U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN S. BUSH and U.S. POSTAL SERVICE,
POST OFFICE, Pittsburgh, PA

Docket No. 02-2201; Submitted on the Record;
Issued April 29, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained a back condition causally related to an employment injury of March 7, 2000; and (2) whether appellant has more than a 20 percent permanent impairment of the right lower extremity for which she has received a schedule award.

On March 8, 2000 appellant, then a 46-year-old manager, filed a claim alleging that on March 7, 2000 she was retrieving postal manuals from her car and fell, injuring her left knee and right ankle. Appellant did not stop work. The Office of Workers' Compensation Programs accepted appellant's claim for contusion of ankle, superficial injury of the hip and leg, and superficial injury of the foot/toe.

Appellant submitted a report from Dr. John R. Johnson, a Board-certified orthopedist, dated April 19, 2001. Dr. Johnson noted that the magnetic resonance imaging scan noted a bulging disc. He indicated that appellant experienced back pain and leg pain. Dr. Johnson noted that he was referring appellant to an orthopedic specialist for a consultation.

In a letter dated May 23, 2001, the Office requested detailed factual and medical evidence from appellant, stating that the information submitted was insufficient to establish that she sustained a back condition causally related to the accepted injury of March 7, 2000.

Appellant submitted a consultation report from Dr. Chris B. Shields, a Board-certified orthopedist, dated May 10, 2001. Dr. Shields noted that appellant previously experienced low back pain with radiation into her hip. Appellant was last treated in August 1998 when she was advised to undergo a lumbar discectomy which was not performed. Dr. Shields diagnosed appellant with a lumbar sprain.

In a decision dated July 25, 2001, the Office denied appellant's claim for compensation on the grounds that the medical evidence was insufficient to establish that her back condition was causally related to the employment injury of March 7, 2000.

In a letter dated August 23, 2001, appellant requested a review of the written record and submitted additional medical evidence. She submitted a report from Dr. Johnson dated August 20, 2001. Dr. Johnson noted a history of appellant's injury and determined that all of the things that have occurred to appellant from March 7, 2000 until the present were caused by the fall of March 2000.

In a decision dated January 31, 2002, the hearing representative vacated the July 25, 2001 decision and remanded the case for further medical development. The hearing representative directed that the Office refer appellant to a second opinion physician for a determination as to whether her current back problems were caused by the March 1, 2000 injury.

On March 11, 2002 the Office referred appellant to Dr. Robert L. Keisler, a Board-certified orthopedic surgeon. The Office provided Dr. Keisler with appellant's medical records, a statement of accepted facts as well as a detailed description of appellant's employment duties.

In a medical report dated March 11, 2002, Dr. Keisler indicated that he reviewed the medical records provided to him and performed a physical examination of appellant. He diagnosed appellant with lumbar scoliosis; degenerative disc and facet disease at L5-S1; status post discectomy for radiculopathy (1998); avascular necrosis of the left femoral head and trochanteric bursitis of the left hip; and a history of a fall with sprains and contusions of the lower extremities, unrelated. Dr. Keisler indicated that appellant's current problem of scoliosis with accelerated degenerative disc and facet disease was long-standing, preexisting and progressive. The progressive changes continued and there was no relationship to the injury of March 7, 2000 as the progression of changes and episodes of recurring increasing symptoms were expected with aging and time. Dr. Keisler noted that there was a possibility of a temporary exacerbation of symptoms from the trauma, but any relationship would cease after six weeks. He further noted that the avascular necrosis of the left hip was a more serious condition but would be unrelated to any single event in March 2000.

In a decision dated May 29, 2002, the Office denied appellant's claim for compensation on the grounds that the medical evidence was insufficient to establish that her back condition was causally related to the work-related injury of March 7, 2000. The Office noted that the report of Dr. Keisler constituted the weight of the medical evidence.

Appellant submitted a report from Dr. Arthur Malkani, a Board-certified orthopedist and treating physician, dated August 28, 2002. Dr. Malkani indicated that appellant had reached maximum medical improvement. He noted that appellant's avascular necrosis had been alleviated. Dr. Malkani indicated that appellant had range of motion from 0 to 90 degrees.

