

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIE A. ROBINSON-McLAUGHLIN and DEPARTMENT OF VETERANS
AFFAIRS, COATESVILLE VETERANS HOSPITAL, Coatesville, PA

*Docket No. 02-1561; Submitted on the Record;
Issued October 24, 2002*

DECISION and ORDER

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

The issue is whether appellant had any disability for employment on or after March 7, 1997, causally related to her March 6, 1997 accepted abdominal muscular strain injury.

This is appellant's second appeal before the Board. In the prior appeal the Board issued an order remanding the case to the Office of Workers' Compensation Programs to hold an oral hearing as timely requested by appellant. The findings leading up to the order are hereby incorporated by reference.¹

The Office accepted that on March 6, 1997 appellant, then a 40-year-old nurse, sustained a abdominal strain after transporting a patient to the dental clinic. She was six months pregnant at that time and described the injury as "preterm contractions R/O pulled abdominal ligament."² Appellant stopped work effective March 7, 1997.

On a prescription dated March 11, 1997 Dr. David M. Fink, a Board-certified obstetrician/gynecologist, noted that appellant "has been having preterm contractions and has been dehydrated. I have instructed [her] to remain at rest this week." On March 24, 1997 he recommended rest for the next two weeks. On April 4, 1997 Dr. Fink recommended that appellant remain off work and at rest, "her problem with pelvic pain and [illegible] still persisting." On April 30, 1997 Dr. Fink noted that "[appellant] is out of work due [to] a muscle pull and ligament pull from work[-]related activity. She also has bad varicosities or leg cramps from her pregnancy [illegible] should remain off work."

On an attending physician's report dated May 9, 1997 Dr. Fink noted appellant's history of injury as "pregnancy/muscle strain [and] ligament strain," noted that "[appellant] has been

¹ Docket No. 99-9 (issued February 28, 2000).

² Appellant delivered a healthy baby boy on June 22, 1997.

unable to walk without difficulty and has had leg pain second[ary] to a muscle strain/ligament strain which occurred during this pregnancy.” Dr. Fink checked “yes” to the question of whether he believed the condition found was caused or aggravated by an employment activity and noted in an explanation that appellant “injured herself while straining with a patient at work. Pregnant women are much more susceptible to musculoskeletal injuries.”

By narrative report dated June 20, 1997, Dr. Fink noted:

“[Appellant] did injure herself at work due to pushing a stretcher and has had some musculoskeletal strain. She also has very bad varicosities.... We did take her out of work because of the persistent back and leg pain. [Appellant] also has had some emotional stress. She did have a previous pregnancy loss.... We had taken [appellant] out of work in April because of the ligament strain and we did advise her to remain at rest as much as she possibly could. [Appellant] also had some episodes of preterm contractions.”

In an attending physician’s form report with an illegible date Dr. Fink noted that appellant was injured on March 6, 1997, that she claimed compensation from March 10 through November 14, 1997, that appellant was totally disabled for work and that her present condition was due to the injury for which compensation was claimed. Dr. Fink diagnosed ligament strain/muscle strain and noted that “[appellant] may return to work six weeks post partum if [the] muscle strain is well healed.”

By letter dated August 21, 1997, the Office requested further information.

By letter dated September 4, 1997, Dr. Fink noted that when appellant presented for obstetrical care:

“[Appellant] had had some back and leg pain, most of it appeared to be related to some strain that occurred at work. Dr. White, my partner, had seen her on March 8, 1997 and she was instructed to remain at rest, elevate her legs and to call us if the problem got worse. She did have some increased abdominal pain and contractions and developed difficulty walking. This was while wheeling a patient at work.... The discomfort did continue even after her pregnancy. Her family doctor, Dr. Funk, did treat her after pregnancy.... To summarize, [appellant] was put on disability for a combination of factors. One was because of the severe ligament strain which actually occurred at work and was certainly exacerbated by pregnancy. Pregnant women are much more prone to ligament strains, muscle pulls and she really was not functional because of the ligament strain or ligament pull.”

