

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA GREENE and U.S. POSTAL SERVICE,
POST OFFICE, Baltimore, MD

*Docket No. 03-1521; Submitted on the Record;
Issued December 16, 2003*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that she sustained a recurrence of disability on March 22, 2002; and (2) whether the medical evidence established that appellant's surgery and/or disability was causally related to the accepted employment injury.

On March 13, 2000 appellant then a 50-year-old rural carrier, filed a traumatic injury claim alleging that she sustained a back injury in the performance of duty. Appellant returned to limited duty on March 13, 2000 and on April 3, 2000 accepted a limited-duty clerical position.¹

In a March 13, 2000 disability certificate, Dr. Stuart Gordon, a Board-certified orthopedic surgeon, indicated that appellant was partially incapacitated from March 29 to April 12, 2000. He indicated that appellant could only do half of her route.²

A July 5, 2000 magnetic resonance imaging (MRI) scan of the lumbar spine was obtained. Dr. Fred C. Ashman, a radiologist, indicated that there was mild disc herniation at L4-5 with mild extrinsic impression on the thecal sac centrally and extending slightly asymmetrically to the right. This was associated with some mild hypertrophic changes of the facet joints bilaterally and there were perineural cysts incidentally noted at S1 and S2.

¹ The limited-duty position requirements included: no repetitive lifting over 5 pounds; no prolonged standing or walking longer than 15 minutes in an hour; no bending greater than 0 times an hour; no pushing or pulling greater than 10 pounds of force and sitting 50 percent of the time.

² In support of her claim, appellant submitted numerous treatment notes from her chiropractors, Dr. Michael D. Ferguson and Dr. M. Caravello. She also submitted notes from her physician's assistant; however, they are not considered physicians under the Federal Employees' Compensation Act. *See* 5 U.S.C. § 8101(2). This subsection defines the term "physician." *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

In a July 19, 2000 report, Dr. William Tham, Board-certified in physical medicine and rehabilitation, assessed a minor lumbosacral disc herniation at the L4-5 level. He opined that it seemed to be a mechanical issue of a lumbosacral sprain/strain injury with the sacroiliac joint dysfunction and radiculitis on the right. He repeated his diagnosis in an August 2, 2000 report and subsequent reports up to May 23, 2001.³

On August 25, 2000 the Office of Workers' Compensation Programs accepted appellant's claim for lumbar sprain.

In a May 25, 2001 electromyograph (EMG), Dr. Joan Luo, Board-certified in physical medicine and rehabilitation, indicated that there was no electrodiagnostic evidence of lumbar radiculopathy or nerve entrapment of the lower extremities.

On April 16, 2002 appellant filed a notice of recurrence of disability commencing March 22, 2002.

In an April 24, 2002 report, Dr. Gordon, a Board-certified orthopedic surgeon, indicated that appellant had a worsening of the right lumbar radiculopathy, which was comprised of a large herniated disc at the right L4-5, which was grossly neurologically intact. He recommended a neurosurgical evaluation and opined that appellant's symptoms were worsening from the date of original problem.

In an April 18, 2002 MRI scan, Dr. James E. Port, a Board-certified diagnostic radiologist, diagnosed small left paracentral disc protrusion at L3-4 without significant stenosis, large central to right paracentral disc herniation at L4-5 obliterating the spinal canal resulting in severe spinal canal stenosis without significant foraminal stenosis and moderate facet joint arthropathy bilaterally at L4-5 and L5-S1 levels.

On May 22, 2002 appellant had surgery to remove the spur that formed on the herniated disc.

In a June 26, 2002 disability certificate, Dr. Charles C. Park, a Board-certified neurological surgeon, indicated that appellant could return to light duty on June 29, 2002 with no bending, stooping, lifting or reaching. Further, he indicated that no prolonged standing, no excessive walking, no prolonged sitting and driving only to and from work. In the duty status report of the same date, he indicated that the recurrence occurred due to aggravations to the original injury.

In a July 17, 2002 report, Dr. Park indicated that appellant had a spur on her disc from her March 13, 2000 on-the-job injury. He opined that the spur on the disc was pressing against the sciatic nerve and causing loss of use of the right leg down to the foot with back hip pain. He checked a box "yes" that inquired as to whether or not he believed that the condition was caused or aggravated by an employment activity and indicated that bending caused an aggravation to the herniated disc. Dr. Park advised that surgery was needed to scrape off the spur to remove

³ In a May 23, 2001 report, Dr. Tham advised that appellant should be given a permanent position with light-duty restrictions.

pressure from the sciatic nerve. Further, he explained that this was a complication of the original injury of March 13, 2000 and it was caused by bending for two to three hours per day which caused pressure on the herniated disc which caused a spur on the disc which pressed into the sciatic nerve.

In an August 15, 2002 report, Dr. Park indicated that appellant had to have an emergency surgery for her lumbar discectomy. He explained that the surgery was done without waiting for authorization as appellant had such a large disc herniation that it could endanger her neurologically.

On September 13, 2002 the Office requested that the Office medical adviser provide an opinion with respect to whether surgery to the herniated disc was warranted.

On September 13, 2002 the Office medical adviser indicated that the removal of a bone spur was clearly not related to a back sprain and opined that spur removal surgery was not related to appellant's accepted employment injury.