On August 30, 2002 appellant submitted a CA-7 form, requesting a schedule award.

In a letter dated September 5, 2002, the Office requested that appellant's treating physician, Dr. Malkani, submit an impairment rating in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (fifth edition 2001).

Appellant submitted a report from Dr. Malkani dated August 28, 2002 noting that appellant reached maximum medical improvement as of that date. He noted forward flexion of 90 degrees, for an impairment rating of 2 percent; backward extension of 0 degrees, for an

impairment rating of 2 percent; internal rotation of 10 percent for an impairment rating of 2 percent; external rotation of 10 percent for an impairment rating of 4 percent; abduction of 10 degrees for an impairment rating of 4 percent; and adduction for an impairment rating of 2 percent; weakness re gluteal nerve for an impairment rating of 2 percent; and weakness and atrophy re gluteal nerve for an impairment rating of 2 percent for a total rating of 20 percent permanent impairment of the left lower extremity. Dr. Malkani did not reference the A.M.A., *Guides*, nor did he provide findings upon physical examination from which he based his figures and calculations.

The Office referred the case record to an Office medical adviser who determined, in accordance with the A.M.A., *Guides* that appellant sustained a 20 percent impairment of the right lower extremity. He did not find any evidence of permanent impairment of the left ankle.

By decision dated December 10, 2002, the Office granted appellant a schedule award for a 20 percent impairment of the right lower extremity.

The Board finds that appellant has failed to establish that she sustained a back condition causally related to the accepted injury of March 2000.

In this case, the Office accepted appellant's claim for contusion of ankle, superficial injury of the hip and leg, and superficial injury of the foot/toe. However, the medical evidence is insufficient to establish that the employment injury on March 7, 2000 caused an injury to her back. In March 2002 the Office referred appellant for a second opinion to Dr. Keisler. In his report dated March 11, 2002, Dr. Keisler indicated that appellant's current problem of scoliosis with accelerated degenerative disc and facet disease was long-standing, preexisting and progressive. He indicated that the progressive changes continued and there was no relationship to the injury of March 2000 as the progression of changes and episodes of recurring increasing symptoms are expected with aging and time. Dr. Keisler noted that there was a possibility of a temporary exacerbation of symptoms from trauma but any relationship would end after six weeks. He further noted that the avascular necrosis of the left hip was a more serious condition but would be unrelated to any single event in March 2000.

Appellant submitted numerous reports from her treating physicians, particularly Dr. Johnson, whose report dated August 20, 2001, noted a history of appellant's injury and treatment. He concluded that "all of the things that have occurred between March 7, 2000 until this time have been brought on due to the aggravation caused by the fall." However, Dr. Johnson did not provide a rationalized opinion as to the causal relationship between appellant's employment injury and her back condition. He did not explain how the March 7, 2000 injury caused or contributed to appellant's back condition, first addressed following a conclusory statement he provided no medical reasoning or rationale to support such statement. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.[1] Therefore, this report is insufficient to meet appellant's burden of proof.

[1] *See Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

The person seeking compensation benefits has the burden of proof to establish the essential elements of the claim. Appellant has failed to do this. In a case such as this, proof must include supporting rationalized opinion of qualified medical experts, based on complete and accurate factual and medical backgrounds, establishing that the implicated incidents caused or materially adversely affected the ailments producing the work disablement.[2] The Board finds that appellant has not met this burden with respect to her back condition.

The Board finds that, under the circumstances of this case, the opinion of Dr. Keisler is sufficiently well rationalized and based upon a proper factual background such that it is the weight of the evidence.

The Board further finds that this case is not in posture for decision with regard to the schedule award determination.

