United States Department of Labor
Employees' Compensation Appeals Board

DIANA C. COLCLOUGH, Appellant	)	
and	)	**Docket No. 06-196**
	)	**Issued: April 4, 2006**
U.S. POSTAL SERVICE, NEW JERSEY INTERNATIONAL & BULK MAIL CENTER, Jersey City, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 1, 2005 appellant filed an appeal from a June 15, 2005 decision of the Office of Workers' Compensation Programs which denied that she sustained a recurrence of disability on April 22, 2002. 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 met her burden of proof to establish that she sustained a recurrence of disability on April 22, 2002 causally related to her June 30, 2001 employment injury.

FACTUAL HISTORY

On June 30, 2001 appellant, then a 41-year-old mail handler, sustained an employment-related dislocation of the first interphalangeal joint of the second digit of her left foot when it was caught between the forklift she was driving and a trailer. She stopped work that day and

came under the care of Dr. Teresa Vega, an orthopedic surgeon, who provided reports dated July 9 and 12, 2001. Dr. Vega diagnosed the dislocated toe and advised that appellant could not work. A July 25, 2001 magnetic resonance imaging (MRI) scan of the left ankle, read by Dr. Mary Ann Peterson, a Board-certified radiologist, demonstrated a thickening of the distal Achilles tendon with a small area consistent with a partial tear, possibly chronic. Appellant returned to work for 4.78 hours on July 19, 2001.

In a July 30, 2001 report, Dr. Vega noted that she had ordered the MRI scan because she found a fullness in appellant's Achilles tendon, although appellant did not complain of pain in the area. She noted the MRI scan findings and opined, "I do not think this is a new injury but I think that it was aggravated by the injury," and suggested casting for at least six weeks. Dr. Vega advised that appellant could not work. The cast was removed in October 2001 and physical therapy was authorized. In a form report dated November 12, 2001, she opined that appellant could return to work on November 22, 2001.

In reports dated December 12 and 19, 2001, Dr. Vega advised that appellant's Achilles tendon had healed but that she had developed back strain due to the way she was ambulating on crutches. Examination findings included low back pain with no radiation and negative straight leg raise testing bilaterally. Sensory examination was normal. She continued to find that appellant could not work because she was undergoing physical therapy. On January 14, 2002 Dr. Vega advised that appellant could return to work on January 24, 2002. In a January 23, 2002 report, Dr. Vega noted that appellant's back was not better. Thoracolumbar spine x-ray revealed no abnormalities, and the physician recommended an MRI scan. A February 15, 2002 MRI scan of the lumbar spine, read by Dr. Robert Einhorn, Board-certified in radiology, demonstrated a small central L5-S1 herniated nucleus pulposa not causing any significant impression upon the thecal sac or nerve roots. A February 20, 2002 MRI scan of the thoracic spine was interpreted by Dr. Lai-No Chiu-Serodio, a Board-certified radiologist, as demonstrating no disc herniation, spinal canal stenosis or neural foraminal narrowing. A right T7 pedicular lesion was visualized, and a contrast enhanced examination was recommended to exclude pathology for metastases. In a February 27, 2002 report, Dr. Vega advised that the lesion at T7 was not related to appellant's work injury. She continued to advise that appellant was totally disabled pending further MRI scan studies. An April 4, 2002 MRI scan of the thoracic spine with and without contrast demonstrated mild scoliosis but no definite evidence of a focal lesion at T7. In an April 17, 2002 report, Dr. Vega noted that appellant had no problems with her feet, reported that the MRI scan had been normal but that appellant experienced back discomfort. She advised that appellant could return to light duty with no heavy lifting, and on April 18, 2002 advised that appellant could return to work with a 20-pound lifting restriction.

