U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEY MAHONEY and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, CA

Docket No. 01-1662 Submitted on the Record;
Issued May 21, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
DAVID S. GERSON

The issue is whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty.

On October 21, 1999 appellant, a 50-year-old postal clerk, filed a notice of occupational disease and claim for continuation of pay/compensation (Form CA-2). She alleged that her right knee gave out as she was coming down the stairs and she landed on her right knee. Appellant alleged that her work-related back and right knee problems on or before September 28, 1999 caused the knee to give out and were due to factors of her employment. She did not stop work.[1]

In an October 18, 1999 statement, appellant indicated that she was having back and right leg pain for the last month. She stated that on September 28, 1999 she was coming down the stairs at work and her right leg just gave out, it buckled under her. Appellant stated that she stumbled forward and landed on her right knee and twisted it. Appellant stated that she thought it was a result of her back and leg injury.

In an October 22, 1999 magnetic resonance imaging (MRI) scan of the right knee, Dr. Beth DuBose, a radiologist, stated that appellant had right knee pain and swelling. She found that appellant had Grade II degenerative signal in the posterior horn medial meniscus and mild intrasubstance degenerative signal in the posterior horn lateral meniscus and no definite evidence of frank meniscal tear. Dr. DuBose also found minimal joint effusion and mild degenerative changes of the patellofemoral joint with small subchondral cysts in the femoral trochlear groove were also noted. She also found a mildly thickened medial patellar plica and a loculated popliteal cyst.

[1] The record reflects that appellant had several preexisting claims. They include: an open claim for a low back injury, #131083530; left forearm #13843642 and cervical spine #131100940. The record also reflects that appellant was on limited duty since at least 1995 and possibly as far back as 1987, in a full- and part-time capacity.

In a November 5, 1999 report, referencing a May 18, 1996 injury, Dr. Leslie Schofferman referenced appellant's right knee and noted that "the right knee was not yet authorized as part of the May 18, 1996 injury and [appellant] has a separate claim in for the right knee trauma." She noted that the MRI scan showed degenerative signals in the posterior horns of both the medial and lateral meniscus, a joint effusion and mild degenerative changes in the patellofemoral joint, as well as small subchondral cysts. Dr. Schofferman assessed: (1) degenerative changes of the right knee, with associated meniscal changes and popliteal cyst; (2) L4-5 retrolisthesis with stenosis and disc herniation; multilevel degenerative disc disease cervical spine with right C4-5 herniation and significant osteophytic ridging at C5-6. She also stated that appellant had symptomatic lipoma of the left forearm. She stated further that appellant's low back had flared because of the knee condition and appellant was perhaps having some radicular pain in the right lower extremity.

In a letter dated November 15, 1999, the Office of Workers' Compensation Programs advised appellant and her physician of the additional factual and medical evidence needed to establish her claim and requested that she submit such.[2] Appellant was advised that submitting a rationalized statement from her physician addressing any causal relationship between her claimed injury and factors of her federal employment was crucial. She was allotted 30 days to submit the requested evidence.

In a November 23, 1999 report, Dr. Schofferman responded to the Office's request and noted that she had followed appellant since 1993. Dr. Schofferman stated that on October 8, 1999 appellant complained of right knee pain in addition to her lower back pain, right lateral thigh pain and calf and heel pain. She stated that the pain pattern seemed different in that the right knee component seemed to be intrinsic knee pain as opposed to a radiation pattern from the low back. Dr. Schofferman provided her assessment and stated that it was her impression that the right knee symptoms were work related and stated that the history that the Office recounted of appellant's right leg giving out and causing her to fall on the stairs landing on the right knee certainly would support a traumatic episode resulting from a give way weakness in the right knee secondary to the underlying lumbar stenosis and degenerative disc findings. She stated further that appellant had a small effusion in the right knee and the acute tenderness in the right knee at the time of her examination suggested an acute injury consistent with the history as previously described.

By merit decision dated February 4, 2000, the Office denied appellant's claim for the reason that "fact of an injury was not established."

By letters dated February 8 and March 1, 2000, appellant requested reconsideration and a review of the written record. She also stated that her job duties aggravated her back and knee conditions. Specifically, appellant stated that her leg, back and knee problems were related and developed over a period of time. She stated further that her leg problems developed as a result of her back problems and her knee problem developed because of her back and leg problems. She described her work conditions including: lifting boxes over 30 pounds; constant walking;

[2] The Office also stated that it is accepted that the claimant fell down the stairs at work on September 28, 1999 and landed on her right knee.

standing; bending and stooping; along with lifting of tray mail in trays weighing 20 to 30 pounds; pushing equipment; reaching and repetitive motions, all of which she alleged altered the way she walked and contributed to her problems.

