

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOAN R. DONOVAN and U.S. POSTAL SERVICE,
POST OFFICE, Scotch Plains, NJ

*Docket No. 03-297; Submitted on the Record;
Issued June 13, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant sustained a recurrence of a medical condition on July 28, 2001 causally related to her June 17, 1999 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's July 18, 2002 request for reconsideration.

On June 17, 1999 appellant, then a 38-year-old part-time flexible letter carrier, sustained an injury "while coming up steps on platform, tripped on box and fell." She stopped work and sought medical attention that day from Complete Care. She complained of pain in her left hip and left leg region. She had no complaints of back, neck or other injury during this visit. An x-ray of her pelvis and left tibia-fibula showed no fracture or abnormalities. Her examination was significant for a small abrasion to the left hip with normal motor and neurologic testing. Appellant was treated for left leg abrasion and contusion to her left hip and leg. Appellant also sought medical attention that day from the Avenel-Iselin Medical Group, where she received a diagnosis of severe contusion to the left knee and lower leg.

The Office accepted appellant's claim for contusions of the left leg and knee. She received compensation for temporary total disability on the periodic rolls.

On October 1, 1999 the chief medical officer at the employing establishment reported that appellant's left knee and leg were clinically okay. Appellant saw her chiropractor that same day. He diagnosed low back sprain/strain with residual left sciatic neuritis and bilateral lumbar neuritis. He also diagnosed left leg contusion.

Dr. Ellen S. Novick, a specialist in physical medicine and rehabilitation, evaluated appellant on October 26, 1999. Dr. Novick diagnosed sprain and strain to the lumbosacral spine and post-traumatic muscle tension headaches, both of which she reported were secondary to the accident of June 17, 1999. Appellant underwent physical therapy with some symptomatic relief, but she continued to have lower back pain and developed radicular symptoms into the lower extremities.

Treatment notes from November 15, 1999 to January 3, 2000 by Dr. Novick's associate, Dr. Allan D. Tiedrich, showed complaints of mid and lower back pain and some episodes of neck and upper back pain. There was a palpable muscle spasm throughout the paraspinal musculature, radiating pain and numbness in the left lower extremity, some weakness in the extensor hallucis longus on the left, some diminution in the left-sided ankle jerk and tenderness over the sciatic notch in the straight leg raising at 40 degrees in both the sitting and supine positions. Appellant reported episodes of severe headaches. Dr. Tiedrich made no mention of a contusion to left knee and leg. On November 29, 1999 he ordered additional physical therapy and a magnetic resonance imaging (MRI) scan of the lumbosacral spine to rule out a disc herniation. On January 3, 2000 he reported that appellant was able to return to work full time.

In a decision dated July 31, 2000, the Office terminated appellant's compensation for wage loss effective that date on the grounds that her treating physician had released her to full duty on January 3, 2000.

Appellant returned to work on December 7, 2000.

On August 1, 2001 appellant filed a claim asserting that she sustained a recurrence of a medical condition on July 28, 2001 causally related to her June 17, 1999 employment injury. She explained that her symptoms were the same as before. To support her claim, she submitted treatment notes from Dr. Tiedrich. On April 28, 2000 he reported the following:

“[Appellant] has not seen me in some time. She has been doing her home exercise program. She is still having a lot of left knee pain and left lower extremity radicular symptomatology. There is tenderness at the lateral joint of the left knee and crepitation with passive and active range of motion. There is a positive Valsalva's maneuver and positive straight leg raising in the sitting and supine position on the left at 30 degrees. There is a diminished knee jerk on the left, so it is imperative that we proceed with MRI scans of the left knee and lower back to rule [out] internal disruption and a herniated nucleus pulposus respectively. She will return to see me again in one month. She is not working at the present time.”

Dr. Tiedrich reported the following on August 6, 2001:

“[Appellant] returned today with the recurrence of her complaints from the injury of June 17, 1999. She, once again, is encouraged to follow through on getting an MRI scan of the lower back and left knee as well as EMG [electromyogram] and NCV [nerve conduction velocity] studies of the lumbosacral spine. She is still limited in her ability to work as a postal worker and cannot do an outside route. She [wi]ll return to see me again in two weeks to discuss the results of the diagnostic tests.”

On August 9, 2001 the Office requested additional information, including a narrative report from her physician with his reasoned opinion as to the causal relationship between her current condition or disability and the injury of June 17, 1999.

Appellant submitted attending physician's form reports, all dated August 31, 2001, from Dr. Tiedrich. He noted that appellant had a "fall down" injury on June 17, 1999. He reported findings of lumbar strain and diagnosed sprain and strain to the lumbosacral spine and left leg. With an affirmative mark he indicated that this condition was caused or aggravated by the employment activity described. Dr. Tiedrich reported that appellant was totally disabled from November 15 to December 21, 1999 and was able to resume light work thereafter.

Appellant also submitted two duty status reports. In a duty status report dated August 3, 2001, Dr. Alan Goldstein, the employing establishment contract physician, noted a tender patella. Dr. Goldstein indicated that appellant could resume full-time regular duty that day.¹ In a duty status report dated August 6, 2001, Dr. Tiedrich described his clinical findings as "left leg and back (lower)." He described his diagnosis as "fell on knee." He stated: "This injury is related to June 17, 1999."

