

**United States Department of Labor
Employees' Compensation Appeals Board**

NAN C. REEVES, Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Wilmington, DE, Employer)

**Docket No. 04-1702
Issued: December 29, 2004**

Appearances:
Nan C. Reeves, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On June 25, 2004 appellant filed a timely appeal of a May 27, 2004 decision of the Office of Workers' Compensation Programs, denying acceptance of a C3-4 or any back condition as causally related to a June 14, 1998 employment injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established a C3-4 or back condition as causally related to a June 14, 1998 employment injury.

FACTUAL HISTORY

On June 16, 1998 appellant, then a 47-year-old nurse, filed a traumatic injury claim for continuation of pay/compensation (Form CA-1) alleging that she sustained injury to her upper back and right shoulder while she was attempting to return a patient to a chair. The Office accepted the claim for right shoulder strain and cervical strain. Appellant returned to work at four hours per day on October 24, 1998.

A magnetic resonance imaging (MRI) scan report dated August 5, 1998 noted prominent central bulging of C4-5 borderline for a small central disc herniation, prominent left spur formation and bulging of C5-6, and central bulging of C6-7. A report dated September 15, 1998 from Dr. Stephen Beneck, a specialist in physical medicine and rehabilitation, stated that the August 5, 1998 MRI scan showed a central disc protrusion herniation at C5-6, with smaller disc protrusions at C3-4 and C4-5. Dr. Beneck indicated that the MRI scan was of poor quality and difficult to evaluate. An MRI scan report dated March 23, 1999 stated that appellant had disc bulging at C3-4, central disc herniation at C4-5, and left lateral disc herniation at C5-6.

By report dated April 21, 1999, Dr. Anthony Curci, an osteopath, opined that the June 14, 1998 injury resulted in acute cervical pain and spasm with concomitant C4-5 cervical disc herniation and mild thoracic outlet syndrome. Appellant underwent a C4-5 and C5-6 anterior cervical decompression with neck discectomy and interbody fusion on April 28, 1999. In a letter dated May 3, 1999, the Office advised appellant that it accepted a C4-5 herniated disc and thoracic outlet syndrome, and authorized the April 28, 1999 surgery.

The record indicates that on February 15, 2000 appellant underwent lumbar surgery involving an L4-5 decompression laminectomy with left L4-5 discectomy; and additional lumbar surgery on March 22, 2000. By report dated August 22, 2000, an attending neurosurgeon, Dr. Michael Sugarman, reported that a July 24, 2000 MRI scan revealed a right-sided disc herniation with an osteophyte at C3-4. He recommended surgery at C3-4, which would include removal of the stabilization plate previously inserted and replacing it with a smaller plate. Appellant underwent an anterior cervical decompression and fusion at C3-4 on September 6, 2000.

In a report dated September 19, 2000, an Office medical adviser stated that the need for surgery was a progression of degenerative joint disease at a level above the accepted employment-related injury. The adviser opined that the only part of the surgery that was clearly related to the employment injury was the replacement of the stabilization plate.

On November 15, 2000 appellant filed a Form CA-1 indicating that she wished to expand her current claim to include aggravation of a preexisting low back condition. She underwent additional surgery on May 2, 2001 for a C3-4 reexploration. On August 24, 2001 appellant submitted another Form CA-1 stating that she wished to expand her claim to include a C3-4 herniation, bilateral leg pain, difficulty swallowing, bilateral foot pain, vocal cord damage, incontinence and hip pain. Appellant submitted a July 24, 2001 report by Dr. Sugarman, who opined that appellant's "neck and low back problems and all subsequent medical treatment are causally related to her work compensation injury in June 1998. This opinion is given with a reasonable degree of medical certainty." Appellant also submitted an April 8, 2001 report from Dr. Curci, who stated that appellant complained of back pain following her April 1999 cervical disc surgery. He stated that complications from the surgery resulted in a limp, causing undue stress on the low back and left leg. Dr. Curci stated that appellant's symptoms in her left leg had progressed to the point of numbness and foot drop. He opined that appellant's complaints of low back and left leg pain were causally related to the June 14, 1998 employment injury.

The Office prepared a statement of accepted facts and requested an opinion from an Office medical adviser as to whether additional conditions were causally related to the

employment injury. In a report dated October 31, 2001, an Office medical adviser stated “no” and explained that the August 5, 1998 MRI scan did not mention a C3-4 herniation. He indicated that the herniation occurred more recently and could not be attributed to the June 14, 1998 injury. The medical adviser noted Dr. Sugarman’s statement on causal relationship but opined that Dr. Sugarman did not explain the opinion in terms of the accepted conditions. The medical adviser also stated that Dr. Curci’s April 8, 2001 opinion was that all current conditions resulted from the work injury, but the medical adviser stated that the accepted work injury was not the cause of all of appellant’s current conditions.

Appellant underwent surgery on her low back on December 14, 2001. Dr. Sugarman indicated that the surgery included L3-4, L4-5 and L5-S1 reexploration and decompression with L3 laminectomy. In a report dated February 11, 2003, Dr. Sugarman reported that appellant continued to complain of neck and low back discomfort.

In a letter dated April 14, 2004, appellant again stated that she wanted to expand her claim to include additional neck and back conditions. Appellant discussed the medical evidence and stated that she had been trying to resolve the matter since 1999.

By decision dated May 27, 2004, the Office denied acceptance of a C3-4 herniation or low back condition as causally related to the June 14, 1998 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.²

Section 8123(a) of the Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.³ When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.⁴

ANALYSIS

The record in this case contains conflicting medical reports with respect to a C3-4 or a low back condition as causally related to the June 14, 1998 injury. The Office accepted a C4-5 disc herniation in this case. An Office medical adviser opined that the C3-4 disc herniation was

¹ 5 U.S.C. §§ 8101-8193.

² *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

⁴ *William C. Bush*, 40 ECAB 1064 (1989).

not causally related, noting the August 5, 1998 MRI scan report. The treating surgeon, Dr. Sugarman, opined that all of the neck conditions were causally related to the employment injury. It is also noted that attending physician, Dr. Beneck, reported that the August 5, 1998 MRI scan showed small disc protrusions at both C3-4 and C4-5, and that the quality of the study was poor.

With respect to the low back, an attending osteopath, Dr. Curci, opined in an April 8, 2001 report that appellant's low back condition was a consequence of the employment injury and the subsequent surgery. An Office medical adviser indicated that he disagreed with Dr. Curci regarding appellant's current condition.

The medical evidence establishes a disagreement between the attending physicians and the Office medical adviser. Accordingly, the case will be remanded to the Office to resolve the conflict in accordance with section 8123(a). The impartial medical specialist should render an opinion with respect to whether there were any additional conditions causally related to the June 14, 1998 employment injury, and if so, discuss whether any surgery or diagnostic testing performed were appropriate for treatment of an employment-related condition. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds there is a conflict in the medical evidence with respect to whether a C3-4 condition or low back condition is causally related to the June 14, 1998 employment injury. The case is remanded to the Office for resolution of the conflict.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 27, 2004 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: December 29, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

A. Peter Kanjorski
Alternate Member