A September 29, 1997 facsimile to appellant’s family doctor, Dr. Funk, a Board-certified family practitioner, from Dr. Frank J.E. Falco, a Board-certified orthopedic surgeon, noted appellant’s diagnosis as lumbar strain/sprain with referred leg pain. He indicated “no work at this time.”

By decision dated November 3, 1997, the Office disallowed appellant's claim for compensation finding that none of the medical evidence supported disability for work due to the abdominal strain.

By letter dated December 2, 1997, appellant, through her representative, requested an oral hearing regarding the denial of compensation for disability. No envelope from the mailing of the request letter was included in the case record.³

By decision dated February 3, 1998, the Office found that appellant was not entitled by right to a hearing since the decision was issued on November 3, 1997 and the request for a hearing "was postmarked December 2, 1997."⁴ The Office denied the hearing request on the basis that appellant could equally well address the issue by requesting reconsideration and by submitting new evidence.

By letter dated March 19, 1998, appellant requested reconsideration of the November 3, 1997 decision and in support she submitted further evidence.

By report dated November 17, 1997, Dr. Falco noted appellant's history of injury and pregnancy, noted that her symptoms persisted after her baby was born and indicated that her abdominal strain was originally treated by her obstetrician/gynecologist. Dr. Falco reported that his evaluation revealed:

"[Appellant was] suffering from an abdominal/lumbar strain/sprain due to the injury at work in March 1997. Initially she felt pain along the sides of her abdomen and some in her low back. After the baby was born, the pain localized to the lumbar area. I feel that [appellant] has two distinct diagnos[e]s due to the March 1997 injury; one, the abdominal strain which was apparent immediately, partially due to the weight of the pregnancy and two, the lumbar pain which was present at the same time, but less noticeable until after the delivery of the baby, when the pain localized to the lumbar spine. Both are related to the work injury."

By report dated February 16, 1998, Dr. Falco noted appellant's complaints of back and bilateral leg pain, performed a physical examination and diagnosed "[l]umbar abdominal spine sprain/strain."

By report dated March 9, 1998, Dr. Falco noted that, prior to the date he began to treat appellant, she was treated by her obstetrician and that according to his records, she "suffered a[n] abdominal/low back strain at work on March 6, 1997." He noted that at that time appellant was six months pregnant, that she delivered a healthy baby boy and that after the birth appellant's pain localized to her low back area. Dr. Falco noted that he recommended physical therapy but

³ The date appearing on the postmark of the envelope will be considered as *prima facie* evidence of the date of mailing. However, if there is no postmark or if the envelope containing the request is not included in the case record, the date of the letter itself must be relied upon to determine whether it was timely submitted; see *Brian R. Leonard*, 43 ECAB 255 (1991); *Gloria J. Catchings*, 43 ECAB 242 (1991).

⁴ Only 29 days later.

did not recommend medication as appellant was still breastfeeding. He noted that he “continued her no work status because her symptoms persisted and she was unable to perform her job responsibilities, lifting, pulling, bending, etc.... Based upon the fact that [appellant] still has symptoms and she has been unable to attend therapy [due to “insurance” difficulties], I continued her no work status based on a persistent lumbosacral strain.” Dr Falco stated that appellant “is being treated for a persistent lumbosacral strain from a work-related injury in March 1997. She has been unable to attend physical therapy for her problem because her on-the-job injury has been denied.... She has been continuously disabled from her previous position as a nurse since her initial visit of September 29, 1997.”

By report dated March 16, 1998, Dr. Falco noted appellant’s complaints of back and bilateral leg pain and that her leg pain had been increasing and he diagnosed lumbar abdominal spine sprain/strain.

By decision dated June 8, 1998, the Office denied modification of its November 3, 1997 decision finding that the evidence submitted in support was insufficient to warrant modification. The Office found that appellant was off work due to complications in her pregnancy and that when a muscle pulled, musculoskeletal strain/sprain or ligament strain was suggested, no anatomical body part was identified. It concluded that the most contemporaneous medical evidence did not support any disability due to the March 6, 1997 work incident.

