

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of LORRINE M. DUCUSIN-HUNGERFORD and GENERAL ACCOUNTING  
OFFICE, FINANCIAL MANAGEMENT DIVISION, Washington, DC

*Docket No. 02-1958; Submitted on the Record;  
Issued January 17, 2003*

---

DECISION and ORDER

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

The issue is whether appellant's disability after July 13, 1999 was causally related to her February 13, 1984 injury.

Appellant's claim was accepted for aggravation of lumbar disc disease after she, then a 31-year-old evaluator, injured her back while squatting down to pick up a telephone during an office move on February 13, 1984. She returned to half-time work on January 28, 1985.<sup>1</sup> The Office reduced her compensation accordingly. On March 23, 1992 appellant reduced her working hours to 12 hours a week. On July 22, 1994 the Office adjusted her compensation to reflect her current actual earnings.

On October 12, 1999 appellant filed a recurrence of disability claim, alleging that she could no longer work due to the excessive and excruciating pain in her legs and back. She alleged that her physical strength and endurance had deteriorated over the prior 15 years, affecting her ability to function adequately. Appellant stopped work on July 13, 1999. In support of her claim, she submitted reports from her treating physicians, Dr. Michael W. Dennis, Board-certified in neurosurgery, and Dr. Thomas A. Gay, Board-certified in family medicine.

On October 15, 1999 the Office referred appellant for a second opinion evaluation to Dr. Leonard N. Green, a Board-certified neurologist, who examined her on November 5, 1999. He opined that her current disability was not causally related to the February 1984 injury. Finding a conflict in the medical opinion evidence,<sup>2</sup> the Office referred appellant to Dr. Taghi

---

<sup>1</sup> Appellant filed a recurrence of disability claim on August 16, 1984, which the Office of Workers' Compensation Programs accepted.

<sup>2</sup> 5 U.S.C. § 8123(a) states in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

Kimyai-Asadi, Board-certified in neurology, who concluded on January 19, 2000 that there was no causal relationship between appellant's current back condition and the accepted work injury.

Based on these reports, the Office issued a notice of proposed termination on February 2, 2000. Appellant disagreed, arguing that the medical evidence failed to establish that her accepted back condition had resolved. On March 8, 2000 the Office terminated her compensation and medical benefits.

Appellant requested an oral hearing, which was held on October 13, 2000. On January 26, 2001 the hearing representative set aside the termination of compensation and remanded the case to the Office for further development. The hearing representative explained that appellant's back condition should be considered occupational in nature, rather than a single injury occurring on February 13, 1984, because she had testified about packing, lifting and moving boxes the previous week during her office's relocation. The hearing representative directed the Office to request a supplemental report from Dr. Kimyai-Asadi discussing whether appellant's back condition was aggravated by her part-time work through 1999 and if so, whether the aggravation was permanent or temporary.

On remand the Office asked Dr. Kimyai-Asadi to respond to specific questions and submit his opinion in light of an amended statement of accepted facts. Based on his February 21, 2001 response, the Office denied appellant's claim for a recurrence of disability on the grounds that the medical evidence failed to establish that employment factors caused her to stop work on July 13, 1999. The Office noted that an automobile accident on March 24, 1998, unrelated to work, worsened appellant's back condition.

Appellant requested a hearing, which was held on August 21, 2001. On April 25, 2002 the hearing representative found that appellant's total disability after July 13, 1999 was not causally related to the 1984 injury. The hearing representative modified the March 8, 2001 decision to find that appellant was still entitled to ongoing medical care for her degenerative disc disease and spondylosis.

The Board finds that appellant has failed to meet her burden of proof to establish a recurrence of disability causally related to her accepted work injury.

When an employee, who is disabled from the job he or she held when injured, returns to a limited or light-duty position or the medical evidence establishes that the employee can perform the duties of such a position, the employee has the burden to establish by the weight of reliable, probative and substantial evidence, a recurrence of total disability.<sup>3</sup> As part of this burden, the employee must show a change in the nature and extent of the light-duty job requirements or a change in the nature and extent of the injury-related condition.<sup>4</sup>

---

<sup>3</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>4</sup> *Glenn Robertson*, 48 ECAB 344, 352 (1997).

