

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

TWILA L. SCHOTT, Appellant)	
)	
and)	Docket No. 04-197
)	Issued: March 2, 2004
U. S. POSTAL SERVICE, POST OFFICE,)	
Cranberry Township, PA, Employer)	
)	

<i>Appearances:</i> Lawrence P. Lutz, Esq., for the appellant Office of Solicitor, for the Director	<i>Case Submitted on the Record</i>
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DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On October 27, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated July 22, 2003, denying her claim for a recurrence of disability. 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 sustained a recurrence of disability on December 27, 2001 causally related to her June 19, 2001 employment injury.

FACTUAL HISTORY

On June 20, 2001 appellant, then a 48-year-old rural mail carrier, filed a traumatic injury claim alleging that on June 19, 2001 she injured her lower back when she attempted to lift a heavy parcel. On May 14, 2002 the Office accepted her claim for a lumbar strain.

Dr. Hugh E. Shearer, an attending Board-certified family practitioner, stated that he saw appellant on January 7, 2002 for low back pain that began when she bent over a couch at home

and felt a pull and experienced significant pain in her back. He did not mention appellant's June 19, 2001 employment injury.

On March 5, 2002 Dr. John J. Honacki, a chiropractor, noted that on December 27, 2001 appellant felt a sharp pain in her back and legs when she leaned over a couch at home. He diagnosed lumbar radiculopathy and subluxations at L5 and the sacrum.¹ Dr. Honacki responded to a March 5, 2002 letter from the Office and indicated that appellant's June 19, 2001 employment injury was exacerbated by the December 27, 2001 incident at home. He diagnosed a disc protrusion at L5-S1 and recommended a work hardening program.

On March 8, 2002 appellant filed a claim for a recurrence of disability on December 27, 2001. She stated that on December 27, 2001 she was leaning over a couch in her living room at home and felt pain in her lower back radiating to her legs.

In notes dated March 12, 2002, Dr. Shearer stated that appellant had low back pain and that a magnetic resonance imaging (MRI) scan dated January 10, 2002 revealed a small central disc protrusion at L5-S1.

By decision dated June 6, 2002, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that she sustained a recurrence of disability on December 27, 2001 causally related to her June 19, 2001 employment injury

Appellant requested an oral argument that was held on December 10, 2002. She submitted a December 24, 2002 report, in which Dr. Shearer noted that he had treated appellant for her June 19, 2001 back injury. He stated:

“[Appellant] began seeing me after her problem became exacerbated following a minor incident on December 27, 2001, when she was moving a cover on her couch at home. This led to the treatment and physical therapy mentioned in my office notes. In my opinion, to a reasonable degree of medical certainty, the incident in December, in [appellant's] home, was relatively minor and only exacerbated the original work injury from which she had not fully recovered....”

By decision dated and finalized February 27, 2003, an Office hearing representative set aside the Office's June 6, 2002 decision and remanded the case for further development.

On May 7, 2003 the Office referred appellant, together with a statement of accepted facts and copies of the medical record, to Dr. Selim El-Attrache, a Board-certified orthopedic surgeon, for an examination and evaluation as to whether she sustained a recurrence of disability on December 27, 2001 causally related to her June 19, 2001 employment injury.

In a June 11, 2003 report, Dr. El-Attrache provided a history of appellant's condition and findings on examination. He noted that an MRI scan revealed a small central disc protrusion at L5-S1. Dr. El-Attrache indicated that the incident on December 27, 2001 caused an aggravation of appellant's June 19, 2001 employment-related lumbar strain.

¹ Dr. Honacki's list of conditions revealed by x-rays of appellant's back did not include subluxations.

By letter dated July 3, 2003, the Office asked Dr. El-Attrache to clarify his June 11, 2003 report. The Office noted that some of the factual background he reported was not accurate according to the statement of accepted facts² provided to him and requested that he review the statement of accepted facts and the medical records and then provide his opinion as to whether the incident on December 27, 2001 was a new injury or a reinjury of appellant's June 19, 2001 employment injury. The Office also asked whether the diagnoses of subluxation and a disc protrusion that were made after the December 27, 2001 incident were caused by the June 19, 2001 employment injury.

In a supplemental report dated July 18, 2003, Dr. El-Attrache stated that the medical evidence established that appellant was able to return to regular work on July 23, 2001. He stated:

"I feel the low back pain resulting from the December 27, 2001 incident at home when [appellant] was pushing cushions on her couch was a new injury caused by the mal-positioning of [her] spine. Such injuries also occur when individuals are bending over to tie their shoes, or lifting objects or pushing and pulling even light material. In this case, [appellant] was injured while bending to push cushions on her couch."