By order dated February 28, 2000, the Board remanded the case to the Office to hold the requested hearing. An oral hearing was held on August 22, 2001 at which appellant testified that she experienced pain her stomach and back after she pushed a patient in a wheelchair up a ramp. Appellant also submitted further new and previously unsubmitted medical evidence.

By report dated September 29, 1997, Dr. Falco noted that at that time appellant presented with “continued complaints of back and abdominal pain with pain radiating into both lower extremities” and that she had suffered a low back strain type injury on March 6, 1997 while she was transporting a patient and experienced abdominal and back pain. He indicated that she had been taken out of work at that time, that she delivered her baby without complications on June 22, 1997 and, that thereafter, she had continued to experience abdominal, back and leg symptoms. Dr. Falco indicated that appellant described her pain as achy in the abdominal area, somewhat stabbing in the low back and numbness in both lower extremities. He noted that she could not take medications at that time as she was breastfeeding. Dr. Falco diagnosed “lumbar abdominal sprain/strain” and recommended no work at that time.

On a November 13, 1997 prescription pad Dr. Falco indicated that appellant had been under his care since September 29, 1997, that she remained under his care and that she was not released to return to work.

By report dated June 30, 1998, Dr. Falco indicated that appellant was totally disabled due to low back pain with bilateral leg pain.

In a report dated February 17, 1999, Dr. Yeshwant P. Reddy, a physical medicine and pain management practitioner, reported the results of a follow-up visit for appellant’s ongoing back and bilateral leg pain. He diagnosed lumbar spine sprain and strain.

By reports dated November 15, 1999, appellant was released to return to full work.

By decision dated October 30, 2001, the hearing representative affirmed the November 3, 1997 Office decision finding that appellant had failed to meet her burden of proof to establish that she had disability for work due to her March 6, 1997 injury. He opined that, since she was pregnant at that time, this could have caused her abdominal and back strains and found that her obstetricians did not provide any orthopedic evaluations or diagnoses.

Thereafter, appellant requested reconsideration of the October 30, 2001 decision.

In support appellant submitted an illegibly signed and dated attending physician's report from her obstetrician indicating that the date of injury was March 6, 1997, that her most recent examination was on June 22, 1997, that she was totally disabled for work and that her present condition was due to the injury for which compensation was claimed. The treating obstetrician diagnosed ligament strain/muscle strain, noted that her disability would continue longer than 90 days and indicated that she could return to work six weeks postpartum if the muscle strain is well healed.

Appellant also submitted her pregnancy and delivery records wherein it was noted that she had abdominal discomfort and contractions when on her feet but that they resolved when she laid down.

By decision dated February 21, 2002, the Office denied modification of its prior decision finding that the evidence submitted in support was insufficient to warrant modification. The Office found that appellant's obstetrical notes make no mention of a work injury.

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

As Larson explained in his *Workers' Compensation Law* § 9.02[1]:

“Preexisting disease or infirmity of the employee does not disqualify a claim under the ‘arising out of employment’ requirement if the employment aggravated, accelerated or combined with the disease or infirmity to produce the death or disability for which compensation is sought. This is sometimes expressed by saying that the employer takes the employee as it finds that employee.”

In this case, appellant's March 6, 1997 employment injury was complicated by the fact that she was six months pregnant. She was working with this condition without problems prior to the March 6, 1997 pushing straining incident, but was unable to work afterwards due to her physicians' recommendations and the documented fact that when she stood on her feet the abdominal pain increased and she experienced premature labor contractions. As the overriding concern for this appellant was the safety and integrity of her pregnancy, she naturally sought medical treatment with her obstetrician instead of with an orthopedist, as she would with virtually any type of nonlife-threatening injury. Dr. Fink immediately put appellant on bed rest, but he did not initially provide an extensive occupational injury-related narrative as his primary concern was the safety of her pregnancy.