A recurrence of disability is defined as a spontaneous material change in the employment-related condition without an intervening injury.<sup>5</sup> A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted employment injury.<sup>6</sup> To meet this burden of proof, a claimant must furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>7</sup>

Causal relationship is a medical issue<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

Dr. Gay began treating appellant in 1989. He diagnosed degenerative disc disease, sciatica and lumbar spondylitis and stated in a July 1, 1999 report that appellant should stop work on July 13, 1999 indefinitely because she had become "significantly worse." Dr. Gay reiterated this conclusion in a September 21, 1999 report, stating that her "excruciating and extreme pain" in her legs and back, which resulted from degenerative disc disease, spondylosis and osteoarthritis, made walking, standing and sitting for long periods difficult and affected her ability to function adequately. He opined that appellant's present back condition was due to the 1984 work injury.

Dr. Dennis concluded, in a report dated December 22, 1998, that appellant's worsening symptoms over the past year were related to the 1984 injury "because it was at that point, as a result of the work injury, that [appellant] first began complaining of back symptoms." He added that a magnetic resonance imaging (MRI) scan clearly demonstrated progressive degenerative changes that were precipitated by the 1984 injury.

Dr. Dennis stated on June 30, 1999 that appellant's back condition had become "progressively worse throughout the 15 years" since her work-related injury in February 1984. He added that she should stop work indefinitely on July 13, 1999 because of her excessive pain,

---

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b.(1)(a) (May 1997).

<sup>6</sup> *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

<sup>7</sup> *Helen K. Holt*, 50 ECAB 279, 282 (1999).

<sup>8</sup> *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

<sup>9</sup> *Duane B. Harris*, 49 ECAB 170, 173 (1997).

<sup>10</sup> *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

stiffness, numbness and soreness in both legs (sciatica) and back. In response to an Office inquiry, Dr. Dennis stated on July 1, 1999 that it was “imperative” that appellant stop work on July 13, 1999 because her condition had become significantly worse.

The Office referred appellant for a second opinion evaluation to Dr. Green. In a November 5, 1999 report, he reviewed appellant’s history, the medical records and diagnostic testing results, including an MRI scan dated May 6, 1996 showing degenerative disc disease at L4-5 and L5-S1 with some osteoarthritic changes. He administered a functional capacity evaluation and the Minnesota Multiphasic Personality Inventory (MMPI) and answered the five questions posed by the Office.

Dr. Green concluded that appellant had no “identifiable physical abnormality of the lumbar region” directly affiliated with the 1984 work injury. The physical changes in her spine were related to degenerative disc disease and osteoarthritis, a natural phenomenon and not to any incident at work. Dr. Green added that appellant’s cessation of work on July 13, 1999 was not causally linked to the 1984 injury and that she had no physical abnormality that would prevent her from performing the physical duties of her job.<sup>11</sup>

In situations where opposing medical opinions on an issue are of virtually equal evidentiary weight and rationale, the case shall be referred for an impartial medical examination to resolve the conflict in medical opinion.<sup>12</sup> The opinion of the specialist properly chosen to resolve the conflict must be given special weight if it is sufficiently well rationalized and based on a proper factual background.<sup>13</sup>

The Office properly found a conflict in the medical opinion evidence between Drs. Green, Gay and Dennis and referred appellant to Dr. Kimyai-Asadi, who examined her on January 19, 2000. He diagnosed lumbar spondylosis, degenerative disc disease and foraminal stenosis and concluded that these problems were not related to the 1984 injury. Dr. Kimyai-Asadi noted “signs of exaggeration of symptoms during the clinical evaluation” and stated that he could not rule out underlying psychological factors. He found no convincing neurological deficit and added that, even though appellant’s emotional problem was not work related, it was severe enough to prevent her from working, considering her attitude and possible psychological factors.