In a June 7, 2000 decision, the hearing representative affirmed the February 4, 2000 decision and found that no medical evidence was submitted, which established that appellant's knee symptoms were work related and appellant had not met her burden of proof in establishing that she sustained a compensable injury causally related to her employment duties.

By letter dated September 29, 2000, appellant requested reconsideration and enclosed additional evidence.

In a July 13, 2000 report, Dr. Schofferman, in reference to a May 18, 1996 date of injury, opined that the significant factor appeared to be the etiology of appellant's right knee pain. She stated that it was her opinion that the right knee injury was work related. Dr. Schofferman stated that appellant had repetitive wear and tear on her knee through her job activities, which consisted of standing, stooping, lifting and constantly having to get up from her chair to transport her mail to the workstation and related types of activity. She noted that appellant had a slip and fall on September 28, 1999 at which time the right knee became symptomatic in a significant way and opined that it was probable that the slip and fall occurred because of the significant spinal problems in the low back and related lower extremities, including a significant retrolisthesis at L4-5 with foraminal stenosis and a disc herniation. Dr. Schofferman stated that this frequently leads to a "give way" weakness in the knees by reflex action and, therefore, she felt that "both the antecedent cumulative degenerative findings in the right knee were work related as well as the slip and fall."

In a May 4, 2000 report referencing appellant's May 18, 1996 injury, Dr. Schofferman assessed L4-5 retrolisthesis with right herniated nucleus pulposus (HNP) and left stenosis, C4-5 HNP with significant C5-6 osteophytic ridging and multilevel cervical degenerative disc disease, symptomatic lipoma of the left upper extremity volar forearm and right S1 radiculopathy.

In a September 13, 2000 report, Dr. Arthur M. Auerbach, a Board-certified orthopedic surgeon, who was used as an independent medical examiner for appellant's April 28, 1995 injury and whom the Office used in this instance as a second opinion, noted appellant's history of injury and treatment. He conducted extensive tests and noted that the knee extension was 180 degrees on the right and left and flexion was 130 degrees on the right and left. Dr. Auerbach observed that, in the prone position, appellant was unable to flex the knees past 45 degrees and at that point, she stated that she had pain. He also reviewed the x-rays and MRIs and noted that he did not find any intrinsic right knee orthopedic disease. Dr. Auerbach further stated that pain in the right knee was referred from the back. He further stated that appellant suffered from chronic residuals of long-standing degenerative disease of the cervical and lumbar spine, which gradually progressed over the years and was aggravated by her work up until the time that she went on her modified light-duty assignment as of December 7, 1999. Dr. Auerbach stated further that her aggravation was permanent. He further determined that appellant's present symptoms were a combination of the natural progression of degenerative disease of the neck, low back and left shoulder, with a degree of pain radiating into the upper and lower extremities

and the specific injuries of April 28, 1995, 1974, November 20, 1987, May 19, 1996 for left forearm overuse syndrome, aggravation of HNP L4-5 and aggravation of cervical disc disease.

In a December 21, 2000 merit decision, the Office denied appellant's claim for reconsideration on the grounds that the evidence was insufficient to warrant modification.

By letter dated April 28, 2001,[3] appellant requested reconsideration. In her statement, appellant alleged that the report of Dr. Auerbach should not have been considered as there was no conflict at the time of the previous decision and the case should be remanded. She enclosed additional evidence.

In a March 8, 2001 report, Dr. Schofferman opined that appellant was seen in a follow-up for continued cervical and low back symptoms with radiation into the right lower extremity predominantly in an L4-5 distribution. She stated that appellant had severe right knee pain intrinsic to the knee in addition to the radiation pattern from the back crossing to the knee. Dr. Schofferman related that she was specifically referring to the right knee, noting her dates of treatment. Dr. Schofferman opined that appellant stated, "she tripped on stairs on September 28, 1999." She also stated that appellant tripped on the stairs as a result of weakness and a give way weakness in her right lower extremity secondary to her low back problem, which is work related. Dr. Schofferman noted further that appellant twisted her right knee and has had right knee pain since that time. Dr. Schofferman's diagnosis was that appellant had degenerative changes in the right knee inclusive of posterior meniscal horns and patellofemoral joint as well as a subchondral cyst and popliteal cyst. She stated further that appellant's right knee appeared to be causally related by direct causation to appellant's industrial injury on September 28, 1999.