Dr. El-Attrache stated that there was no evidence of any subluxation or disc protrusion resulting from the June 19, 2001 employment injury.

By decision dated July 22, 2003, the Office denied appellant's claim on the grounds that the weight of the medical evidence of record established that she did not sustain a recurrence of disability on December 27, 2001 causally related to her June 19, 2001 employment-related lumbar strain.

LEGAL PRECEDENT

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which compensation is claimed is causally related to the accepted injury.³ This burden includes the necessity of furnishing 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 rationale.⁴ Where no such rationale is present, medical evidence is of diminished probative value.⁵

² Dr. El-Attrache indicated that appellant had episodes of aggravated low back pain in August, October and December 2001.

³ *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

⁴ *Lourdes Davila*, 45 ECAB 139 (1993); *Mary S. Brock*, 40 ECAB 461 (1989).

⁵ *Michael Stockert*, 39 ECAB 1186 (1988).

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.⁶ In order to establish causal relationship, a physician's opinion must be based on a complete factual and medical background, 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 activities.⁷

ANALYSIS

The record shows that appellant was released to return to regular duty on July 23, 2001 following her June 19, 2001 employment-related lumbar strain and did not seek medical treatment until the incident at home on December 27, 2001. She alleged that she sustained a recurrence of disability on December 27, 2001 while at home when bending over a couch.

In the July 18, 2003 report, based on a review of the medical records, statement of accepted facts and his physical examination of appellant, Dr. El-Attrache, who served as an Office referral physician provided an opinion on the cause of appellant's condition after December 27, 2001.⁸ He stated that the medical evidence confirmed that appellant was able to return to regular work on July 23, 2001 and that the low back pain resulting from the December 27, 2001 incident was a new injury caused by the mal-positioning of her spine when she bent over a couch. He stated that there was no evidence that the subluxation and disc protrusion diagnosed after the December 27, 2001 incident at home were related to the June 19, 2001 employment injury. The opinion of Dr. El-Attrache represents the weight of the medical evidence in this case. He is an appropriate Board-certified specialist, who reviewed the factual and medical evidence of record and provided detailed findings on examination. His opinion that the incident on December 27, 2001 was not causally related to the June 19, 2001 employment injury is supported by medical rationale in that he explained that the December 27, 2001 incident at home was competent to cause a new injury, which accounted for appellant's back problems after December 27, 2001.

The medical reports submitted by appellant do not establish that she sustained a work-related recurrence of disability on December 27, 2001. Dr. Shearer stated that he saw appellant on January 7, 2002 for low back pain that began when she bent over a couch at home but he did not mention appellant's June 19, 2001 employment injury. In notes dated March 12, 2002, Dr. Shearer stated that appellant had a small central disc protrusion at L5-S1. However, he did not explain how this condition was related to appellant's June 19, 2001 employment injury. In a December 24, 2002 report, Dr. Shearer opined that the incident on December 27, 2001 "exacerbated her June 19, 2001 employment injury, from which she had not fully recovered." However, his statement that she had never fully recovered is not consistent with the fact that she had been released to return to regular duty on July 23, 2001. Additionally, Dr. Shearer provided

⁶ *Walter D. Morehead*, 31 ECAB 188 (1986).

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

⁸ Dr. El-Attrache provided findings of his examination in a report dated June 11, 2003.

insufficient medical rationale explaining how appellant's back condition on December 27, 2001 aggravated her June 19, 2001 employment injury. The reports of the chiropractor, Dr. Honacki, are of no probative value in this case because he does not meet the definition of a physician under the Federal Employees' Compensation Act.⁹

CONCLUSION

Appellant failed to establish that she sustained a recurrence of disability on December 27, 2001 causally related to her June 19, 2001 employment injury. Therefore, the Office properly denied her recurrence claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 22, 2003 is affirmed.

Issued: March 2, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁹ Under section 8101(2) of the Act, chiropractors are only considered physicians and their reports considered medical evidence to the extent that they treat spinal subluxations as demonstrated by x-ray to exist. 5 U.S.C. § 8101(2). *See Jack B. Wood*, 40 ECAB 95, 109 (1988). As Dr. Honacki's list of conditions revealed by x-rays of appellant's back did not include subluxations, he is not considered a physician under the Act in this case.