

On January 16, 2004 Dr. Karen E. Kea, appellant's attending internist, addressed the issue of causal relationship:

"[Appellant] suffered her initial injury to her lower back and neck on January 13, 2002 when a cart she was moving tipped over jerking her, causing immediate back and neck pain. She had some partial improvement in pain until February 26, 2003 when she bent over to change paper in an ATM [sic] machine exacerbating her back pain. I saw [appellant] the following day at which time she had very tender back muscles in the lumbar area. She also demonstrated nerve irritation radiating into her right leg.

"It was established after the first injury that [appellant] had degenerative changes of her lumbar and cervical spine with disc protrusion at L5-S1. After evaluation in the spine clinic on August 2002, it was recommended that she limit lifting over 20 pounds and avoid many positional changes. [Appellant's] injury of February 26, 2003 occurred while bending and carrying at the job putting a load on her lower spine and this reagravating her pain. Since that time, she has had limited improvement in her symptoms."

On March 1, 2004 Dr. Manhal A. Ghanma, a Board-certified orthopedic surgeon and Office referral physician, offered a different view. He reported current objective findings related to pain behavior and symptom magnification, findings that could not be explained on a physiological basis, findings indicating nonorganic complaints. Dr. Ghanma stated: "The February 26, 2003 incident could not have caused any significant injury since all she did was bend down and straighten up." He added:

"I spent a considerable amount of time trying to understand how [appellant] might have been injured in the January 13, 2002 incident, but I could not arrive at the conclusion that any injury occurred.

"[Appellant's] current examination is full of nonorganic findings and symptom magnification, thereby, suggesting nonorganic and nonphysical causes for her symptoms.

"Her complaints far outweigh the symptoms expected with the condition diagnosed by her physician. The mechanism of injury described both in the January 13, 2002 incident and the February 26, 2003 incident are highly unlikely to have caused these conditions (low back pain, lumbar disc disease, neck sprain and cervical spondylosis) to occur, nor is there any medical evidence to substantiate that they were worsened by her work incidents."

In a decision dated May 31, 2006, the Office denied appellant's claim for compensation. The Office found that the weight of the medical evidence rested with the opinion of Dr. Ghanma, who reported that the work incident appellant described could not have caused the diagnosed condition.

LEGAL PRECEDENT

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Office shall appoint a third physician who shall make an examination.¹

ANALYSIS

A conflict in medical opinion exists between appellant's attending physician and the Office second opinion physician. Dr. Kea, appellant's internist, supported an injury on February 26, 2003 when the accepted employment activity placed a load on her previously injured lower spine, reaggravating her pain. Dr. Ghanma, the referral orthopedic surgeon, disagreed. It was his opinion that the mechanism of injury described in the February 26, 2003 incident was highly unlikely to have caused or aggravated any of appellant's conditions.

To resolve this conflict, the Office must refer appellant, together with the medical record and a statement of accepted facts, to an appropriate impartial specialist for an opinion on whether the February 26, 2003 incident at work caused an injury or aggravated a preexisting medical condition. After such further development of the evidence as may be necessary, the Office shall issue an appropriate final decision on appellant's claim for compensation.

CONCLUSION

The Board finds that this case is not in posture for decision. There is a conflict in medical opinion necessitating referral to an impartial medical specialist pursuant to 5 U.S.C. § 8123(a). Further development of the evidence is warranted.

¹ 5 U.S.C. § 8123(a).

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2006 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: April 24, 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