United States Department of Labor
Employees' Compensation Appeals Board

T.B., Appellant	)	
and	)	**Docket No. 06-1095**
	)	**Issued: April 5, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Galvin, WA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 10, 2006 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated March 22, 2006 which denied her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a new injury to her left leg on February 16, 1999; and (2) whether her sexual dysfunction was causally related to her December 2, 1997 employment injury and, if so, would she then be entitled to a schedule award.

FACTUAL HISTORY

This case has been before the Board on prior occasions.[1] By decision dated July 27, 2000, the Board set aside a January 26, 1999 Office decision and remanded the case to the Office to determine the rate of pay for compensation purposes.[2] On August 3, 2000 appellant filed a schedule award claim and on August 20, 2001 was granted an award for a 43 percent permanent loss of use of the left lower extremity. On August 21, 2001 she requested a review of the written record and argued that she was entitled to receive wage-loss compensation and concurrent schedule award compensation because she sustained a new injury on February 16, 1999 when she developed foot drop. By decision dated March 15, 2002, an Office hearing representative affirmed the schedule award decision and interrupted appellant's temporary total disability for the term of the schedule award. On March 28 and April 3, 2002 appellant filed requests for reconsideration. On June 13, 2002 the Board dismissed her appeal at her request[3] and by decision dated August 8, 2002 the Office denied her reconsideration request. By letter dated August 16, 2002, appellant claimed that her sexual dysfunction should be covered by her schedule award claim and on August 14 and 18, 2002 requested reconsideration. In a decision dated April 11, 2003, the Office denied her reconsideration request. Appellant then filed an appeal with the Board and, by order dated October 14, 2004, the Board granted the Director's motion to remand and cancelled a schedule oral argument. The Director acknowledged that the Office precluded appellant from a merit review of the schedule award due to inordinate delays and requested that the case be remanded to the Office to conduct a merit review.[4] The law and facts of the previous Board decisions and orders are incorporated herein by reference.

Subsequent to the Board's October 14, 2004 order, in a January 6, 2005 decision, the Office found that appellant had not sustained a new leg injury on February 16, 1999 which would entitle her to concurrent compensation and that her sexual dysfunction was not caused by the employment injury. On July 8, 2005 appellant filed an appeal with the Board and, by order dated January 3, 2006, the Board remanded the case to the Office for reconstruction of the record, to be followed by an appropriate decision.[5] On March 22, 2006 the Office reissued the January 6, 2005 decision.

The medical evidence relevant to the issue of whether appellant sustained a new injury to her left leg on February 16, 1999 includes an operative report dated February 16, 1999 in which

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[1] On December 2, 1997 appellant, then a 47-year-old post master, sustained an employment-related lumbar strain and herniated disc at L5-6 for which she underwent surgery on June 25, 1998. She had a history of nonwork-related back surgery in 1988 and underwent an intestinal bypass procedure in 1999. Except for three days in November 1998, appellant has not worked since February 28, 1998. She underwent a second surgical procedure on February 16, 1999.

[2] Docket No. 99-1590 (issued July 27, 2000). By decision dated August 15, 2000, affirmed by an Office hearing representative on December 19, 2000, the Office determined that the proper rate of pay was $699.58, the date disability began. Appellant did not file an appeal of this decision with the Board.

[3] Docket No. 02-1258 (issued June 13, 2002).

[4] Docket No. 03-1460 (issued October 14, 2004).

[5] Docket No. 05-1554 (issued January 3, 2006).

Dr. Reginald Q. Knight, a Board-certified orthopedic surgeon, advised that he performed redecompression laminectomy at L4-5. In treatment notes dated March 15 and 19, 1999, Dr. Knight advised that appellant had some symptoms of L5-S1 paresthesia which could be associated with manipulation of the nerve at surgery and on April 30, 1999 reported that she had complaints consistent with early sympathetic dystrophy. In an August 27, 1999 report, Dr. Keith V. Anderson, Board-certified in orthopedic surgery, noted appellant's complaints of left lower extremity L5 weakness and that she reported bowel, bladder and sexual difficulties. He diagnosed failed back syndrome with anxiety overlay. In a December 29, 1999 consultation report, Dr. Steven Tung, a Board-certified anesthesiologist, noted appellant's complaints of chronic low back and leg pain. He diagnosed lumbar radiculopathy, L5, left, status post decompressive laminectomy times three.

By report dated May 16, 2000, Dr. Gregory T. Carter, a Board-certified physiatrist, advised that appellant had obvious left foot drop. In reports dated November 16 and 29, 2000, Dr. Carter, who performed an impairment rating, advised that, following three surgical procedures, appellant was left with chronic L4-5 radiculopathy and foot drop with objectively documented atrophy and significant motor loss. In numerous treatment notes and reports dating from September 22, 1998 to February 23, 2000, Dr. Michael W. Strohbach, Board-certified in family medicine, noted diagnoses including sympathetic dystrophy and treatment for appellant's back and leg conditions and chronic pain.

