

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

MARIANNE DOYLE, Appellant)
and) Docket No. 04-75
DEPARTMENT OF THE STATE,) Issued: May 7, 2004
Washington, DC, Employer)

)

Appearances:
Marianne Doyle, *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On October 7, 2003 appellant filed a timely appeal from the decision of the Office of Workers' Compensation Programs dated June 19, 2003, which denied her lumbar condition claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she sustained a lumbar condition causally related to the accepted January 17, 1994 employment injury.

FACTUAL HISTORY

On September 24, 2001 appellant, then a 48-year-old engineer-planner, submitted a traumatic injury claim alleging that on January 17, 1994 she sustained neck and back injuries when she was riding in a taxi returning from the airport and due to the weather conditions, the taxi slammed into a concrete retaining wall/bridge abutment at approximately 50 miles an hour.

By letter dated January 9, 2002, the Office requested that appellant submit further factual and medical information. She responded to various factual questions on January 15, 2002. However, appellant did not provide any medical reports.

By decision dated March 5, 2002, the Office denied appellant's claim for compensation. The Office noted that although the initial evidence of file supported that she actually experienced the claimed accident, the evidence did not establish that a condition had been diagnosed in connection with this, and, therefore, an injury within the meaning of the Federal Employees' Compensation Act¹ was not demonstrated.

By letter dated April 8, 2002, appellant requested reconsideration. In support thereof, she submitted a December 15, 2000 note from Dr. Michael W. Hasz, a Board-certified orthopedic surgeon, who indicated that appellant still had diffuse low back pain for which she underwent a procedure on November 17, 2000 and had no significant worsening or improvement of her symptoms immediately following this procedure. Appellant also submitted a March 18, 2002 report from Dr. Hasz, who stated:

"Based on the medical records I have available, including my initial evaluation of October 18, 1999 as well as record through today's date, the complaints of back pain and the subsequent diagnosis of lumbar annular tears and low back pain appear to be directly related to an accident she reports on January 17, 1994.

"The subsequent treatment of her back symptoms, including the physical therapy, medications, as well as the IDET or thermal annuloplasty do appear to be directly related to these back symptoms.

"These appear to be directly related to her history of having no previous episodes of back pain or other symptoms prior to the date of injury. She did give a history that she was previously treated on multiple occasions, including by a chiropractor, as well as Dr. Kahanovitz, prior to her evaluation and treatment by me. Her examination and history do not appear to be consistent with the diagnoses mentioned above.

"She has had improvement after her subsequent treatment and concerning the question of medical causation, there does appear to be within the reasonable medical degree of certainty, based on the information cited above that her diagnoses, back pain and subsequent treatments were related to the above-mentioned accident.

By decision dated July 10, 2002, the Office reviewed appellant's case on the merits and found that the evidence submitted was insufficient to warrant modification of the March 5, 2002 decision.

¹ See 5 U.S.C. § 8101 *et. seq.*

Appellant submitted an August 3, 1994 report from Dr. Ross H. Weinberg, a chiropractor,² who indicated that she was injured in the January 17, 1994 motor vehicle accident and that factors contributing to the severity of her injuries included that she was only wearing a lap belt and that the impact was to the side of the vehicle. He indicated that appellant currently experienced pain with certain exercises and positions.

Also submitted was a December 20, 1994 report from Dr. Neil Kahanovitz, a Board-certified orthopedic surgeon, who noted that appellant continued to have some pain to palpitation at the lumbosacral junction. He stated:

“The patient continues to have persistent pain which is directly related to her auto accident. No new treatment is indicated at this time and it is likely that the patient will experience continued symptoms for an indeterminate amount of time.”

In a report dated March 19, 2002, Dr. Weinberg indicated:

“[Appellant] was seen at my office on January 26, 1994 for injuries sustained in a January 17, 1994 motor vehicle accident. She had injuries to her low back, neck and right hip region. She was treated by me and released in November 1994 with continued low back stiffness and right hip pain. Her pain at the time of her release was directly attributed to the [motor vehicle accident]. She has been seen periodically for her complaints at our office and her condition is related to the injuries of January 17, 1994.

