U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REX L. WOODRUFF and DEPARTMENT OF VETERANS AFFAIRS, PUGET SOUND HEALTH CARE SYSTEMS, Seattle, WA

Docket No. 02-1177; Submitted on the Record;
Issued November 13, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof in establishing that he sustained a recurrence of disability due to his June 20, 1997 employment injury.

On June 20, 1997 appellant, then a 51-year-old utilities systems operator, was helping to move a boiler plate up a set of stairs when he stumbled. He stopped working on June 23, 1997, after resting at home during the weekend and returned to light-duty work on June 26, 1997. Appellant received continuation of pay for the period June 23 through June 25, 1997. The Office of Workers' Compensation Programs accepted appellant's claim for a lumbar strain.

On August 4, 1998 appellant filed a claim for recurrence of disability. He stated that the back condition never stopped. In a March 9, 1999 statement, appellant indicated that his initial claim had been closed in July 1997 and he had been informed that the only way to reopen his claim was to file a claim for a recurrence of disability. He noted that he had been involved in an automoble accident on September 10, 1998 when his vehicle was struck in the rear by another vehicle, injuring his cervical spine and upper shoulders.

In a May 3, 1999 decision, the Office denied appellant's claim for a recurrence of disability and medical treatment on the grounds that the evidence of record did not establish that appellant's current symptoms were a result of the June 20, 1997 employment injury. The Office noted that he had been involved in automoble accidents on April 24, 1996 and January 25, 1999. Appellant requested a hearing before an Office hearing representative, which was conducted on November 15, 1999. In a February 29, 2000 decision, the Office hearing representative found that he had submitted sufficient medical evidence to require further development of appellant's claim. She, therefore, set aside the Office's May 3, 1999 decision and remanded the case for referral of appellant to an appropriate medical specialist for a second opinion.

In a September 5, 2000 decision, the Office denied appellant's claim on the grounds that the medical evidence did not establish that he sustained a recurrence of disability due to his

employment injury. He requested a hearing before an Office hearing representative, which was conducted on March 6, 2001. In a May 29, 2001 decision, the Office hearing representative affirmed the Office's September 5, 2000 decision.

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

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which he seeks compensation was causally related to his employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.[1]

In a November 13, 1997 report, Dr. Paul Lewis, a Board-certified family practitioner, noted that he had been treating appellant since the employment injury. He indicated that x-rays taken by a chiropractor showed spondylosis and first degree spondylolisthesis at L5-S1. Dr. Lewis reported that appellant had slight right paralumbar region tenderness, negative straight leg raising bilaterally and a full range of lumbar motion. He diagnosed chronic low back pain, spondylosis with first degree spondylolisthesis and a June 1997 employment injury.

In a June 22, 1998 report, Dr. Michael S. McManus, a Board-certified specialist in occupational medicine, gave a history of the June 20, 1997 report. He noted that appellant complained of pain in the lower lumbar region, particularly on the right side, with occasional pain radiating down the anterior aspect of the right thigh. Appellant also described pain after prolonged sitting or attempts at lifting. Dr. McManus reported that appellant noted intermittent paresthesias and dysesthesias of the right leg in the anterolateral aspect of the right leg and the entire right foot. He indicated that appellant had diabetes mellitus. Dr. McManus reported that electrodiagnostic studies showed mild chronic L4-5 radiculopathy with no clear evidence of active denervation. He indicated that a computerized tomography (CT) scan of the lumbosacral spine, performed on May 29, 1998, showed a Grade I spondylolisthesis of L5 on S1 with L5 spondylosis defects bilaterally and moderate to marked degenerative hypertrophy of the right L4-5 facet joint with moderately severe right-sided neuroforaminal encroachment. Dr. McManus noted that the CT scan also showed moderate denervation hypertrophy of the L3-4 facet joints, more on the right then left and mild hypertrophy of the L5-S1 facet joint. He pointed out that the CT scan did not show evidence of disc herniation. Dr. McManus diagnosed work-related low back injury with permanent exacerbation of spondylosis and degenerative arthritis, chronic right L4 radiculopathy which was greater than the right L5 radiculopathy and Grade I spondylolisthesis of L5-S1. In subsequent reports, Dr. McManus repeated the diagnosis and his opinion that appellant's condition was related to his work.

In an August 19, 1998 report, Dr. Timothy D. Steege, a Board-certified neurosurgeon, stated, on the basis of a CT scan and a magnetic resonance imaging (MRI) scan, that appellant had facet hypertrophy on the right from L3-4 through L5-S1 and Grade I isthmic L5-S1 spondylolisthesis with apparent healing of the spondylolysis bilaterally at the L5 pars interarticularis, especially on the right. He noted appellant had some foraminal stenosis on the

[1] *Dominic M. DeScala*, 37 ECAB 369 (1986).

right at L4-5 and L5-S1 due to a combination of facet hypertrophy and the subluxation at the L5-S1 level. Dr. Steege recommended further tests to determine if the spondylolisthesis was stable.

