necrosis is a progressive disease, the progression of the disease is determined not after one year but a duration of five years.

Thereafter, appellant submitted a report from Dr. Geiringer dated June 21, 2000 which indicated that appellant still needed surgery.

In a decision dated September 27, 2000, the Office denied appellant's claim on the grounds that the proposed surgery was neither warranted nor causally related to appellant's accepted work-related injury of February 11, 1998.

The Board finds that the Office properly denied appellant's request for hip surgery.

Section 8103(a) of the Federal Employees' Compensation Act provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Office considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.² The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office, therefore, has broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from

² 5 U.S.C. § 8103(a).

established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.³

In this case, the Office accepted that appellant sustained a lumbosacral strain related to her employment factors. Appellant's physician, Dr. Geiringer, diagnosed appellant with avascular necrosis in the right hip and indicated that appellant's job of delivering mail, which included jumping down from her truck daily, aggravated her underlying condition. Appellant sought treatment from Dr. Urbaniak who diagnosed appellant with avascular necrosis, right femoral head, Stage IV A/1 and indicated that since appellant had no other risk factors, he related the avascular necrosis secondary to trauma to the articular surface and femoral head following repeat jumps from the mail. Dr. Urbaniak recommended a free vascularized fibular graft. The Office referred appellant for a second opinion to Dr. Obianwu. In his medical report dated April 27, 1999, Dr. Obianwu, indicated that based on his review of the records, x-rays and a physical examination he did not believe that employment factors were responsible for direct causation, aggravation, acceleration or precipitation of appellant's avascular necrosis condition, however, noted that the type of work appellant performed would exacerbate the symptoms of the condition. He further noted that there was no relationship between appellant's preexisting lumbar disc condition and her right hip problems.

The Office properly reviewed the medical evidence and determined that a conflict existed in the medical evidence between appellant's treating physician, Dr. Geiringer and the Dr. Obianwu, who disagreed with Dr. Geiringer regarding the causal relationship between appellant's condition of avascular necrosis and her employment factors; and ultimately the necessity of surgery for appellant's condition. Consequently, the Office referred appellant to Dr. Bohra to resolve the conflict.

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.⁴

Dr. Bohra reviewed appellant's history, reported findings, and noted a diagnosis of Stage III avascular necrosis of the head of the right femur. He noted an essentially normal physical examination except for pain in the right hip rotation and flexion, and positive Fabre test on the right side. Dr. Bohra opined that appellant's disease process of avascular necrosis of the head of the femur of the right hip was not caused or aggravated by her employment activities but was the result of a natural disease process progression. In support of his opinion, he noted that the radiological findings clearly indicate no evidence of post-traumatic osteoarthritis which would be present if caused by the repeated trauma of jumping from appellant's mail truck onto the ground for 25 years.

The Board finds that Dr. Bohra's report is based upon a proper factual background and is sufficiently well rationalized such that it is entitled to special weight and establishes that the Office did not abuse its discretion in declining to authorize the requested surgery.

³ *Francis H. Smith*, 46 ECAB 392 (1995); *Daniel J. Perea*, 42 ECAB 214 (1990).

⁴ *Aubrey Belnavis*, 37 ECAB 206 (1985); *see also* 5 U.S.C. § 8123(a).

Thereafter, Dr. Geiringer submitted an additional report supporting the need for surgery but he did not base his recommendation on any different finding or rationale than that previously presented. Due to his lack of supporting medical rationale and as Dr. Geiringer was on one side of the conflict that Dr. Bohra resolved, the additional reports from Dr. Geiringer are insufficient to overcome the weight accorded Dr. Bohra's report as the impartial specialist or to create a new conflict with it.⁵

The Board finds that, under the circumstances of this case, the opinion of Dr. Bohra is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's diagnosed condition of avascular necrosis did not result either by direct cause, acceleration or aggravation from her employment factors. Therefore, the Board finds that the July 28, 1999 and May 26, 2000 reports of Dr. Bohra, carry the weight of the medical evidence.

The decision of the Office of Workers' Compensation Programs dated September 27, 2000 is affirmed.

Dated, Washington, DC
January 7, 2002

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

⁵ *Dorothy Sidwell*, 41 ECAB 857 (1990) (a the doctor on the side of the creation of the conflict that's resolved cannot come back and create a new conflict without submitting new rationale or medical evidence to support his opinion).