

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

CHRISTINA M. PALMIERI, Appellant)	
)	
and)	Docket No. 04-1514
)	Issued: March 8, 2005
DEPARTMENT OF THE AIR FORCE,)	
EIELSON AIR FORCE BASE,)	
Anchorage, AK, Employer)	
)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Christina M. Palmieri, pro se</i>	
<i>Office of the Solicitor, for the Director</i>	

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On May 24, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 24, 2004. Under 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 as of October 14, 1997 causally related to her accepted low back strain.

FACTUAL HISTORY

This is the second appeal in this case before the Board. Appellant, a 29-year-old program technician, injured her back on April 23, 1996 while bending over to pick up some toys. On May 30, 1996 appellant injured her back when a child jumped on her back. The Office accepted appellant's claim for low back strain. On October 14, 1997 appellant filed a Form CA-2a claim for benefits, alleging that she sustained a recurrence of disability, which was causally related to

her accepted low back strain.¹ By decisions dated January 5 and November 19, 1998, the Office denied appellant compensation for a recurrence of her accepted low back strain.

In a report dated November 20, 1999, Dr. Cary S. Keller, a specialist in orthopedic surgery and the attending physician, stated that appellant had related a pattern of recurring injuries and frequent exacerbation of symptoms between 1996 and 1998; however, he believed that these were mostly subjective complaints unsupported by objective findings. Dr. Keller noted that the most recent examinations contained in the medical records demonstrated full range of motion and normal objective neurologic testing. He further stated that reports from several physicians indicated that she showed consistent and significant symptom magnification. Although Dr. Keller acknowledged that appellant had degenerative disc disease and a disc herniation at L5-S1, which could be expected to produced chronic, intermittent low back pain with repeated episodes, he opined that it was not “appropriate to consider the frequency of [appellant’s] subjective complaints or reported reinjuries as a reputable basis for a claim of significant exacerbation or permanent worsening.” Dr. Keller advised that there was no basis for judging the possibility of any current limited capacity, but that based on the normal examinations she underwent early in 1998, there would be no basis for restriction of activity at that time.

By decision dated February 17, 2000, the Office again denied appellant’s claim for a recurrence for disability on reconsideration. By letter dated January 19, 2001, appellant’s representative requested reconsideration. By decision dated February 9, 2001, the Office denied appellant’s request for reconsideration on the grounds that she had not submitted new and relevant medical evidence or raised new, substantive legal questions.

In a May 9, 2002 decision,² the Board reversed the Office’s decision. The Board found that appellant had submitted a January 30, 2001 magnetic resonance imaging (MRI) scan report from Dr. Thomas Brown, a Board-certified radiologist, which was received by the Office on February 6, 2001, three days before the Office’s February 6, 2001 decision. The Board found that Dr. Brown’s report constituted relevant medical evidence, which the Office did not review and therefore remanded the case for merit review of this evidence. The facts of this case are set forth in the Board’s May 9, 2002 decision and are herein incorporated by reference.

Dr. Brown stated that the MRI scan showed findings of mild to moderate disc degeneration and mild disc space narrowing present at L5-S1. He further stated that at the L5-S1 level there was a small shallow midline and left paramedian disc protrusion in association with an annular tear, with no spinal canal stenosis or nerve root impingement. Dr. Brown advised that the rest of the examination was unremarkable except for early degenerative facet joint changes at L5-S1.

By decision dated July 30, 2002, the Office denied appellant’s claim, finding that she failed to submit sufficient medical evidence to establish that the claimed recurrence of disability was caused by her accepted conditions.

¹ Appellant submitted several Form CA-8 claims, seeking compensation for total disability for various periods during 1997.

² Docket No. 01-1433 (issued May 9, 2002).

By letter dated July 25, 2003, appellant's attorney requested reconsideration of the July 30, 2002 decision. Appellant submitted reports dated December 22, 1998 and July 7, 2003 from Dr. Markus Kornberg, a Board-certified orthopedic surgeon. On December 22, 1998 Dr. Kornberg related complaints of back pain, as well as left lower extremity, buttock, posterior thigh and calf pain. He advised that appellant had restricted flexion due to pain localized to the left paralumbar and buttock region, with left paralumbar tenderness and left buttock tenderness. Dr. Kornberg opined that appellant was neurologically intact with symmetrical strength, sensibility and reflexes. He diagnosed persistent and limiting left sciatica likely secondary to lumbar disc pathology. On July 7, 2003 Dr. Kornberg stated:

“[Appellant's] present condition specifically that of back pain with left sciatica is related directly to an industrial event that occurred April 23, 1996. The patient's history of injury back complaints with radicular complaints correlate well to objective findings found on the MRI [scan]. [Appellant's] symptoms and findings were consistent since initial evaluation in this office on December 22, 1998.”