Appellant returned to limited duty on April 22, 2002. On May 13, 2002 she filed a recurrence of disability claim, stating that she had to stop work on April 26, 2002 due to extreme back pain. In a report dated May 21, 2002, Dr. Vega noted that appellant came into the office in severe pain and "says she strained her back." By letter dated July 31, 2002, the Office informed appellant of the evidence needed to support her recurrence claim. In a decision dated September 9, 2002, the Office denied the claim on the grounds that the medical evidence was insufficient to establish total disability due to the accepted injury.

On September 27, 2002 appellant, through counsel, requested a hearing and submitted a September 30, 2002 report from Dr. Clifford Botwin, an osteopathic physician specializing in orthopedic surgery, noted that appellant had been injured at work on June 30, 2001 while driving a forklift and had injured her toes and foot and "apparently had pain and discomfort in her back." He noted that she returned to work with lifting restrictions but stopped due to increasing pain and discomfort. Dr. Botwin indicated that a herniated disc as L5-S1 was demonstrated on MRI scan. Dr. Botwin stated that appellant walked very slowly with a cane and had limited range of motion of the spine due to "apparent" muscle spasm. Neurologic examination was normal. His diagnostic impression included chronic lumbar strain and sprain, and concluded, "within a reasonable degree of medical probability, the injuries that [she] sustained are causally related to the work accident of June 30, 2001 and are permanent in nature." Dr. Botwin recommended physical therapy and medication and advised that she could not work. His subsequent reports noted appellant's complaint of severe pain and advised that she could not work.

Dr. Botwin referred appellant to Dr. Ralph E. Sweeney, Jr., a Board-certified orthopedic surgeon, who provided a January 13, 2003 report in which he reviewed the history of injury and appellant's treatment for her Achilles tendon and back problems. He also reviewed medical records, noting that she was in an automobile accident in January 1999. Appellant's complaints was of back pain radiating into her left leg and knee with buttocks pain on the right, radiating into her right leg. Dr. Sweeney noted examination findings and his review of the February 15, 2002 lumbar spine MRI scan which he interpreted as showing degenerative disc disease at L5-S1 with a minimal posterior bulge at L4-5 and a diffuse disc bulge with possible annular tear at L5-S1 and mild narrowing of the L5-S1 facet joint. He recommended steroid injections and opined that appellant's prognosis was poor. On April 4, 2003 Dr. Sweeney performed discography from L2 to S1 which indicated that appellant had painful degenerative disc disease from L5 to S2. In an April 8, 2003 report, Dr. Sweeney reviewed the discography findings and recommended surgery, for which he requested authorization.

In a May 23, 2003 report, an Office medical adviser stated that the proposed surgery should not be authorized, advising that the medical evidence did not support that appellant's discogenic disease or lumbar instability were causally related to her employment. By letter dated June 3, 2003, the Office informed appellant that the surgery was not authorized. In a June 12, 2003 report, Dr. Sweeney opined that, "based upon the history," appellant's painful degenerative disc disease was directly related to the June 30, 2001 employment injury. By report dated August 21, 2003, he opined that appellant's mechanism of injury on June 30, 2001 "is consistent with producing a painful degenerative disc at L5-S1. It is my opinion that crutch ambulation is not a reasonable mechanism of injury." Dr. Sweeney stated that, because appellant had no documented back pain for three and a half months following the work injury, "it is my opinion that, without documentation that the pain did occur in the proximity of the accident of June 30, 2001, there is no documentation to support [her] claim that her present low back pain is related to the accident of June 30, 2001."

By decision dated October 2, 2002, an Office hearing representative remanded the case to determine if appellant's work-related back problems rendered her disabled from her light-duty job beginning April 26, 2003.

