

bills for medical expenses related to the accepted conditions would be processed for payment by the Office.

In a June 17, 1999 report, Dr. Joseph W. Lasnoski, a treating dentist, advised that appellant presented with a fracture of the porcelain on the bridge for tooth numbers 6 through 10, which she related occurred at work. He noted that appellant was referred to Dr. Patrick Laughlin, a surgeon specializing in periodontics and dental implants, for the evaluation of tooth number 6 and it was determined that this tooth was fractured. Dr. Lasnoski opined that appellant needed extensive treatment to repair the injury. He indicated that he would have to extract the teeth numbered 6 and 10 and place implants in the region of teeth numbered 6, 7 and 10 and 13. Dr. Lasnoski also indicated that the oral surgeon would have to do this under a separate fee for \$2,266.00 dollars. He advised that appellant would need a temporary bridge for teeth 2 through 12 and plastic crowns for teeth 2, 3, 5, 11, 12 and a plastic pontic for teeth 4, 6, 7, 8, 9, 10. Dr. Lasnoski advised that appellant needed to have an osseointegrated bridge (OIB) for teeth 6 through 10, which would be comprised of an osseointegrated crown (OIC) for teeth 6, 7 and 10 and an osseointegrated pontic (OIP) for teeth 8 and 9. He opined that this would cost \$6,169.00. Dr. Lasnoski opined that an OIC was needed for tooth 13 and that would equate to \$1,545.00. He noted that this work would cost approximately \$9,980.00. Dr. Lasnoski explained that because tooth number 6 was fractured, it had to be extracted and that tooth number 10 had to be removed. He recommended placing three dental implants in the anterior portion of appellant's mouth, in the number 6, 7 and 10 regions and then restoring this with a fixed bridge attached to the implants at number 6, 7 and 10. Dr. Lasnoski opined that he would need the services of a prosthodontist and a Board-certified oral surgeon to extract the teeth numbered 6 and 10 and to place the implants in the number 6, 7 and 10 regions. He also explained that the post in tooth number 4 had fallen out and could not be restored, so it would be extracted by the dental surgeon. Dr. Lasnoski advised that tooth number 13 was lost and extracted and implants would need to be placed in the number 4 and 13 region. He opined that the cost to replace tooth 4 and the permanent crowns on teeth 2, 3, 4, 11 and 12 would cost \$1,545.00 for the OIC at tooth number 4 and \$3,835.00 for the porcelain veneer crown to teeth 2, 3, 5, 11 and 12 or a total of \$5,380.00. Dr. Lasnoski advised that the total cost of treating the maxillary arch was \$15,360.00.

In an October 14, 1999 follow-up report, Dr. Lasnoski noted that appellant's "upper anterior region [number] 6 through 10" was fractured in the work-related accident on March 3, 1999. He reiterated his prior estimate, but did not include the cost for the OIC for tooth 13, which he previously noted would cost \$1,545.00. Dr. Lasnoski opined that the treatment that had been recommended was "directly related to the March 3, 1999 accident" and that the total cost for appellant's treatment would equate to \$8,435.00. He did not include the costs for implant number 4, as he noted it was a separate fee. Dr. Lasnoski had previously indicated that this would cost \$5,380.00.

In an October 18, 1999 statement, appellant alleged that on the day of the injury she went to answer the telephone, when she slipped and her mouth and face slammed on the telephone while falling. She alleged that she broke two front teeth and a third was loosened. Appellant later indicated that she was informed that it was broken in the root canal post.

In an October 21, 1999 statement of accepted facts, the Office noted that appellant's claim was accepted for fracture, two front upper teeth. The Office determined that appellant would need to be examined in order to determine if the dental work was medically necessary.