In a May 10, 2001 merit decision, the Office denied appellant's claim for reconsideration on the grounds that the evidence failed to establish that her right knee degenerative condition was causally related to her work activities. The Office further found that the alleged September 28, 1999 incident was not established as factual and the medical evidence failed to explain a causal relationship between the degenerative condition and other work activities.

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

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury."[4] These are the essential

[3] The letter is actually dated April 28, 2000; however, this appears to be a typographical error.

[4] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[5]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[6] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[7] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based upon a complete factual and medical background of the claimant,[8] must be one of reasonable medical certainty[9] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.

There does not appear to be any dispute that the employment incident occurred as alleged. In fact, the hearing representative, in the June 7, 2000 decision, stated that "appellant's statement establishes her job duties may have aggravated her back and knee conditions."

With respect to the medical evidence, the record contains several reports from Dr. Schofferman, appellant's treating physician. In her October 8, 1999 report, Dr. Schofferman references appellant's accepted May 18, 1996 injury. She further stated that the pain in the knee was severe for the past month. Dr. Schofferman diagnosed multilevel degenerative disc disease of the cervical spine, with right C4-5 disc herniation and significant osteopathic ridging at C5-6 and a symptomatic lipoma of the left forearm. In a November 5, 1999 report, she again referenced a May 18, 1996 injury, noting that the right knee was not authorized and that appellant had a separate claim for the "right knee trauma." Dr. Schofferman assessed appellant's condition to degenerative changes and stated that appellant's low back had flared because of the knee condition. In response to an inquiry from the Office, the physician, in a November 23, 1999 report, noted that the first time appellant complained of pain in the right knee was in October 1999. She noted that the pain seemed different in that the right knee component

[5] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

[6] *See Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[7] The Board has held that, in certain cases, where the causal connection is so obvious, expert medical testimony may be dispensed; *see Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

[8] *William Nimitz, Jr.* 30 ECAB 567, 570 (1979).

[9] *See Morris Scanlon*, 11 ECAB 384-85 (1960).

appeared to be intrinsic knee pain as opposed to a radiation pattern from the low back. Dr. Schofferman referred to the history that the Office recounted and stated that this would support a traumatic episode resulting from a give way weakness in the right knee secondary to the underlying lumbar stenosis and degenerative disc findings. She opined further that appellant had a small effusion in the right knee and the acute tenderness in the right knee at the time of her examination suggested an acute injury consistent with the history as previously described. In her May 4, 2000 report, Dr. Schofferman made diagnoses that referred to appellant's L4-5 retrolisthesis with right HNP and left stenosis, C4-5 HNP with significant C5-6 osteophytic ridging and multilevel cervical degenerative disc disease, symptomatic lipoma of the left upper extremity volar forearm and right S1 radiculopathy. In a July 13, 2000 report, she stated that it was her opinion that appellant's right knee injury was work related. Dr. Schofferman explained that appellant had repetitive wear and tear on her knee through her job activities, which consisted of standing, stooping, lifting and constantly having to get up from her chair to transport her mail to the workstation and related types of activity. She noted that appellant had a slip and fall on September 28, 1999 at which time her right knee became symptomatic in a significant way and opined that it was probable that the slip and fall occurred because of the significant spinal problems in the low back and related lower extremities, including a significant retrolisthesis at L4-5 with foraminal stenosis and a disc herniation. Dr. Schofferman further explained that this frequently leads to a "give way" weakness in the knees by reflex action and, therefore, she felt that "both the antecedent cumulative degenerative findings in the right knee were work related as well as the slip and fall. The Board finds that these reports directly relate appellant's condition to the September 28, 1999 employment incident and there is no medical opinion to the contrary.[10]

The Board finds that the evidence from Dr. Schofferman is sufficient to require further development of the evidence. It is well established that when an uncontroverted inference of causal relationship is raised, the Office is obligated to further develop the medical evidence.[11] After such further development of the case as the Office deems necessary, it should issue an appropriate decision.

[10] The Board notes a September 13, 2000 report from Dr. Auerbach, the independent medical examiner for appellant's April 28, 1995 injury. The Board also notes that it appears that the Office used his report as a second opinion in this matter. However, Dr. Auerbach attributed appellant's conditions to a combination of a natural progression of degenerative disease of the neck, low back and shoulder and to appellant's other employment incidents. He did not mention or address appellant's September 28, 1999 injury. It appears that the Office, took this report from appellant's other accepted claim and tried to utilize it for this claim. However, Dr. Auerbach was not asked to address the issue in this case. His report is, therefore, of little probative value, as it did not address the issue in this case, appellant's knee.

[11] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

The May 10, 2001 and December 21, 2000 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
May 21, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

David S. Gerson
Alternate Member