In a November 13, 1998 report, Dr. McManus noted that appellant had lumbar spondylosis, degenerative arthritis and Grade I spondylolisthesis of L5 on S1. He stated that appellant probably had some degenerative changes in his lumbar spine prior to the June 20, 1997 employment injury. Dr. McManus commented that, prior to the employment injury, appellant was completely asymptomatic and tolerated his full work activities. He indicated that the natural course of appellant's underlying, preexisting degenerative changes in the lumbar spine was unpredictable but the degenerative changes were not necessarily associated with functional impairment, neurologic deficits of the legs or radiculopathy unless they progressed to the point where neurologic impingement occurred. Dr. McManus concluded that appellant's current symptomatology was more probably entirely related to the employment injury as he was completely asymptomatic before that employment injury. He stated that the objective evidence that appellant's condition was permanently aggravated by the employment injury was the onset of symptoms and functional limitations that had been confirmed by electrodiagnostic studies which were consistent with the anatomic changes noticed on the postinjury MRI scan. Dr. McManus stated that the June 20, 1997 work injury involved sudden forced flexion and twisting of the trunk while carrying a heavy load. He indicated that, under these circumstances, it was possible that a potential instability due to the spondylosis moved causing the associated nerve root irritation, resulting in appellant's neurologic deficit. Dr. McManus noted that at the same time appellant may have subluxed at L5-S1, causing the spondylolisthesis. He indicated that the flexion and rotational stress while under a load to the lumbar spine aggravated the arthritic changes at the facet joints and may have further inflamed or temporarily aggravated the foramina, irritating the spinal nerves as they exit the spine. Dr. McManus stated that appellant's symptoms had improved but he continued to experience low back pain, limited range of motion in the leg and neurologic deficits.

In a December 23, 1999 report, Dr. McManus noted that, at the time of the employment injury, appellant was working part time as a tow truck driver. He stated that appellant sustained no injuries or aggravations due to his part-time work. Dr. McManus indicated that he was treating appellant at the time of the September 10, 1998 motor vehicle accident and found no change in his chronic symptomatology or his examination at that time as a result of the accident.

The Office, pursuant to the order of the first Office hearing representative, referred appellant, together with a statement of accepted facts and the case record, to Dr. Harry Reese, a Board-certified orthopedic surgeon, for an examination and second opinion. In an August 21, 2000 report, Dr. Reese indicated that appellant had no muscle weakness in the legs, no sensory deficit to pin or light touch but diminished sensation below both ankles. He noted that appellant had straight leg raising at 50 degrees on the right and 40 degrees on the left without true sciatic tension signs. Dr. Reese reported that seated straight leg raising was to 90 degrees bilaterally. He indicated that a July 30, 1998 MRI scan showed no pathologic protrusion at L4-5 or L5-S1. Dr. Reese noted that the L4-5 disc appeared normal with no excessive narrowing of the foramen on either side and no central bulging or protrusion of significance. At the L5-S1 level, he reported that appellant had similar findings with some possible mild foraminal narrowing on the right. He stated that the pars defect on the left was more evident than any pars defect on the

right. Dr. Reese concluded that appellant had a history compatible with a probable lumbosacral strain related to the employment injury. He noted that appellant had a history of injuring his neck in an April 24, 1996 motor vehicle accident and of injuring her neck and low back in a September 10, 1998 motor vehicle accident. Dr. Reese stated that the diagnosis of lumbosacral strain due to the employment injury was based on history alone. He indicated that there were no objective findings to substantiate a relationship. Dr. Reese commented that appellant had preexisting degenerative disc disease, particularly at the lumbosacral junction with associated spondylolisthesis. He found no credible evidence that the employment injury was more aggravating to appellant than the effects of the September 10, 1998 motor vehicle accident. Dr. Reese stated, "There is enough uncertainty [with] regard [to] which event contributes to the perpetuation of these symptoms that this examiner is unable to state with greater than [a] 50 percent certainty that there was an irreversible aggravation of [appellant's] preexisting condition by the covered industrial injury." He noted that appellant continued to complain of pain but commented that it was not clear with 50 percent certainty that appellant's residual symptoms could be attributed to the employment injury. Dr. Reese stated that appellant's motor vehicle accidents could have had as much as a role in appellant's current symptoms as the employment injury. He again stated that he was unable to state with greater than 50 percent certainty that the motor vehicle accidents were the primary cause of his continuing symptoms. Dr. Reese concluded that the employment injury should have, at worst, resulted in a temporary aggravation of an underlying spinal condition. He attributed appellant's evidence of polyneuropathy to his underlying diabetes. Dr. Reese stated that appellant's diminished ankle jerks and his electrodiagnostic studies suggested that appellant's bilateral S1 radiculopathy was most probably related to his chronic spine condition.

The Office based its decision on the August 21, 2000 report of Dr. Reese. However, Dr. Reese was unable to give a clear opinion on whether appellant's lumbosacral condition the result of an employment-related aggravation of a preexisting condition or was causally related to appellant's subsequent automoble accident. His report, therefore, has limited probative value in determining whether appellant had a recurrence of disability due to the employment injury. Dr. McManus, on the other hand, consistently related appellant's condition to the June 20, 1997 employment injury. He noted that appellant had evidence of radiculopathy as shown by an electromyogram and reported that he had spondylosis and degenerative arthritis of the lumbar spine. He stated that appellant had no symptomatology rising from his automoble accident. Dr. McManus' reports, while insufficient to satisfy appellant's burden of proof, are sufficient to require further development of the medical evidence.[2] The case will therefore, be remanded for referral of appellant to an appropriate specialist for an examination and a second opinion on whether her condition is causally related to the June 20, 1997 employment injury. The specialist should be asked whether appellant's employment injury caused his lumbosacral condition or aggravated a preexisting condition. If he should find that appellant's condition was an employment-related aggravation of a preexisting condition, he should state whether the aggravation was temporary or permanent and if temporary, when the effects of the employment-related aggravation of the preexisting condition ceased.

[2] *John J. Carlone*, 41 ECAB 354 (1989).

The decision of the Office of Workers' Compensation Programs dated May 29, 2001 is hereby set aside and the case remanded for further action as set forth in this decision.

Dated, Washington, DC
November 13, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member