U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MIGDALIA BOCANEGRA and U.S. POSTAL SERVICE,
POST OFFICE, Bronx, NY

Docket No. 02-640; Submitted on the Record;
Issued November 5, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant established that she sustained an injury in the performance of duty on March 1, 2000.

Appellant, then a 32-year-old letter carrier, filed a notice of traumatic injury and claim for compensation (Form CA-1), alleging that she sustained an injury on March 1, 2000, when a coworker twice punched her in the back.[1] She ceased working on March 2, 2000.

By decision dated October 18, 2001, the Office denied appellant's claim on the basis that she failed to establish that a condition had been diagnosed in connection with the March 1, 2000 employment incident. She requested an oral hearing and in a decision dated February 6, 2001, the Office hearing representative found that the case was not in posture for a hearing. He noted that, while the prior evidence of record was insufficient to establish fact of injury, recently submitted evidence from appellant's treating physician contained "a history of injury consistent with that given by [appellant], a diagnosis of a new condition and an affirmative, if not well-reasoned opinion on causal relationship."[2] The hearing representative found that appellant established a *prima facie* case. Accordingly, he set aside the prior decision and remanded the case for further development to determine whether the March 1, 2000 employment incident caused appellant to suffer a new herniated disc as stated by her treating physician.

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[1] Appellant sustained a prior employment-related back injury on November 12, 1996, which the Office of Workers' Compensation Programs accepted for subluxation of the lumbar region and lumbosacral radiculopathy (A2-721277). At the time of the March 1, 2000 employment incident, appellant was working in a part-time, limited-duty capacity as a result of her November 12, 1996 employment injury.

[2] In a report dated May 1, 2000, Dr. Joseph M. Waltz, a Board-certified neurosurgeon, indicated that appellant had a prior disc herination at L4-L5 and recently developed a second herniated disc at L5-S1. In a subsequent report dated January 16, 2001, Dr. Waltz attributed the second level disc herniation (L5-S1) to the March 1, 2000 employment incident.

On remand, the Office referred the case to its medical adviser to ascertain whether there was a causal relationship between appellant's claimed lumbar disc herniation and the March 1, 2000 employment incident. In a report dated May 22, 2001, the Office medical adviser stated that disc bulges are not pathological and that a punch in the back cannot produce a herniation. He characterized appellant's condition as a congenital anomaly and not work related or traumatic in nature.

In a decision dated June 6, 2001, the Office denied appellant's claim on the basis that she failed to establish a causal relationship between her claimed condition and the March 1, 2000 employment incident.

On September 21, 2001 appellant requested reconsideration and submitted additional medical evidence. The Office reviewed his claim on the merits and in a decision dated November 2, 2001, the Office denied modification of the June 6, 2001 decision.

The Board has duly reviewed the case record on appeal and finds that the case is not in posture for a decision.

A claimant seeking compensation under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that any claimed condition or disability for work is causally related to the employment injury.[4] Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[5]

In attributing appellant's herniated disc at L5-S1 to the March 1, 2000 employment incident, Dr. Waltz explained that the disc bulge at L5-S1 was not seen on a May 8, 1997 computerized tomography scan, but was evident on a March 16, 2000 magnetic resonance imaging (MRI) scan. However, the Office medical adviser stated that disc bulges are not pathological and a punch to the back cannot produce a herniation. He characterized appellant's condition as a congenital anomaly and not work related or traumatic in nature. Neither physician's opinion is particularly well rationalized. Moreover, there is no apparent basis upon which to accord any greater probative value to either Dr. Waltz's opinion or the Office medical adviser's opinion.

The Act provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination.[6] A simple disagreement between two physicians does not, of itself, establish a conflict. To constitute a true conflict of medical opinion, the opposing physicians' reports must be of virtually equal weight and rationale.[7] As there remains an

[3] 5 U.S.C. §§ 8101-8193.

[4] *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[5] *Robert G. Morris*, 48 ECAB 238 (1996).

[6] 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

[7] 20 C.F.R. §§ 10.321(a), 10.502 (1999); *see Robert D. Reynolds*, 49 ECAB 561, 565-566 (1998).

unresolved conflict of medical opinion regarding the etiology of appellant's disc herniation at L5-S1, the case is remanded to the Office for further development of the record.

On remand, the Office should refer appellant, the case record, including the pertinent MRI scans and a statement of accepted facts to an appropriate medical specialist for an impartial medical evaluation and a rationalized medical opinion regarding the cause and extent of appellant's herniated disc at L5-S1. After such development of the case record as the Office deems necessary, a *de novo* decision shall by issued.

The November 2, 2001 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further consideration consistent with this opinion.[8]

Dated, Washington, DC
November 5, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[8] The Office issued a separate decision on November 2, 2001 denying appellant's September 21, 2001 request for reconsideration (A02-0721277). Appellant also appealed the denial of reconsideration, which was docketed as No. 02-639. In a decision dated August 19, 2002, the Board affirmed the Office's November 2, 2001 decision denying reconsideration.