

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA E. FRIDLEY and DEPARTMENT OF COMMERCE,
BUREAU OF THE CENSUS, Charlottesville, VA

*Docket No. 02-491; Submitted on the Record;
Issued February 13, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant's claimed medical condition or disability after August 23, 2000 is causally related to her August 17, 2000 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied her request for review of the written record.

On August 18, 2000 appellant, a 44-year-old assistant manager for administration, filed a claim for compensation (Form CA-1), alleging that she sustained multiple injuries while in the performance of duty on August 17, 2000. She slipped and fell in water that leaked from the men's bathroom into the hall and claimed injury to her right upper extremity, buttocks, back and neck. Appellant stopped working on August 18, 2000 and returned to work on August 23, 2000. She received continuation of pay for August 21 and 22, 2000.

Approximately a month after she returned to her regular duties, appellant stopped working. On October 2, 2000 she filed a claim for compensation (Form CA-7), for lost wages beginning September 22, 2000.¹

In a decision dated January 3, 2001, the Office denied appellant's claim for compensation. The Office found that the medical evidence failed to establish that appellant's condition subsequent to her return to work on August 23, 2000 was either caused or aggravated by the August 17, 2000 employment incident. The Office found that her accepted lumbar strain condition had resolved noting that since she worked full duties without apparent difficulty until September 22, 2000, this established her medical condition had resolved. No further medical treatment was authorized.

¹ Appellant worked full time for the census from August 16, 1999 until September 9, 2000. On September 10, 2000 she became an intermittent employee with her appointment expiring on September 30, 2000. By letter dated December 18, 2000 the agency noted that the census office had closed and there was no light or limited duty available.

By letter dated May 14, 2001, appellant's counsel inquired about the status of a January 13, 2001 request for review of the written record. Enclosed was a January 13, 2001 letter from appellant to the Jacksonville District Office, requesting a copy of her case record and a review of the written record by an Office hearing representative. By decision dated August 8, 2001, the Office denied the request as untimely. The Office considered the matter in relation to the issue involved and denied appellant's request on the basis that the issue could equally well be addressed through the reconsideration process.

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

The Office accepted that appellant sustained a lumbar strain as a result of her August 17, 2000 employment injury.² The record establishes that in addition to her accepted lumbar strain, she also injured her right shoulder on August 17, 2000. When Dr. Kenneth A. Ballew, a Board-certified internist, initially examined her on August 18, 2000 he noted, among other things, right "shoulder tenderness."³ Although he did not provide an immediate diagnosis relative to appellant's right shoulder condition, he later diagnosed a rotator cuff injury attributable to her August 17, 2000 fall. Dr. Victor C. Lee, a Board-certified anesthesiologist specializing in pain management, examined appellant on August 22, 2000 and provided an assessment that included "cervicobrachial pain," which he subsequently identified as "possible right rotator cuff tear and right shoulder tendinitis." Dr. Lee also attributed this condition to appellant's August 17, 2000 employment injury. In a September 25, 2000 report, Dr. Linda F. Staiger, a Board-certified orthopedic surgeon, noted it was unlikely that appellant sustained a rotator cuff tear and instead, diagnosed a right shoulder strain. She reported that x-rays revealed minor degenerative changes of the right shoulder acromioclavicular joint. The Board accepts Dr. Staiger's diagnosis and finds that appellant sustained a right shoulder strain as a result of her August 17, 2000 employment injury.

In its January 3, 2001 decision, the Office noted that appellant was released to return to work without restrictions on August 23, 2000 and that she worked her full duties without "apparent difficulty" until September 22, 2000. The Office found that the evidence established that appellant's accepted medical condition had resolved no later than September 21, 2000. However, there is no affirmative medical evidence to support this finding. The Office based its conclusion on the fact that appellant was released to return to her regular duties without restrictions and she worked for a period of 30 days following her return.

In an August 18, 2000 report, Dr. Ballew stated that appellant should be able to return to her regular duties on August 23, 2000. However, Dr. Lee, treated appellant for ongoing pain in the left sacroiliac area on August 22, 2000. He diagnosed a lumbar strain a month later on

² Where appellant claims that a condition not accepted or approved by the Office was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury. *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

³ In his August 18, 2000 report, Dr. Ballew reported findings of back and shoulder tenderness. He described appellant's injury as back pain and sciatica, which he attributed to a "fall at work yesterday." Dr. Ballew prescribed pain medication for the treatment of appellant's injury and further surmised that appellant should be able to resume her regular work on August 23, 2000.

September 22, 2000.⁴ Additionally, Dr. Staiger diagnosed a lumbar strain when she examined appellant on September 25, 2000. The medical evidence does not establish that appellant's accepted lumbar strain resolved by September 21, 2000. The fact that she returned to her regular duties for approximately 30 days does not establish that she has no residual of her accepted condition.

With respect to the issue of whether appellant's claimed disability beginning September 22, 2000 is causally related to her August 17, 2000 employment injury, the evidence is unclear regarding the cause and extent of appellant's claimed disability. Dr. Ballew found appellant totally disabled as of September 20, 2000 based on her right shoulder condition. In contrast, Dr. Staiger found that appellant was able to work four hours a day "with sitting or standing ad lib." Her reports, however, do not clearly indicate whether appellant's disability and the reported restrictions apply to her lumbar strain, her right shoulder strain or both. While Dr. Lee did not offer an opinion regarding appellant's disability, in his most recent report dated December 19, 2000, he clearly attributed her right shoulder condition to the August 17, 2000 employment injury.

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁵ The medical reports raise an inference of causal relationship sufficient to require further development of the case record by the Office.⁶

On remand, the Office should refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist for an evaluation and a rationalized medical opinion regarding the cause and extent of appellant's claimed disability. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

In view of the Board's disposition of the case on the merits, the question of whether the Office properly denied appellant's request for a review of the written record is moot.

⁴ In his initial report dated August 22, 2000, Dr. Lee noted that appellant fell recently, slipping in approximately one inch of water, landing on her left hip and striking her right shoulder. He diagnosed cervicobrachial pain, cervical spondyloarthropathy, postural back pain and lumbar radiculopathy. Dr. Lee further stated that appellant was in a "pain flare-up from a recent fall" and that she complained of some increased numbness in the left lower extremity. He reported appellant's level of pain as 10 on a scale of 10, mostly in the shoulder area and left sacroiliac area. Additionally, Dr. Lee administered trigger point injections to appellant's right shoulder area and refilled her prescription for Demarol. He also recommended that she return in about a month for possible repeat treatment. When appellant ceased working September 22, 2000 she sought further treatment from Dr. Lee that same day. In his September 22, 2000 report, Dr. Lee noted that appellant presented with a pain level of nine with increased pain in her right shoulder and some tingling in her right fingers. He further noted that she had significant pain in her left hip. Dr. Lee diagnosed cervicobrachial diffuse pain, muscle spasm, lumbosacral strain and "post fall injury right upper arm biceps tendinitis." He also administered trigger point injections to appellant's right shoulder, right upper extremity and left quadratus-lumborum.

⁵ *William J. Cantrell*, 34 ECAB 1223 (1983).

⁶ *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

The decisions of the Office of Workers' Compensation Programs dated August 8 and January 3, 2001 are hereby set aside and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
February 13, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member