U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JO DEE COLE and U.S. POSTAL SERVICE,
POST OFFICE, Radnor, OH

Docket No. 01-739; Submitted on the Record;
Issued January 2, 2002

DECISION and ORDER

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

The issue is whether appellant sustained a recurrence of disability on May 20, 1999 causally related to her November 27, 1996 employment injury.

On November 27, 1996 appellant, then a 36-year-old rural carrier, sustained a lumbar strain and herniated disc at L5-S1[1] in the performance of duty when she reached for a bundle of mail in the back seat of her delivery vehicle. She returned to work on December 16, 1996 for four hours a day with restrictions and was released by her physician to return to regular duty on April 3, 1997.

In a report dated December 6, 1996, Dr. Diana L. Taylor, appellant's attending family practitioner, indicated that appellant had a lumbar strain and a probable herniated disc and was totally disabled.

In a form report dated April 2, 1997, Dr. Taylor diagnosed a herniated disc at L5-S1 but indicated that appellant was able to perform fulltime regular work.

On August 17, 1999, appellant filed a claim for a recurrence of disability on May 20, 1999.

In a report dated August 13, 1999, Dr. Janet W. Bay, a neurosurgeon, provided a history of appellant's condition and findings on examination and diagnosed an L5 disc protrusion based on an MRI scan of her lumbar spine.

[1] A magnetic resonance imaging (MRI) scan report dated December 9, 1996 indicated a disc herniation at L5-S1.

In a report dated October 7, 1999, Dr. David S. Smith, a family practitioner, noted that appellant had a back injury in late 1996 with confirmation of a herniated disc at L5-S1 and that she had complete resolution of symptoms. He continued:

> "One must remember that this small focal herniation still represented a weak spot in this disc. [Appellant] was symptomatic then again in early 1999 when she saw me here at the office. Her history then was that she was in the shower and bent over to pick up the soap and felt severe back pain. It was again recommended that she has conservative therapy with bed rest and anti-inflammatory medications and she did improve.
>
> "[I]n April of this year, she had a significant pneumonia with a cough…. Fortunately, she has done well with this very significant complication. Subsequent to that, however, her back pain recurred. The etiology of that recurrence is not real clear, but certainly could be related to the significant coughing that she had. She was seen in August by … one of my partners who diagnosed a radiculopathy and a repeat MRI was ordered. The MRI again showed a focal disc protrusion with effacement of the thecal sac and compromise of the left nerve root at L5-S1. Copies of that MRI as well as the original MRI in 1996 are enclosed. As you can see, the fundamental anatomic lesion is identical. The subsequent surgery that [appellant] required to relieve the pain is clearly related to the initial injury in 1996."

In a form report dated October 28, 1999, Dr. Bay diagnosed a herniated disc and noted that appellant underwent surgery in August 1999. She checked the block marked "no" in answer to the question of whether the condition was caused or aggravated by appellant's employment.

By decision dated November 23, 1999, the Office denied appellant's claim for a recurrence of disability.

Appellant requested an oral hearing that was held on July 27, 2000 and submitted additional evidence.

In notes dated November 29, 1996, Dr. Taylor diagnosed a severe lumbar strain and possible herniated disc on November 27, 1996 when she reached for a bag of mail and noted that she also had numbness and tingling in her left leg.

In a report dated August 1, 2000, Dr. Smith stated, "Given the identical location of the herniated disc noted on the MRI of December 1996 and seen again on MRI in August 1999, I have no doubt that the two are related."

In a report dated August 10, 2000, Dr. Bay stated:

> "I first saw [appellant] in neurosurgical consultation in August 1999. At that time she presented with low back pain with left sciatica. She gave a history of a work-related injury in 1996 with resultant back pain and sciatica. A MRI scan of the lumbar spine was performed in December 1996 … show[ing] a disc protrusion at L5 on the left. She was treated with bed rest for several weeks and the pain

gradually improved. Her pain improved to the point in April 1997, she was able to return to her work duties…. She self treated thereafter with over-the-counter pain medications and limitation of activities…. The pain was not severe enough at that point to require medical evaluation or care. In the spring 1999, she contracted pneumonia and developed significant coughing as a consequence. At that point [appellant] began having increasingly severe left sciatica to the ankle. At about that same time she had reached for a bar of soap in the shower and felt increasing pain down her left leg. She was treated in the spring 1999 with oral steroids and physical therapy without relief. She continued to be bothered with severe left leg pain and although she continued her work duties she was significantly impaired.