In a February 9, 2000 report, Dr. Dennis responded to the Office’s questions. He stated that appellant stopped working on July 13, 1999 because she was experiencing continual weakness in her legs and pain in her lower back. He opined that the 1984 work injury affected appellant’s current back condition because she injured her back during the previous week while moving her office and picking up the telephone on February 13, 1984 was “the straw that broke

---

<sup>11</sup> Dr. Green, who is also Board certified in psychiatry, found that the MMPI-2 profile substantially underestimated appellant’s psychological maladjustment because she was “too guarded” to cooperate in answering the questions. He concluded that appellant’s “psychiatric disturbance” could interfere with her ability to work.

<sup>12</sup> *Richard L. Rhodes*, 50 ECAB 259, 263 (1999).

<sup>13</sup> *Sherry A. Hunt*, 49 ECAB 467, 471 (1998).

the camel's back." He added that appellant's back had undergone various degenerative changes over the past 15 years. Dr. Dennis stated that his conclusion of total disability was based on his independent and unbiased assessment of appellant's back-related problems, which precluded her from functioning adequately in her work and personal life.

In a December 20, 2000 report, Dr. Dennis stated that appellant's symptoms were directly referable to a progressive degenerative spondylosis precipitated by the 1984 work injury, based on her history. Her intermittent flare-ups of pain had been transient in nature superimposed on the progressive changes precipitated by the 1984 injury. Dr. Dennis emphasized that appellant's MRI scan was markedly abnormal and the findings would not be related to any acute back problems but were related directly to her degenerative arthritis and the 1984 injury.

In a January 29, 2001 report, Dr. Dennis reviewed appellant's work history and stated that she had developed spinal stenosis since the 1984 injury, which resulted in periodic flare-ups of severe pain. She had great difficulty in sitting, standing, walking and lifting and the stenosis had negatively affected her ability to sit at her desk interviewing and writing. Appellant could not walk long distances or carry more than five pounds. Dr. Dennis concluded that appellant had "a bad back" as shown by the November 7, 2000 MRI scan, which revealed facet and disc degeneration at L4-5 and L5-S1 with stenosis worse on the right.

Following remand by the hearing representative, the Office asked Dr. Kimyai-Asadi to review an amended statement of accepted facts and answer specific questions. He responded that appellant's cessation of work had nothing to do with the initial injury in 1984. "Most probably her spondylosis and spinal stenosis reached a point that made her quit working" because these conditions are permanent and by nature progressive and daily use of her joints caused more degeneration and symptoms. Dr. Kimyai-Asadi stated that appellant provided no specific aggravating factor that caused her to stop work on July 13, 1999. He added that if the worsening of her back condition resulted from natural deterioration, it would be permanent.

Dr. Kimyai-Asadi explained that there were no definite work factors that prevented appellant from working, especially considering her sedentary job, which required no extreme physical strain on the lumbar spine. It was mainly desk-type duties, which appellant was able to perform, definitely on a part-time basis. Dr. Kimyai-Asadi concluded that if appellant's degenerative disc disease were the only issue and there were no overlapping psychological factors, appellant would be able to continue her part-time work.

The Board finds that Dr. Kimyai-Asadi's opinion establishes that appellant had no work-related physical condition that resulted in total disability for work. Dr. Kimyai-Asadi reviewed the case record and medical reports on appellant's treatment since the 1984 work injury. He examined appellant thoroughly, discussed the diagnostic testing, explained clinical findings and provided medical rationale for his conclusion that appellant's current back condition resulted from the natural progression of her underlying degenerative disc disease. Dr. Kimyai-Asadi's opinion is sufficiently well rationalized to support his conclusion that appellant's current

disability was due to the natural progression of her underlying back condition and was not further contributed to by the 1984 work injury.<sup>14</sup>

Dr. Gay reviewed the reports of Dr. Kimyai-Asadi and stated on December 21, 2001 that he disagreed that appellant had any psychological problem preventing her from working. He opined that appellant could not work as an evaluator, which involved teaching the staff about computer software, because she could not stand, walk, sit or rise while showing them how to operate the programs. Dr. Gay reiterated his conclusion that appellant's current back condition was work related because her symptoms started in 1984 and had worsened over the years as shown by her medical records. He concluded that appellant should receive total disability compensation or retire on medical disability because she could not perform her job duties adequately.