Dr. Fink did, however, note the presence of preterm contractions, but did not discuss whether the cause of these contractions was employment related. He continued to recommend bed rest with persistent pelvic pain and on April 30, 1997 he clarified and specified that appellant was out of work due to a muscle pull and ligament pull from work-related activity. On May 9, 1997 Dr. Fink noted that appellant had had muscle strain and ligament strain and had difficulty walking due to leg pain secondary to the muscle strain/ligament strain. He indicated that appellant had injured herself at work pushing a stretcher. Dr. Fink noted that they took appellant out of work because of persistent back and leg pain and because of the ligament strain. Thereafter, he noted that appellant was put on disability due to severe ligament strain/ligament pull which rendered her nonfunctional.

On September 29, 1997 Dr. Falco, an orthopedist, first saw appellant postpartum for her continued back and abdominal pain with pain radiating into both lower extremities. He described her March 6, 1997 injury, noted her disability from that time through her delivery and noted that thereafter, she continued to experience abdominal, back and leg symptoms. He diagnosed “lumbar abdominal sprain/strain” and recommended no work. On November 17, 1997 Dr. Falco opined that appellant had two distinct diagnoses as a result of the March 6, 1997 injury: abdominal strain which was immediately apparent due to the weight of the pregnancy and lumbar pain which became more noticeable after the delivery of the baby, which he later diagnosed as “lumbar abdominal spine sprain/strain.” Dr. Falco opined that this persistent lumbosacral strain was causally related to the March 1997 injury and that appellant had been disabled since that injury due to these two injuries.

The hearing representative, however, found that appellant’s acute prenatal and obstetrical reports, notes and forms lacked orthopedic findings, diagnoses and opinions on causal relation of orthopedic injuries with her employment, as physicians having expertise in one area or field do not generally provide probative opinions regarding another field of medicine⁵ and that appellant would likely not have sought follow-up orthopedic care until after she delivered the pregnancy, which was her overriding concern for three months post injury.⁶ He further found that appellant’s pregnancy could have caused her abdominal and back strains, but the Board notes that, even if this were the case, this did not occur until after the implicated employment incident and as such would be compensable since apparently the employment aggravated, accelerated or combined with the pregnancy to produce the disability for which compensation is sought.

Proceedings under the Federal Employees’ Compensation Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁷ This holds true in disability claims as well as in initial traumatic and

⁵ The opinion of a physician who has specialized training in a particular field of medicine has greater probative value on issues involving that particular field than opinions of other physicians not having such specialized training. *See Effie Davenport (James O. Davenport)*, 8 ECAB 136 (1955).

⁶ The Board also notes that appellant had had a previous miscarriage and was trying to avoid an employment-related second miscarriage.

⁷ *William J. Cantrell*, 34 ECAB 1223 (1983).

occupational claims. In the instant case, although none of appellant's treating physicians' reports contain rationale sufficient to completely discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that she was disabled for any period and in any part, due to her March 6, 1997 abdominal strain injury or that she additionally sustained lumbar strain on March 6, 1997, they constitute substantial, uncontradicted evidence in support of appellant's claim and raise an uncontroverted inference of disability causally related to the March 6, 1997 injury, that is sufficient to require further development of the case record by the Office.⁸ Additionally, there is no opposing medical evidence in the record

The case will be, therefore, remanded to the Office for the creation of a comprehensive statement of accepted facts, composition of both obstetric and orthopedic questions to be addressed, and the referral of appellant to both an obstetrician and an orthopedist for rationalized medical opinions as to, obstetrically, what injuries appellant's pushing incident on March 6, 1997 with a six-month gestational pregnancy actually caused and as to whether she had resultant disability and as to, orthopedically, what orthopedic findings postpartum actually demonstrated so far as conditions or injuries that had occurred on March 6, 1997 and as to whether she had ongoing disability causally related to the March 6, 1997 injuries.

⁸ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978); *see also Cheryl A. Monnell*, 40 ECAB 545 (1989); *Bobby W. Hornbuckle*, 38 ECAB 626 (1987) (if medical evidence establishes that residuals of an employment-related impairment are such that they prevent an employee from continuing in the employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity).

Consequently, the decisions of the Office of Workers' Compensation Programs dated February 21, 2002 and October 30, 2001 are hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, DC
October 24, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member