In a decision dated October 5, 2001, the Office denied appellant's claim of recurrence. The Office noted that Dr. Tiedrich's diagnosis of sprain to the left leg and back was not an accepted condition, that he reported no objective findings and that he offered no medical rationale for his opinion on causal relationship. The Office also noted that the August 3, 2001 duty status report did not address the claimed recurrence.

Appellant requested a hearing before an Office hearing representative. At the hearing, which was held on February 25, 2002 appellant appeared and gave testimony. She submitted an August 15, 2001 report from Dr. Goldstein.² He related appellant's current symptoms and findings on examination. He stated that appellant had a contusion of the knee approximately one year earlier,³ that since she had continuing symptoms including buckling of the knee, she might be suffering from an internal derangement. "This could be a direct result of the fall."

In a decision dated May 15, 2002, the hearing representative affirmed the denial of appellant's claim of recurrence. The hearing representative found that the medical evidence failed to establish that any condition in the left leg or knee, for which appellant was treated in August 2001, was causally related to her work injury in 1999.

Appellant requested reconsideration and submitted a May 29, 2002 report from Dr. Tiedrich:

"[Appellant] returns today with the same problems of mid and lower back pain with radiating pain into the left lower extremity as well as left knee pain. There continues to be palpable muscle spasm, trigger points and limited range of motion in the paradorsal and lumbar musculature. There is tenderness about the left knee,

¹ In an injury visit report that same date, Dr. Goldstein diagnosed contusion left knee, rule out internal derangement. He noted a normal examination with intermittent pain, swelling and buckling. He prescribed medication and recommended an MRI scan.

² The report itself does not appear in the record. The contents of the report, however, are described in the transcript of the hearing.

³ The accepted injury occurred two years earlier on June 17, 1999.

centered around the medial joint line. There is crepitation with passive and active range of motion. There is thickening to the undersurface of the patella. There is a loss of five degrees of extension and eight degrees of flexion. The gait is antalgic. There is weakness in the quadriceps on the left. There is a diminished knee jerk on the left.

“It is my professional opinion that the patient’s current complaints and problems in the lower back and left knee are a direct result of the fall down accident that she experienced on June 17, 1999. The patient had no prior history of any of these problems and there is no other incident that resulted in these injuries. She needs MRI scans of the lumbosacral spine and left knee to rule out herniated nucleus pulposus and internal derangement respectively. She needs EMG/NCV studies to rule out radiculopathy. She [wi]ll return to see me after these appropriate, necessary and reasonable studies have been performed.”

In a decision dated July 15, 2002, the Office reviewed the merits of appellant’s claim and denied modification of its prior decision. The Office found that Dr. Tiedrich’s May 29, 2002 report was insufficient to establish the claimed recurrence because it failed to explain how appellant’s current knee condition was related to the accepted employment injury and failed to explain the substantive gap in medical care for that condition.

On July 18, 2002 appellant again requested reconsideration. She argued that the claims examiner who allowed her claim was the same person who issued the July 15, 2002 decision on her request for reconsideration. She objected to being accused of altering medical forms.⁴ Appellant submitted postal guidelines for recurrence and alleged that this article “is exactly like my case.” She alleged fraud in the filling out of a Form CA-17.

In a decision dated October 15, 2002, the Office denied appellant’s July 18, 2002 request for reconsideration. The Office found that appellant submitted no relevant evidence or argument of error in fact or law. The Office found that appellant’s arguments were unfounded and irrelevant to the issues at hand. The Office noted that the claims examiner who issued the July 15, 2002 decision was not previously assigned to any of the contested decisions in appellant’s case. The Office also noted that the July 15, 2002 decision did not accuse her of wrongdoing.

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of a medical condition on July 28, 2001 causally related to her June 17, 1999 employment injury.

A claimant seeking compensation under the Federal Employees’ Compensation Act⁵ has the burden of establishing the essential elements of her claim by the weight of the reliable,

⁴ In its July 15, 2002 decision, the Office notes medical forms that were altered but does not state who altered them.

⁵ 5 U.S.C. §§ 8101-8193.

probative and substantial evidence.⁶ In this case, appellant has the burden of establishing that she sustained a recurrence of a medical condition⁷ on July 28, 2001 causally related to her June 17, 1999 employment injury.

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.⁸

Appellant sustained an employment injury on June 17, 1999 "while coming up steps on platform, tripped on box and fell." She complained of pain in her left hip and left leg region and was diagnosed with and was treated for left leg abrasion and contusion to her left hip and leg. She was also diagnosed with severe contusion to the left knee and lower leg. The Office accepted her claim for contusions of the left leg and knee and paid benefits.

The medical records in this case continue to note left leg contusion until October 1999, when attention turned to a sprain/strain of the low back, an injury appellant did not mention when she sought medical care on the day of her injury. In her October 26, 1999 report, Dr. Novick made no reference to a contusion of the left knee or leg. In his treatment notes from November 15, 1999 to January 3, 2000, Dr. Tiedrich also made no reference to a contusion of the left knee or leg. During this period appellant complained of mid and lower back pain, some episodes of neck and upper back pain and severe headaches. She no longer complained of the accepted left leg and knee contusions and she received no treatment for the accepted condition.