By decision dated March 24, 2004, the Office affirmed the July 30, 2002 decision.

LEGAL PRECEDENT

When an employee, who is disabled from the job held when injured on account of employment-related residuals, returns to a light-duty position or when medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.³

ANALYSIS

In the instant case, appellant has failed to submit sufficient medical evidence containing a rationalized, probative opinion which relates her disability for work as of October 14, 1997 to her accepted low back strain. There is no rationalized medical evidence of record that appellant's accepted low back strain materially worsened causing disability after October 14, 1997, or that her back condition after this date was caused by the accepted employment incidents. For this reason, she has not discharged her burden of proof to establish her claim that she sustained a recurrence of disability as a result of her accepted employment injury.

Dr. Keller stated in a November 20, 1999 report that, based on the normal examinations appellant underwent early in 1998, there would be no basis for imposing restrictions on her activity at that time. He advised that appellant had a pattern of claiming recurring injuries and frequent exacerbation of symptoms between 1996 and 1998, but stated that these were subjective complaints unsubstantiated by objective findings. Dr. Keller noted that her most recent examinations demonstrated full range of motion and normal objective neurologic testing, in addition to “consistent and significant symptom magnification.” While appellant did experience

³ *Ralph C. Spivey*, 53 ECAB 248 (2001).

degenerative disc disease and a disc herniation at L5-S1, which could be expected to produce chronic, intermittent low back pain with repeated episodes, Dr. Keller stated that there was no reason to conclude, based on appellant's frequent subjective complaints and alleged reinjuries, that she had sustained any significant exacerbation or permanent worsening of her low back conditions.

Following remand, appellant submitted a July 7, 2003 report from Dr. Kornberg, who stated that appellant's present condition was related directly to her April 23, 1996 employment injury. He advised that her history of back complaints with radicular complaints correlated well to objective findings found on the MRI scan and that her symptoms and findings were consistent since his initial December 22, 1998 evaluation. This report, however, other than summarily relating appellant's current condition to the April 23, 1996 work injury, essentially reiterates the findings and conclusions of Dr. Kornberg's December 22, 1998 report, which was previously rejected by the Office. The accepted condition in this case was a low back strain. Dr. Kornberg's medical reports never offered any medical explanation as to how the objective findings on MRI scan were a progression, a material worsening, of the accepted low back strain, nor did Dr. Kornberg offer any medical explanation as how the accepted incident would have physiologically caused these additional medical findings. Dr. Kornberg's reports are not sufficient to meet appellant's burden to submit probative, rationalized medical evidence to establish that she sustained a recurrence of disability as of October 14, 1997, due to the accepted employment injury. Dr. Kornberg's reports do not demonstrate a causal relation between appellant's employment-related conditions and her alleged recurrence of disability on October 14, 1997. Causal relationship must be established by rationalized medical opinion evidence. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁴ Dr. Kornberg's reports failed to provide a rationalized, probative medical opinion indicating that her condition as of October 14, 1997 was caused or aggravated by the accepted low back strain and resulted in her total disability.⁵

The report from Dr. Brown merely stated findings from an MRI scan of mild to moderate disc degeneration and mild disc space narrowing at the L5-S1 level. Dr. Brown noted some disc protrusion in association with an annular tear, but no spinal canal stenosis or nerve root impingement. He did not address the issue of whether appellant's findings were causally related to the 1996 employment injury or whether they caused total disability. Appellant failed to submit rationalized medical opinion evidence establishing that she became totally disabled due to a recurrence of her accepted low back conditions on or after October 14, 1997. The Office properly found that appellant did not meet her burden of proof in establishing that she sustained a recurrence of disability. The Board will affirm the Office's March 24, 2004 decision, denying benefits for a recurrence of disability.

⁴ See *Anna C. Leanza*, 48 ECAB 115 (1996).

⁵ *William C. Thomas*, 45 ECAB 591 (1994).

CONCLUSION

The Board finds that appellant has not met her burden to establish that she was entitled to compensation for a recurrence of disability as of October 14, 1997 causally related to her accepted low back strain.

ORDER

IT IS HEREBY ORDERED THAT the March 24, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 8, 2005
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member