On January 26, 2004 the Office referred appellant, together with the medical record, a statement of accepted facts, a set of questions, to Dr. Iqbal Ahmad, a Board-certified orthopedic surgeon, for a second opinion evaluation. In reports dated February 24 and 25, 2004, he reviewed the medical record and statement of accepted facts, and appellant's past history. He noted that she injured her back in 1993 and her back and neck in 1999 when she was involved in a motor vehicle accident. Dr. Ahmad reported appellant's complaints of pain and his review of MRI scan films which demonstrated a disc herniation at L5-S1 and arthritis of the spine. Examination findings included complaints of pain on palpation in the cervical and low back areas with limited range of motion. He diagnosed spinal sprain and arthritis and a sprain of the left foot and dislocation of the second toe. Regarding the Achilles tendon, Dr. Ahmad stated that his examination and review of the MRI scan revealed no findings which would suggest that the June 30, 2001 injury aggravated any chronic tear, noting there was no evidence of any definite tear on the MRI scan. He found no relationship between appellant's work stoppage on April 26, 2002 and the employment injury of June 30, 2001 or that the accepted injury aggravated her spinal arthritis. Dr. Ahmad opined that she could return to light duty for 8 hours a day with a 20-pound lifting restriction, and attached a work capacity evaluation.

In a decision dated April 6, 2004, the Office denied appellant's recurrence of disability claim on the grounds that the medical evidence of record failed to demonstrate that her disability was causally related to the June 30, 2001 injury. Surgery and further medical treatment were not authorized. On April 12, 2004 appellant, through counsel, requested a hearing. In an August 28, 2004 report, Dr. Sweeney advised that he first saw appellant on January 9, 2003 and reviewed appellant's treatment course. He noted that the first reference to back pain in her medical records was by a physical therapist on October 18, 2001, and that this was first noted by Dr. Vega on December 11, 2001. He again reported that examination findings as supported by her MRI scan and discogram confirmed a disc bulge at L5-S1 and painful degenerative disease. Dr. Sweeney noted his review of Dr. Ahmad's report and opined that the June 30, 2001 injury was sufficient to produce painful degenerative disc disease at L5-S1, especially with preexisting degenerative changes, and that she would have ongoing back pain without surgery.

At the hearing, held on February 15, 2005, appellant testified regarding the work injury, stating that she repeatedly told Dr. Vega about her back pain from the date of injury. She testified that when she returned to work in April 2002 she was working within her restrictions but that mid back pain prevented her from working. Appellant stated that she retired on disability and was working a temporary position as a switchboard operator. Her counsel argued that the employment injury aggravated her underlying degenerative disc disease. By decision dated June 15, 2005, an Office hearing representative affirmed the April 6, 2004 decision, finding the weight of the medical evidence rested with the opinion of Dr. Ahmad. She, however, found that the case should remain open for medical care for the accepted conditions as Dr. Ahmad did not opine that her work-related conditions had resolved.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment

that caused the illness.[1] This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[2]

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.[3]

In assessing medical evidence, the number of physicians supporting one position or another is not controlling. The weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[4]

ANALYSIS

The Board finds that appellant did not submit medical evidence sufficient to establish that she sustained a recurrence of disability on April 22, 2002 causally related to the June 30, 2001 employment injury. In order to establish a claim for a recurrence of disability, a claimant must establish that he or she suffered a spontaneous material change in the employment-related condition without an intervening injury.[5]

The Board initially notes that the record indicates that appellant's lengthy disability from June 30, 2001 to April 22, 2002 was for an injury to her Achilles tendon which has not been accepted as employment related. The first report of this condition was on an MRI scan dated July 25, 2001 which advised that appellant had a partial chronic tear of the Achilles tendon. There is no medical evidence of record that provides a rationalized explanation regarding how this chronic condition was caused by the June 30, 2001 forklift accident or any other factor of appellant's federal employment. While Dr. Vega, appellant's attending orthopedist, stated in a July 30, 2001 report that she did not think appellant's Achilles tendon injury was new but

[1] 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB ___ (Docket No. 04-887, issued September 27, 2004).

[2] *Id.*

[3] *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Robert Kirby*, 51 ECAB 474 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

[4] *Anna M. Delaney*, 53 ECAB 384 (2002).