The gap in medical care for the accepted condition appears to end with Dr. Tiedrich's treatment note of April 28, 2000, though he did not diagnose contusion. He reported that appellant, whom he had not seen in some time, was still having a lot of left knee pain. He noted positive findings on examination and recommended an MRI scan to rule out internal derangement. On August 6, 2001 Dr. Tiedrich stated that appellant returned "with the recurrence of her complaints from the injury of June 17, 1999." Appellant claimed a recurrence of a medical condition on July 28, 2001 causally related to her June 17, 1999 employment injury.

Although the Office requested that appellant submit a narrative report from her physician with his reasoned opinion as to the causal relationship between her current condition and the injury of June 17, 1999, appellant failed to submit this evidence. Form reports indicating with an affirmative mark that a condition was caused or aggravated by employment activity are

⁶ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁷ Recurrence of medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a "need for further medical treatment after release from treatment," nor is an examination without treatment. 20 C.F.R. § 10.5(y) (1999). In this case, appellant's treatment for the accepted contusions was not continuous but appeared to stop in October 1999.

⁸ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

insufficient to discharge a claimant's burden of proof because such forms lack the necessary medical discussion explaining basis of the physician's opinion.⁹ Dr. Goldstein's August 15, 2001 statement that appellant might be suffering from an internal derangement that "could be a direct result of the fall" is speculative and of limited probative value.¹⁰

In his May 29, 2002 report, Dr. Tiedrich made positive findings on examination of the left knee. He stated that it was his professional opinion that appellant's current complaints and problems in the lower back and left knee were a direct result of the fall down accident that she experienced on June 17, 1999. He explained that appellant had no prior history of any of these problems and there is no other incident that resulted in these injuries. The Board has held that when a physician concludes that a condition is causally related to employment because the employee was asymptomatic before the employment injury, the opinion is insufficient, without supporting medical rationale, to establish causal relationship.¹¹ Dr. Tiedrich must do more than note a temporal relationship. He must positively demonstrate how appellant's need for further medical treatment on or after July 28, 2001 is causally related to the incident that occurred on June 17, 1999. He must base his opinion on a complete factual and medical background with an accurate history of the employment injury. He must explain appellant's failure to report any back complaints, symptoms or injury to her contemporaneous caregivers. He must firmly diagnose appellant's left knee condition and explain how it is pathophysiologically related to the June 17, 1999 employment injury. If appellant continues to suffer from the accepted contusions, he must explain why the contusions failed to resolve after 25 months. If she suffers from an internal derangement of the left knee, he must explain how this occurred and how appellant's medical record is consistent with such an injury. Dr. Tiedrich must also account for the October 1, 1999 report of the employing establishment's chief medical officer, who stated that appellant's left knee and leg were clinically okay and for the lack of reported left knee complaints from October 1999 to April 2000.

It is not necessary that the evidence be so conclusive as to suggest causal connection beyond all possible doubt. The evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound and logical.¹²

Appellant has not met her burden of proof because the medical opinion evidence in this case is insufficient to establish the critical element of causal relationship. The Board will affirm the Office's May 15 and July 15, 2002 decisions denying her claim of recurrence.

The Board also finds that the Office properly denied appellant's July 18, 2002 request for reconsideration.

⁹ *E.g., Lillian M. Jones*, 34 ECAB 379 (1982).

¹⁰ *See Jennifer Beville*, 33 ECAB 1970 (1982) (finding that a physician's opinion that the employee's complaints "could have been" related to her work injury was speculative and of limited probative value). Dr. Goldstein's reference to a knee contusion, approximately one year prior to his August 15, 2001 report, raised a question whether he is referring to the accepted injury on June 17, 1999 or a subsequent injury in 2000.

¹¹ *Thomas D. Petrylak*, 39 ECAB 276 (1987).

¹² *Kenneth J. Deerman*, 34 ECAB 641, 645 n. 1 (1983).

The Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district office. The request, along with the supporting statements and evidence, is called the “application for reconsideration.”¹³

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.¹⁴

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹⁵

Appellant’s July 18, 2002 request for reconsideration fails to meet at least one of the standards for obtaining a merit review of her claim. She made arguments concerning the drafter of the Office’s July 15, 2002 decision and her perception that the Office accused her of altering medical records. As the Office found, her arguments were unfounded and irrelevant and she submitted no new medical opinion evidence explaining how her need for further medical treatment on or after July 28, 2001 was causally related to the injury that occurred on June 17, 1999. The Office properly denied appellant’s request without reopening her case for a review on the merits. The Board will affirm the Office’s October 15, 2002 decision denying appellant’s July 18, 2002 request for reconsideration.

¹³ 20 C.F.R. § 10.605 (1999).

¹⁴ *Id.* at § 10.606.

¹⁵ *Id.* at § 10.608.

The October 15, July 15 and May 15, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
June 13, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member