Appellant submitted the emergency room record from January 17, 1994, which indicated that she was treated for a cervical strain on that date.

By decision dated February 21, 2003, the Office accepted appellant’s claim for a cervical strain.

In a report dated February 14, 2003, Dr. Hasz noted:

“We do believe to a reasonable degree of medical certainty that her current pain is a direct result of the automobile accident she sustained in 1994. She did initially have a cervical injury as well, but it has completely resolved and is no longer a significant issue.”

Dr. Hasz listed appellant’s diagnoses as: lumbar annular tears, lumbar facet syndrome, lumbar radiculitis, sacroilitis and lumbar disc degeneration.

² In his August 3, 1994 report, Dr. Weinberg diagnosed lumbar subluxation sprain/strain by x-ray. Therefore, Dr. Weinberg’s opinion is interpreted as a physician’s opinion under the Act. See 5 U.S.C. § 8101(2).

By letter dated March 19, 2003, the Office referred appellant to Dr. Robert Allen Smith, a Board-certified surgeon, for a second opinion. In an April 18, 2003 report, Dr. Smith noted that he conducted a physical examination and reviewed appellant's medical records. He concluded:

"[B]ased on the record from Alexandria Hospital, it appears that [appellant] sustained, by history, a minor soft tissue strain of the neck and contusion of the right ribcage in this accident. The hospital did not report any evidence of acute back injury or even any symptoms regarding the back. It is also noted that [appellant] has a preexisting problem with her back that required treatment while she lived in Germany [as related by appellant], although this fact was never reported to any of her treating physicians. Based on those medical facts, [appellant] does not have any lumbar condition that is causally related to the January 17, 1994 injury.

"Diagnosis with regard to the motor vehicle accident of January 17, 1994, is mild soft tissue strain of the neck and contusion to the ribs. Fair and reasonable treatment for such conditions would include around a month of physical therapy directed to the neck, appropriate medication and a few days of rest.

"There is no evidence that [appellant] has any ongoing objective residual with regard to her accepted condition of cervical strain from the January 17, 1994 accident. As noted above, the record from Alexandria Hospital does not support an acute injury to the back from this accident. There is a preexisting history of back pain that required some treatment."

By decision dated June 19, 2003, the Office denied appellant's claim as it found that her lumbar condition was not causally related to the January 17, 1994 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

ANALYSIS

In this case, the Office accepted that appellant sustained a cervical strain as a result of the taxi collision on January 17, 1994, but has denied that appellant's lumbar condition is causally related to this incident. In support of causal relationship, Dr. Kahanovitz indicated that appellant had pain to palpitation at the lumbosacral junction directly related to her automobile accident. However, his opinion was based on an examination conducted approximately 11 months after the January 17, 1994 motor vehicle accident. Dr. Hasz indicated in a report dated March 18, 2002, that the diagnoses of lumbar annular tears and low back pain, within a reasonable degree of certainty, were directly related to the January 17, 1994 accident. He based this in part on the fact that appellant had no previous episodes of back pain or other symptoms prior to the accident. However, Dr. Hasz noted that his initial evaluation of appellant was on October 18, 1999 over five years after the 1994 motor vehicle accident. The only condition that was indicated in the emergency room report, which is the most contemporaneous with the January 17, 1994 employment injury, is a cervical strain which the Office accepted on February 21, 2003. There is no medical evidence contemporaneous with the 1994 employment injury that indicates that appellant sustained low back pain as a result of the accident. Dr. Smith noted that this initial hospital report did not report any evidence of any back symptoms. He noted that appellant had a preexisting condition of back pain that required some treatment, a fact of which Dr. Hasz appeared unaware. The Board finds that the Office properly relied on Dr. Smith's well-reasoned opinion in concluding that appellant's back pain was not caused by her January 17, 2004 employment injury. He addressed the absence of medical records indicating low back pain contemporaneous with the injury and the fact that she had a preexisting history of back pain which required medical treatment.

CONCLUSION

Under the circumstances described above, the Board finds that the Office properly determined that appellant had not met her burden of proof in establishing that her lumbar condition was causally related to her January 17, 2004 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 19, 2003 is affirmed.

Issued: May 7, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member