The evidence relevant to appellant's claim for sexual dysfunction includes an intake form prepared by appellant for a second opinion evaluation with Dr. Ron Brockman, an osteopath practicing orthopedics. In that form, appellant alleged that she could not have sex due to pain. In his report dated January 13, 1999, Dr. Brockman diagnosed degenerative changes in the lumbar spine, aggravated by the employment injury. In his report dated August 27, 1999, Dr. Anderson noted appellant's complaint of sexual difficulties. Dr. Carter advised in November 2000 that, while appellant complained of bladder and bowel dysfunction, she had no electromyographic (EMG) evidence of bladder or bowel dysfunction or evidence of cauda equina syndrome.[6]

LEGAL PRECEDENT -- ISSUE 1

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.[7] The Board has defined "the same injury" as used in the above section to include an injury which is suffered

[6] Cauda equina syndrome is defined as a dull aching pain of the perineum, bladder and sacrum, generally radiating in a sciatic fashion, with associated paresthesias and a reflexic paralysis, due to compression of the spinal nerve root. *Dorland's Illustrated Medical Dictionary*, 29th edition (2000).

[7] Larson, *The Law of Workers' Compensation* § 1300; *see Charles W. Downey*, 54 ECAB 421 (2003).

as a consequential effect of a primary employment-related injury,[8] finding that a consequential injury "does not constitute a new, separate, or independent injury."[9]

Section 8116(a) of the Federal Employees' Compensation Act[10] provides that an employee who receives continuing compensation or has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, may not receive salary, pay or remuneration of any type from the United States,[11] and it is a well-established principle that a claimant is not entitled to dual workers' compensation benefits for the same injury.[12] With respect to benefits under the Act, the Board has held that an employee cannot concurrently receive compensation under a schedule award and compensation for disability for work.[13]

ANALYSIS -- ISSUE 1

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a new left lower extremity injury on January 16, 1999 such that she would be entitled to a schedule award compensation concurrently with wage-loss compensation. The only medical report that discusses the cause of this condition are the treatment notes dated March 15 and 19, 1999 in which Dr. Knight, who performed the surgery, advised that appellant had some symptoms of L5-S1 paresthesia which could be associated with manipulation of the nerve at surgery and on April 30, 1999 reported that she had complaints consistent with early sympathetic dystrophy. Other medical reports from Drs. Anderson, Tung, Carter and Strohbach note her left lower extremity condition, but none of these physicians provided an opinion regarding its cause, and medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[14]

The medical record supports that appellant developed left foot drop after the surgical procedure she had on January 16, 1999. It would thus be a consequential injury, not a new injury, and appellant received an appropriate schedule award for a 43 percent left lower extremity impairment on August 20, 2001. The Board therefore finds that appellant would not be entitled to receive schedule award compensation concurrently with wage-loss compensation.[15]

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[8] *Ruey J. Yu*, 49 ECAB 256 (1997).

[9] *Id.*

[10] 5 U.S.C. §§ 8101-8193.

[11] 5 U.S.C. § 8116(a); *see also* 20 C.F.R. § 10.400(b); *Dale Mackelprang*, 55 ECAB 174 (2003).

[12] *James A. Earle*, 51 ECAB 567, 568 (2000).

[13] *Id.*

[14] *Willie M. Miller*, 53 ECAB 697 (2002).

[15] *James A. Earle*, *supra* note 12.

LEGAL PRECEDENT -- ISSUE 2

Under section 8107 of the Act[16] and section 10.404 of the implementing federal regulations,[17] schedule awards are payable for permanent impairment of specified body members, functions or organs. No schedule award is payable for a member, function or organ of the body that is not specified in the Act or in the implementing regulations. The Act identifies members as the arm, leg, hand, foot, thumb and finger; functions as loss of hearing and loss of vision; and organs to include the eye. Section 8107(c)(22) of the Act provides for the payment of compensation for permanent loss of "any other important external or internal organ of the body as determined by the Secretary of Labor."[18] The Secretary of Labor has made such a determination and, pursuant to the authority granted in section 8107(c)(22), added the breast, kidney, larynx, lung, penis, testicle, ovary, uterus and tongue to the schedule.[19] It is the claimant's burden of establishing that he or she sustained a permanent impairment of a scheduled member or function as a result of an employment injury.[20]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[21] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 factors identified by the claimant.[22] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[23]

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[16] 5 U.S.C. § 8107.

[17] 20 C.F.R. § 10.404.

[18] 5 U.S.C. § 8107(c)(22).

[19] 5 U.S.C. § 10.404(a); *see Paul A. Zoltek*, 56 ECAB ___ (Docket No. 04-2185, issued February 9, 2005). The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.

[20] *Tammy L. Meehan*, 53 ECAB 229 (2001).

[21] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[22] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[23] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ANALYSIS -- ISSUE 2

The Board finds that the medical evidence does not support that the claimed sexual dysfunction condition was caused by or was a consequence of the accepted lumbar strain and herniated disc at L5-6. The only medical evidence that mentions the claimed condition are the reports of Dr. Brockman and Dr. Anderson who merely noted appellant's report that she could not have sex due to pain. The physicians' reports, however, do not contain a reasoned medical opinion regarding the cause of appellant's reported condition, and medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[24] The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[25] Moreover, even had appellant establish that any sexual dysfunction was employment related, she would not be entitled to a schedule award because this condition is not a scheduled member. For example, she has not established that she sustained loss to a scheduled member such as to her uterus or ovary.[26]

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a new injury to her left leg on February 16, 1999 or that any sexual dysfunction was causally related to her December 2, 1997 employment injury.

[24] *Willie M. Miller*, *supra* note 14.

[25] *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[26] 20 C.F.R. § 10.404(a); *compare Marilyn S. Freeland*, 57 ECAB ___ (Docket No. 06-563, issued June 7, 2006).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 22, 2006 be affirmed.

Issued: April 5, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board