

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

B.Y., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Edison, NJ, Employer**

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Docket No. 06-2038

Issued: April 5, 2007

Appearances:

James D. Muirhead, 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

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 5, 2006 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated June 19, 2006 denying modification of a decision dated July 12, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this decision.

ISSUE

The issue is whether appellant sustained a recurrence of disability on September 1, 2004 causally related to her September 10, 2001 employment injury.

FACTUAL HISTORY

On September 11, 2001 appellant, then a 24-year-old carrier, filed a traumatic injury claim alleging that she sustained an injury to the lower back when she was moving a tray. She stopped work on September 11, 2001 and returned to full duty on October 7, 2001. The Office received a report of the magnetic resonance imaging (MRI) scan on October 3, 2001 from

Dr. Richard Pinto, Board-certified in diagnostic radiology, which diagnosed disc herniation at L5-S1. Appellant's claim was accepted for lumbosacral sprain on November 29, 2002.

By letter dated May 9, 2003, Dr. Robert P. Mayson, Board-certified in obstetrics and gynecology, placed appellant on light duty due to pregnancy. In a June 4, 2003 letter, he informed the Office that appellant was admitted to the hospital from May 30 until June 1, 2003 and advised to stay at home from June 4 through 18, 2003. In a June 23, 2003 letter, Dr. Safrir Neuwirth, Board-certified in obstetrics and gynecology, informed the Office that appellant would not be returning to work during her pregnancy due to complications.

On April 6, 2004 appellant filed a Form CA-2a, claim for recurrence of disability, alleging that on April 1, 2004 she suffered a relapse of her lower back condition and stopped work. She returned to work on May 15, 2004 but has been off work for intermittent periods since that time.

In an April 16, 2004 letter, the employer controverted appellant's claim for recurrence.

The Office received a report of the MRI scan on April 7, 2004 from Dr. Myron Levitt, Board-certified in diagnostic radiology, who diagnosed disc herniation at L5-S1. The Office received an unsigned note dated April 15, 2004 excusing appellant from work from April 15 through May 14, 2004 due to "LS-spine [lumbosacral] and sciatica."

In an August 18, 2004 letter, the Office requested further information from appellant, specifically the information listed in the recurrence development check list.

Appellant submitted additional information consisting of two claims for compensation and two attending physician's reports. The first claim for compensation dated August 11, 2004 was for the time period April 6 through May 14, 2004. In an August 23, 2004 physician's report, Dr. Jeffrey Charen, Board-certified in orthopedic surgery, diagnosed low back pain and sciatica and opined that appellant was totally disabled from April 15 through May 13, 2004 and referred appellant to Dr. Francisco Del Valle, Board-certified in physical medicine and rehabilitation. The second claim for compensation also dated August 11, 2004 was June 21 through August 6, 2004. In an August 18, 2004 physician's report related to a May 20, 2004 visit, Dr. Del Valle diagnosed lumbar radiculopathy and opined that appellant was totally disabled from May 20, 2004 until the present. The Office also received an undated letter from appellant describing her condition and what she was doing when the symptoms returned.

The Office received additional information from Dr. Del Valle consisting of the results of electrodiagnostic testing on May 27, 2004, an operative report for lumbar epidural steroidal injection on June 30, 2004 in which he diagnosed lumbar radiculopathy and an excuse slip dated June 18, 2004 for the period June 18 through 28, 2004.

In a September 3, 2004 letter, the employer continued to controvert appellant's claim.

In a September 29, 2004 work disposition form, Dr. Del Valle recommended light duty when appellant returned to work on October 4, 2004 due to lumbar radiculopathy.

In a December 3, 2004 letter, the employer requested an impartial medical examination be done to find out if appellant could return to full duty. There is no record that an impartial medical examination was done.

In a June 6, 2005 letter, Dr. Del Valle gave a summary of each of appellant's office visits.

By July 12, 2005 decision, the Office denied appellant's claim due to the absence of a medical opinion demonstrating how the claimed recurrence was related to the original work-related injury.

By April 3, 2006 letter, appellant, through her representative, requested reconsideration of the Office's July 12, 2005 decision. Accompanying the reconsideration request was a letter dated March 27, 2006 from Dr. Del Valle discussing her work history, medical history, course of medical treatments and the results of the most recent medical examination. In the letter Dr. Del Valle diagnosed a disc herniation and opined that this condition was causally related to appellant's employment injury. He also opined that appellant's pregnancy was not the direct cause of the herniated disc.

By June 19, 2006 decision, the Office denied modification of the prior decision.

LEGAL PRECEDENT

A claimant seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.² In this case, appellant has the burden of establishing that she sustained a recurrence of a medical condition³ on April 6, 2004 causally related to her September 10, 2001 employment injury. This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale.⁴

Section 10.5(x) of the Office's regulations provides, in pertinent part:

“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

¹ 5 U.S.C. §§ 8101-8193

² *Edward W. Spohr*, 54 ECAB 806 (2003).

³ Recurrence of medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a “need for further medical treatment after release from treatment,” nor is an examination without treatment. 20 C.F.R. § 10.5(y) (2002).

⁴ *Ronald A. Eldridge*, 53 ECAB 278 (2001).

had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”⁵

Therefore, the Board has held that, in order to establish a claim for a recurrence of disability, appellant must establish that she suffered a spontaneous material change in the employment-related condition without an intervening injury.⁶

In order to establish that appellant’s claimed recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between appellant’s present condition and the accepted injury must support the physician’s conclusion of a causal relationship.⁷

ANALYSIS

On November 29, 2001 the Office accepted that appellant sustained a lumbar strain on September 10, 2001. On October 25, 2001 appellant was released to return to work with physical restrictions. On November 21, 2001 she returned to unrestricted full duty.

On May 9, 2003 appellant was placed on light duty due to pregnancy. Starting around May 30, 2003 she took a medical leave of absence due to her pregnancy and returned to work on April 2, 2004. Appellant claims a recurrence of her accepted injury on April 4, 2004.

The Board notes, as set forth above, that the record contains extensive medical evidence indicating that there is a causal relationship between appellant’s employment duties and her lower back condition. Specifically, in his March 27, 2006 letter, Dr. Del Valle stated that appellant’s pain was from a disc herniation which was work related and documented by an MRI scan in 2001. Dr. Del Valle also stated that appellant’s pregnancy was not the direct cause of a herniated disc. In the same letter, he diagnosed a disc herniation and opined that this condition was causally related to her employment injury.

The Board finds that the report from Dr. Del Valle regarding the causal relationship between appellant’s herniated disc and her employment duties are unrefuted and sufficient to require further development of the case record by the Office.⁸ Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁹ Additionally, the Board notes that in this case the record contains no medical opinion contrary to appellant’s position. The Board will remand the case for further development of the medical evidence.

⁵ 20 C.F.R. § 10.5(x).

⁶ *Carlos A. Marrero*, 50 ECAB 117 (1998).

⁷ *See Ricky S. Storms*, 52 ECAB 349 (2001).

⁸ *See Felix Flescha*, 52 ECAB 268 (2001); *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁹ *Claudio Vazquez*, 52 ECAB 496 (2001).

CONCLUSION

Appellant has established a *prima facie* case with respect to the claimed recurrence of her lower back condition sufficient to require further medical development by the Office. On remand the Office should prepare a statement of accepted facts and refer appellant, along with her medical records for a second opinion examination. Following such further development as may be necessary the Office shall issue an appropriate final decision on this issue.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 12, 2005 be set aside and the case be remanded for further proceedings consistent with this decision of the Board.

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