The schedule award provisions of the Federal Employees' Compensation Act[3] and its implementing regulation[4] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

The Board has reviewed Dr. Malkani's report dated August 28, 2002 and notes that, while the doctor found a 20 percent permanent impairment of the left lower extremity it is not clear how he came to this conclusion. The Board notes that the A.M.A., *Guides*, on page 537, Table 17-9 set forth the procedure for determining hip motion impairments by indicating whole person impairment and lower extremity impairment. Dr. Malkani noted, in a report dated August 28, 2002, that appellant reached maximum medical improvement and provided the following physical findings and impairment rating: forward flexion of 90 degrees for a 2 percent impairment rating;[5] retention of backward extension of 0 for an impairment rating of 2 percent;[6] retention of internal rotation of 10 percent for an impairment rating of 2 percent;[7] retention of external rotation of 10 percent for an impairment rating of 4 percent;[8] retention of abduction of 10 percent for an impairment rating of 4 percent;[9] retention of adduction of 10 percent for an

[2] *See Margaret A. Donnelly*, 15 ECAB 40 (1963).

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.404 (1999).

[5] *See* A.M.A., *Guides* at page 537, Table 17-19 (5th ed. 2001).

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

impairment rating of 2 percent;[10] weakness of the gluteal nerve for an impairment rating of 2 percent; and weakness and atrophy regarding the gluteal nerve for an impairment rating of 2 percent for a combined impairment rating of 20 percent permanent impairment of the left hip. However, Dr. Malkani neither referenced the A.M.A., *Guides* nor did he cite to tables or charts for an impairment rating determination.

The Board notes that Table 17-9 of the A.M.A., *Guides* provides impairment ratings for flexion, extension, internal rotation, external rotation, abduction, adduction. However, the impairment rating provided by Dr. Malkani addresses the whole person impairment rating and not those for lower extremity impairment. For instance, Dr. Malkani indicated that flexion of 90 degrees constituted a 2 percent whole person impairment rating;[11] retention of internal rotation of 10 percent constituted a 2 percent whole person impairment rating;[12] retention of external rotation of 10 percent constituted a 4 percent whole person impairment rating;[13] retention of abduction of 10 percent constituted a 4 percent whole person impairment rating;[14] and retention of adduction of 10 percent constituted a 2 percent whole person impairment rating.[15] The Board notes that schedule awards for permanent impairment are not based on whole person impairment but on impairment for loss of use of specified anatomical members.[16] Additionally, Dr. Malkani's report noted that appellant sustained weakness of the gluteal nerve, for an impairment rating of two percent and weakness and atrophy of the gluteal nerve, for an impairment rating of two percent. However, he did not provide findings upon physical examination from which he based his figures and calculations. Therefore, Dr. Malkani's figures for lower extremity impairment are not in conformance with the fifth edition of the A.M.A., *Guides*.

In turn, the Board finds that the December 4, 2002 report of the Office medical adviser is deficient as it is unclear from his report how he determined the lower extremity impairment as 20 percent.[17] Although the medical adviser referenced the A.M.A., *Guides*, he provided no findings from which he based his figures and calculations. The Board notes that neither the treating physician, Dr. Malkani, nor the Office medical adviser provided ratings in conformance to the fifth edition of the A.M.A., *Guides*.

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[10] *Id.*

[11] *See id.* at page 537, Table 17-19 (5th ed. 2001).

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *See Paul R. Evans, Jr.* 44 ECAB 646 (1993) (attending physicians report is of little probative value when the A.M.A., *Guides* are not properly followed).

[17] *See John Constantine,* 39 ECAB 1090 (1988) (medical Report not explaining how the A.M.A., *Guides* were used is of little probative value).

In view of the failure of Dr. Malkani and the Office medical adviser to fully explain their calculations under the A.M.A., *Guides*, the Office should further develop the case to determine the extent of impairment to appellant's right lower extremity.[18]

The Board will remand the case to the Office for referral of the matter to an appropriate specialist to determine the extent of permanent impairment in accordance with the A.M.A., *Guides.* Following this, and any other further development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's schedule award claim.

The decisions of the Office of Workers' Compensation Programs dated December 10, 2002 is hereby set aside and the case is remanded for further development in accordance with this decision of the Board; and the decision dated May 29, 2002 is hereby affirmed.

Dated, Washington, DC
April 29, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[18] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (March 1995) (these procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present).