[5] 20 C.F.R. § 10.5(x); *Theresa L. Andrews, supra* note 1.

thought it was aggravated by the injury, the Board finds this opinion equivocal and of insufficient rationality to support that appellant's Achilles tendon condition was caused or aggravated by the June 30, 2001 employment injury. The medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty but it cannot be speculative or equivocal. The opinion must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[6]

Dr. Ahmad, who provided a second opinion evaluation for the Office, advised that his examination and review of the foot MRI scan revealed no findings which would suggest that the June 30, 2001 injury aggravated a chronic Achilles tendon tear, noting that there was no evidence of a definite tear on the MRI scan. The initially accepted condition in this case was a dislocation of the first interphalangeal joint of the second digit. The Office later accepted lumbosacral strain caused by appellant's abnormal gait while ambulating on crutches. The Board, however, notes that appellant was on crutches because she was casted for her Achilles tendon condition, not the accepted toe dislocation, and her disability was extended from February 2002, again for a nonwork-related condition when a February 20, 2002 MRI scan of the thoracic spine demonstrated a right T7 pedicular lesion interpreted as a possible metastasis. In fact, Dr. Vega had advised that appellant could return to work on January 24, 2002 and specifically stated that the T7 lesion was not related to appellant's employment injury.

It is well established that medical reports must be in the form of a reasoned opinion by a qualified physician and must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value.[7] The medical evidence must explain from a medical perspective how the current condition is related to the injury.[8] The medical evidence contemporaneous with appellant's claimed recurrence includes an April 17, 2002 report in which Dr. Vega noted that appellant had no problems with her feet; reported that the MRI scan had been normal but that appellant continued to have back discomfort. She advised that appellant could return to light duty with no heavy lifting, and on April 18, 2002 advised that appellant could return to work with a 20-pound lifting restriction. In a report dated May 21, 2002, Dr. Vega noted that appellant came into the office in severe pain and "says she strained her back." There is nothing in this report, however, to support that appellant injured her back at work or that she could not do her limited-duty job. Dr. Vega's opinion is therefore insufficient to establish appellant's claim that she sustained a recurrence of disability on April 22, 2002.

In September 2002 Dr. Botwin opined that appellant "apparently had pain and discomfort in her back" from the time of the June 30, 2001 employment injury and noted that she stopped work due to increasing pain and discomfort with a herniated disc demonstrated on MRI scan and

[6] *Patricia J. Glenn*, 53 ECAB 159 (2001).

[7] *William D. Farrior*, 54 ECAB 566 (2003); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[8] *Tomas Martinez*, 54 ECAB 623 (2003).

concluded that this was causally related to the June 30, 2001 employment injury. The Office, however, has not accepted as work related that appellant sustained a herniated disc or aggravation of her degenerative disc disease. For conditions not accepted by the Office as being employment related, it is appellant's burden to provide rationalized medical evidence sufficient to establish causal relationship,[9] and a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion that the condition was caused by the employment injury and is unsupported by medical rationale.[10] Thus, as Dr. Botwin provided no explanation for his conclusion that appellant's herniated disc was caused by the employment injury or why appellant could not perform her limited-duty job, his opinion is insufficient to establish that this condition was caused by the June 30, 2001 employment injury or to establish appellant's recurrence claim.

By report dated June 12, 2003, Dr. Sweeney opined that, based upon appellant's history, her painful degenerative disc disease was directly related to the June 30, 2001 employment injury, and in reports dated August 21, 2003 and August 28, 2004 opined that the mechanism of injury was consistent with producing a painful degenerative disc at L5-S1. He disagreed with the previous conclusion that appellant's back pain was caused by ambulation with crutches but admitted that there was no documentation in the medical record to support her claim that her back hurt immediately following the June 30, 2001 injury because it was not documented for three and a half months. Dr. Sweeney still felt, however, that the work injury was sufficient to produce painful degenerative disc disease at L5-S1. The Board finds that Dr. Sweeney's opinion lacks sufficient rationale to meet appellant's burden of proof. While he opines that the employment injury could have caused appellant's back problems, his opinion lacks the certainty needed to establish her claimed recurrence or that her current degenerative back condition was caused or aggravated by the employment injury.[11] He did not discuss the ramifications of appellant's previous back injuries that occurred in 1993 and 1998 and, furthermore, the Board has held that, when diagnostic testing is delayed, uncertainty mounts regarding the cause of the diagnosed condition and a question arises as to whether that testing in fact documents the injury claimed by the employee. The greater the delay in testing, the greater the likelihood that an event not related to employment has caused or worsened the condition for which the employee seeks compensation.[12] In this case, the lumbar spine MRI scan that demonstrated the herniated disc at L5-S1 was not done until February 15, 2002, seven and one-half months after the June 30, 2001 employment injury, and the medical record contains no complaints of back pain for over three months after the employment injury.