The Office referred appellant to Dr. Robert E. Vraney, a dentist, for a second opinion. In a February 1, 2000 report, Dr. Vraney noted examining appellant on January 24, 2000 and opined that he was "somewhat shocked to see all the dental work that has been completed. Everything relating to her injury is mostly finished. Only the cementation of the permanent crown and bridgework is left." From the information that Dr. Vraney had received, he was assuming that appellant not only chipped her anterior bridge, but also fractured the root on tooth 10 and opined that perhaps it would require extraction of these two teeth and fabrication of a new bridge. He added that, while there were other methods of replacing the teeth, the "devised treatment plan that has been used is certainly the best that modern dental science has to offer." Dr. Vraney noted that he could understand the extractions of teeth 13 and 10 and possibly 6 and 4, as a bridge of that length was often "double abutted," which meant that two teeth on either side of the missing teeth were in good condition. He advised that a bridge of this type would go from teeth 4, 5, 11 and 12. Dr. Vraney indicated that the work done on appellant was "master work." He opined that he did not think that teeth 2, 3 and 13 had any relationship to the injury.

By letter dated February 22, 2000, the Office requested clarification from Dr. Vraney regarding other methods that could have been used to replace the damaged teeth.

In a March 6, 2000 report, Dr. Vraney opined that he was "acting as a 'Monday Morning Quarterback,' as the 'game' is essentially over-but I guess under potential protest." He opined that he did "not know EXACTLY what happened." Dr. Vraney opined that there were two other possible plans that might have occurred in the case provided the "suspect teeth" did not have root fractures. One possibility was that he could have extracted teeth 6, 10 and 13. Dr. Vraney also advised that regarding the anterior bridge, for teeth 6 through 10, they could have sectioned and removed a semi-permanent upper partial denture fabricated to replace upper missing teeth for a cost of \$972.00. He opined that the second option would be to extract tooth 13, section a bridge and remove pontics at teeth 7, 8 and 9 and make a full cast crown for teeth 3 and 4 out of gold and a porcelain veneer crown for tooth 12. Dr. Vraney also added that a upper partial removable bridge would be needed to replace teeth 7, 8, 9, 13, 14 and 15 for a cost of \$1,376.00. He indicated that he could not see where a minor accident involving the front part of the mouth could have any effect on the back part of the mouth. Dr. Vraney further noted that, in addition to being a member of the American College of Prosthodontics, he was a past faculty member of the Prosthodontic Department of Loyola University in Chicago for five years. If you will please excuse the slang: "I know from whence I speak."

By letter dated May 9, 2000, the Office provided appellant's treating dentist, Dr. Lasnoski, with a copy of Dr. Vraney's report and requested his comments regarding the need for the dental work performed on appellant.

In a May 16, 2000 response, Dr. Lasnoski explained that he performed a temporary bridge for teeth 2 through 12, made plastic crowns for teeth 2, 3, 5, 11 and 12 and made plastic pontics for teeth 4, 6, 8, 9, 10 and 10. He also indicated that he made an OIB for teeth 6 through 10, an OIC for teeth 6, 7 and 10 and an OIP for teeth 8 and 9. Dr. Lasnoski advised that the total

cost for the temporary bridge for teeth 2 through 12 and the permanent OIB for teeth 6 to 10 was equal to \$8,435.00.

By letter dated August 8, 2000, the Office requested that appellant provide additional information regarding the extent of her injuries and the necessity for the services she received. On July 24, 2003 appellant's congressional representative contacted the Office regarding reimbursement for her dental expenses.

On August 26, 2003 the Office advised appellant's congressional representative that her claims for reimbursement needed to be submitted with the "ADA Form J 510 which is a universal form used for billing dental work." He noted that the expenses would be reviewed to determine whether they were work related. The Office subsequently received confirmation from appellant's dental office, that the forms had been completed and submitted. On August 9, 2004 the Office informed appellant's congressional representative that her payment was processed. The record reflects that appellant was subsequently provided two checks in the amount of \$2,467.60 and \$8,188.00.