"I saw [appellant] in August 1999, and reviewed a repeat MRI scan of the lumbar spine which once again showed the herniated disc at L5 on the left. Because of her ongoing pain and failure to improve with conservative measures, I recommended surgical therapy, and this was carried out on August 18, 1999. A herniated disc at L5 on the left was successfully removed and she did well thereafter.

"It is my opinion that the surgery that was performed to relieve this ruptured disc was related to [appellant's] original work injury of November 1996. I believe that the pain recurrence in this case, triggered by the pneumonia and reaching injury basically represented the natural progression of her original injury…. I do not believe that the pneumonia or the injury in the shower were intervening acts or causative of her disc protrusion. The disc protrusion, as a consequence of a work related injury in 1996, and the surgery required in 1999 was due to a recurrence of symptoms, which often occurs in lumbar disc protrusions."

By decision dated October 5, 2000, the Office hearing representative affirmed the Office's November 23, 1999 decision.

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

In reports dated October 7, 1999 and August 1, 2000, Dr. Smith, a family practitioner, stated his opinion that appellant's herniated disc at L5-S1 and surgery in 1999 were causally related to her November 27, 1999 employment injury. He stated that the herniated disc at L5-S1 revealed by an MRI scan in 1996 represented a weak spot in the disc and that appellant experienced back pain in early 1999 when she bent over to pick up a bar of soap in the shower and later in 1999 when she had significant coughing accompanying a case of pneumonia. Dr. Smith noted that the fundamental anatomic lesion in the back was identical in the 1996 and 1999 MRI scans.

In a report dated August 10, 2000, Dr. Bay, a neurosurgeon, opined that appellant's herniated disc at L5-S1 and surgery in 1999 represented a natural progression of her November 27, 1996 employment-related lumbar spine and herniated disc at l5-S1. She indicated that appellant's pneumonia and reaching incident in the shower did not cause a new injury but rather triggered a recurrence of pain in the area of the back injured on November 27, 1996.

Dr. Bay stated, "The disc protrusion, as a consequence of a work related injury in 1996, and the surgery required in 1999 was due to a recurrence of symptoms, which often occurs in lumbar disc protrusions." She indicated that appellant improved after surgical removal of the herniated disc at L5 on the left. Additionally, the record shows that appellant had left leg pain both in 1996 and 1999. A November 29, 1996 note from Dr. Taylor, appellant's attending physician in 1996, describes numbness and tingling in the left leg and Dr. Bay reported in her August 10, 2000 report that appellant had severe sciatica on the left side with left leg pain. Although the record shows that Dr. Bay checked the block marked "no" in her October 28, 1999 form report, indicating no causal relationship to appellant's employment, she provided a detailed medical rationale in her August 10, 2000 narrative report in support of her opinion that appellant's back condition in 1999 was causally related to her November 27, 1996 employment injury.

The medical evidence is sufficient to require that the case be remanded for further development of the claim.[2] Although additional medical explanation is needed regarding the contribution of the shower incident and the pneumonia coughing to appellant's back condition in 1999, and the fact that appellant had been returned to regular duty in 1997 and did not seek medical treatment until 1999, there is sufficient medical evidence to require further development of this recurrence claim considering the similarities between the 1996 and 1999 conditions and the medical rationale provided by appellant's treating physicians. On remand, the Office should refer appellant to an appropriate medical specialist, along with a statement of accepted facts and copies of medical records, for an examination and evaluation as to whether her back condition in 1999 was caused or aggravated by her November 27, 1996 employment injury.

The October 5, 2000 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
January 2, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

[2] *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).