The Board finds that the weight of the medical evidence rests with the opinion of Dr. Ahmad, the second opinion examiner. In his reports dated February 24 and 25, 2004, the physician noted his review of the medical record and statement of accepted facts, and appellant's

[9] *Alice J. Tysinger*, 51 ECAB 638 (2000).

[10] *See Albert C. Brown*, 52 ECAB 152 (2000).

[11] *See John W. Montoya*, 54 ECAB 306 (2003) (the physician must provide an opinion on whether the employment incident described caused or contributed to claimant's diagnosed medical condition and support that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical and rational).

[12] *Mary A. Ceglia*, 55 ECAB ____ (Docket No. 04-113, issued July 22, 2004).

past history including that she injured her back in 1993 and her back and neck in 1999 when she was involved in a motor vehicle accident. He reported her complaints of pain and his review of MRI films and examination findings. Dr. Ahmad diagnosed spinal sprain and arthritis and a sprain of the left foot and dislocation of the second toe. He found no relationship between appellant's work stoppage on April 26, 2002 and the employment injury of June 30, 2001 or that this injury aggravated her spinal arthritis. Dr. Ahmad opined that she could return to light duty for eight hours a day with a 20-pound lifting restriction, the same lifting restriction provided by Dr. Vega in 2002.

It is appellant's burden of proof to submit the necessary medical evidence to establish a claim for a recurrence. A mere conclusion without the necessary medical rationale explaining how and why the physician believes that a claimant's accepted exposure would result in a diagnosed condition is not sufficient to meet the claimant's burden of proof. The medical evidence must also include rationale explaining how the physician reached the conclusion he or she is supporting.[13] The record in this case does not contain a medical report providing a reasoned medical opinion that appellant's claimed back conditions or recurrence of disability were caused by the June 30, 2001 employment injury,[14] or that is sufficient to establish a conflict in medical opinions.[15]

Finally, to the degree that appellant is requesting authorization for back surgery, as neither a herniated disc nor degenerative disc disease have been accepted as employment related, the Office properly denied authorization for any recommended surgical procedure.[16]

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a recurrence of disability on April 26, 2002 causally related to her accepted employment injuries.

[13] *Beverly A. Spencer*, 55 ECAB ____ (Docket No. 03-2033, issued May 3, 2004).

[14] The Board notes that the case at hand can be distinguished from those cases wherein a claimant returned to light-duty work for a brief period and his or her disability was supported by a physician's opinion with no evidence that his or her inability to perform the light-duty position was due to any factor other than her employment-related condition. In this case appellant's attending physician, Dr. Vega, unequivocally advised that she could return to work with her only restriction that she not lift heavier than 20 pounds and Drs. Botwin and Sweeney advised that her inability to work was due to degenerative disc disease of the lumbar spine, not an accepted condition. *Janice F. Migut*, 50 ECAB 166 (1998).

[15] In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight. *Manuel Gill*, 52 ECAB 282 (2001).

[16] To be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury by submitting rationalized medical evidence that supports such a connection and demonstrates that the treatment is necessary and reasonable. *Glen E. Shriner*, 53 ECAB 165 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 15, 2005 is hereby affirmed.

Issued: April 4, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board