In a September 19, 2002 report, Dr. Park explained that surgery was necessary to relieve the pressure on appellant's sciatic nerve caused by a spur that had formed at the work-related herniated disc. He explained that the spur was formed as a result of work activity that caused aggravation to the disc by putting pressure on the disc by bending to pick up packages from the floor. Dr. Park indicated that the operation did not change the original injury, only the complications from it. Dr. Park explained that appellant's restrictions remained the same and she was released to return to work on June 29, 2002, the same position she had prior to her surgery. He provided a disability certificate dated September 25, 2002 wherein he indicated no driving and indicated that the restrictions were back to the original restrictions.

In an October 9, 2002 report, Dr. Park indicated that appellant was now having left-sided pain and more recently bilateral pain. He noted that the MRI scan of September 16, 2002 showed slight residual disc at L4-5 on the right side but the left side seemed to be clear, with the exception of degenerative disease at L4-5 with a decrease in disc height.

In a November 20, 2002 decision, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that appellant's surgery or disability was a result of the accepted work-related lumbar strain.

On January 10, 2003 appellant requested reconsideration.

Appellant filed a notice of recurrence of disability on January 10, 2003 commencing on March 23, 2002.

In a January 15, 2003 report, Dr. Park indicated that appellant underwent a lumbar discectomy and had a huge fragment at L4-5. He explained that appellant was doing well but continued to have pain down the right leg. He indicated that appellant had a large disc herniation and, although appellant thought she had a bony fragment or spurs, in fact it was a very large fragment on the L4-5 on the right side. Dr. Park had a discectomy and the free fragment was removed but not the entire disc.

By letter dated March 5, 2003, the Office requested detailed factual and medical evidence, stating that the information submitted was insufficient to establish a recurrence on the above date.

By decision dated April 15, 2003, the Office found that the evidence was not sufficient to establish that appellant's current medical condition was due to the accepted work injury.

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability on March 22, 2002.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.⁴

Causal relationship is a medical issue,⁵ and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. This consists of 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.⁶ The physician's opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty 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.⁷

In the present case, appellant's claim was accepted for lumbar strain on August 25, 2000. In an April 24, 2002 report, Dr. Gordon indicated that appellant had a worsening of her right lumbar radiculopathy, but offered no opinion on causal relationship. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁸ Appellant had surgery to remove a bone spur without requesting prior authorization and began treating with Dr. Park, almost two years after the accepted injury. Dr. Park determined that appellant had a bone spur and opined that it was a progression of her accepted work-related condition. He stated that, although appellant improved sufficiently to return to work in a light-duty capacity, her light-duty position aggravated the disc such to cause the necessity for surgery. In a July 17, 2002 report, he noted that her spur was due to a complication from the original injury and opined that it was caused by bending two to three

⁴ *Richard E. Konnen*, 47 ECAB 388 (1996); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁵ *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

⁶ *Duane B. Harris*, 49 ECAB 170, 173 (1997).

⁷ *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

⁸ *Michael E. Smith*, 50 ECAB 313 (1999).

hours per day which caused pressure on the herniated disc which caused a spur on the disc which pressed into the sciatic nerve. However, the record reflects that appellant's light-duty description did not include bending. The Office accepted appellant's claim for a lumbar sprain and a July 5, 2000 MRI scan revealed a mild disc herniation and no evidence of a bone spur or herniated disc. The spur was not documented until two years after the accepted injury. Dr. Park appears to be describing a new injury, as the original injury occurred March 13, 2000 when appellant lifted a heavy object as opposed to an injury occurring due to repeated work activities while on light duty. Appellant did not provide a report sufficient to relate her accepted lumbar sprain to the herniated disc.

An Office medical adviser reviewed the record and opined that the removal of a bone spur was not related to the prior back sprain. He indicated that surgery was not necessitated by appellant's accepted injury.

The Board also finds that appellant has not established that her surgery and/or disability were causally related to employment factors.

Section 8103 of the Federal Employees' Compensation Act⁹ provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Office considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.¹⁰ In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under the Act.

The only limitation on the Office's authority is that of reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.¹¹ In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury.

Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.¹² Thus, in order for surgery to be authorized, appellant must submit evidence to show that such surgery is for a condition causally related to the employment injury and that the surgery was medically warranted. Both of these criteria must be met in order for the Office to authorize payment.

⁹ 5 U.S.C. §§ 8101-8193.

¹⁰ 5 U.S.C. § 8103; *see Thomas W. Stevens*, 50 ECAB 288 (1999).

¹¹ *Claudia L. Yantis*, 48 ECAB 495 (1997).

¹² *See Debra S. King*, 44 ECAB 203 (1992); *Bertha L. Arnold*, 38 ECAB 282 (1986).

As noted, the reports of Dr. Parks and Dr. Tham fail to adequately explain how appellant's bone spur resulted from her accepted lumbar sprain to the point that she required surgery. Dr. Parks' reports did not provide sufficient rationale that appellant's surgery was related to the accepted employment injury nor address the absence of a bone spur in 2000 to the MRI scan obtained in 2002. Appellant, therefore, has not shown that her bone spur was a condition sustained in the performance of duty. The Office properly denied appellant's surgery as related to the accepted injury.

The decisions of the Office of Workers' Compensation Programs dated April 15, 2003 and November 20, 2002 are affirmed.

Dated, Washington, DC
December 16, 2003

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member