Dr. Gay did not address the specific duties of appellant's part-time job, which was described as basically sedentary. Nor is there any evidence in the record that appellant could not stand, walk, sit or rise while performing her duties for 12 hours a week. Dr. Gay did not explain how the 12 hours of work a week aggravated appellant's degenerative disc disease to the point that she had to quit on July 13, 1999. Nor did he discuss any relationship between the natural progression of her underlying condition and the effects of working part time. Therefore, Dr. Gay's reports are insufficient to meet appellant's burden of proof.<sup>15</sup>

Dr. Dennis stated, in a report dated January 7, 2002, that appellant continued to experience severe back pain with any protracted static positions including walking, standing, sitting or bending. Appellant was severely limited in her functional capacity and spent most of her time in bed. Dr. Dennis concluded that appellant was disabled for all work because of her complaints of pain that were confirmed by neurological examination and an MRI showing severe spinal stenosis with degenerative disc disease at L4-5 and L5-S1 levels. He stated that appellant worked half time after her initial injury but had to reduce her hours because of pain. Her condition continued to deteriorate and as a result of progression of leg pain she was obliged to discontinue her employment in July 1999.

While Dr. Dennis opined that appellant's condition had worsened, he did not explain how this deterioration was related to the initial aggravation of her degenerative disc disease. He also failed to discuss the causal relationship of appellant's spinal stenosis to the accepted work injury in 1984. Further, Dr. Dennis has continually related that appellant's back condition stemmed from the initial work incidents in February 1984 but he has never provided any medical rationale to support this conclusion. Finally, because Drs. Dennis and Gay were on one side of the

---

<sup>14</sup> See *Jimmie H. Duckett*, 52 ECAB \_\_ (Docket No. 99-1858, issued April 6, 2001) (opinion that appellant's back condition was due to the natural progression of his spondylitis was sufficiently rationalized to establish that his work-related back condition had resolved and to meet the Office's burden of proof in terminating compensation).

<sup>15</sup> See *Carmen Gould*, 50 ECAB 504, 508 (1999) (finding that a physician's opinion that failed to explain the relationship between appellant's current back condition and the accepted lumbar sprain was insufficient to establish causation and thus failed to meet appellant's burden of proof).

conflict of medical opinion evidence, their subsequent reports are insufficient to overcome the probative value of Dr. Kimyai-Asadi's opinion as a referee specialist.<sup>16</sup>

The 1984 moving incident caused an aggravation of appellant's underlying degenerative disc disease does not establish that her subsequent flare-ups of severe pain remained causally related to the 1984 injury or that her cessation of work on July 13, 1999 was due to a worsening of the accepted work condition. In fact, even appellant's physicians indicated that the deteriorating nature of her stenosis and disc disease is causing the severe pain.

Appellant failed to meet her burden of proof to establish that the worsening of her back condition was work related that the physical requirements of her job changed or that her current disabling back condition is causally related to the 1984 injury. The Office properly denied her claim for a recurrence of disability.<sup>17</sup>

The April 25, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
January 17, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

---

<sup>16</sup> See *Barbara J. Warren*, 51 ECAB 413, 416 (2000) (finding that additional reports from appellant's treating physician that reiterated her findings and opinion were insufficient to overcome the special evidentiary weight accorded the impartial medical examiner).

<sup>17</sup> See *Michael E. Smith*, 50 ECAB 313, 316 (1999) (finding that appellant failed to submit a rationalized medical opinion on causal relationship and, therefore, had not established his entitlement to compensation).