In an August 26, 2004 telephone memorandum, the Office indicated that a congressional representative had contacted it regarding receipt of compensation checks. The congressional representative was advised that the \$8,188.00 check was issued in error and that appellant should return it. In a March 22, 2005 e-mail correspondence, the Office noted that appellant had received an overpayment and had not returned the check.

On August 9, 2005 the Office issued a preliminary determination that appellant was overpaid in the amount of \$8,188.00, because she was overcompensated for medical expenses. The Office made a preliminary finding that appellant was at fault because she was advised of the error and the need to return the check, but the money was not returned. Appellant was further informed of her options to challenge the amount of the overpayment or request a waiver of the overpayment. If she disputed fault and desired waiver of the overpayment, she was specifically directed to submit financial information by completing an overpayment recovery questionnaire. No response was received.

In a February 26, 2007 decision, the Office finalized the preliminary overpayment finding and found that appellant was at fault because she was paid for dental repairs and services beyond those related to the accepted work-related condition for which she knew or should have known that she was not entitled.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty.¹ When an overpayment has been made to an individual

¹ 5 U.S.C. § 8102(a).

because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.²

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision. In this case, the Office found that appellant received an overpayment of compensation in the amount of \$8,188.00, because she received a payment for dental repairs which she knew or should have known that she was not entitled to receive. However, the Board finds that the record is unclear as to how the Office fact of overpayment.

In this case, the Office accepted appellant's claim for fracture of two front upper teeth. However, the Office did not identify which front teeth were accepted or explain why only two teeth were accepted. This is particularly important in light of the fact that appellant explained that not only did she break her two front teeth, but she also alleged that a third tooth was loosened and broken in its root post. The Board notes that the statement of accepted facts in the record does not contain information regarding these conditions.³ Office procedures provide that a statement of accepted facts must contain the date of injury, claimant's age, the job held on the date of injury, the employer, the mechanism of injury and the claimed or accepted conditions. The Office may also include additional elements, including appellant's prior medical history, depending on the nature of the condition claimed and the issues to be resolved.⁴ In this case, the record also establishes that appellant had a bridge in her mouth and her treating dentists indicated that it was damaged in the fall. Dr. Lasnoski opined that various teeth would need to be extracted in order to fabricate a new bridge. The statement of facts does not note or describe appellant's dental condition. It is well established that, when a factor of employment aggravates, accelerates or otherwise combines with a preexisting, nonoccupational pathology, the employee is entitled to compensation.⁵

Moreover, Dr. Vraney, the second opinion physician, provided a report that is speculative, at best.⁶ On February 1, 2000 he opined that he was "somewhat shocked to see all the dental work that has been completed." Dr. Vraney indicated that he was assuming that appellant not only chipped her anterior bridge, but also fractured the root on tooth 10. While he opined that the "devised treatment plan that has been used is certainly the best that modern dental science has to offer," he opined that he did not think that teeth 2, 3 and 13 had any relationship to the injury. However, Dr. Vraney did not explain how he arrived at his conclusion. On his

² *Id.* at § 8129(a).

³ See *Bertha J. Soule*, 48 ECAB 314 (1997) (noting the importance of an accurate and up-to-date statement of accepted facts).

⁴ *Darletha Coleman*, 55 ECAB 143 (2003).

⁵ *Chris Wells*, 52 ECAB 445 (2001). See also Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.5(d) (April 1993) (provides for repair or replacement of injured natural and fixed artificial teeth).

⁶ The Board has held that an opinion which is speculative in nature has limited probative value in determining the issue of causal relationship. *Arthur P. Vliet*, 31 ECAB 366 (1979).

March 6, 2000 he stated that he was “acting as a ‘Monday Morning Quarterback,’ as the ‘game’ is essentially over-but I guess under potential protest.” Additionally, Dr. Vraney indicated that he did “not know EXACTLY what happened.” He provided an explanation regarding two other possible plans that might have occurred provided the suspect teeth were not root fractured. Again, the Board notes that Dr. Vraney’s opinion is speculative. He did not appear to be aware of the circumstances surrounding the injury or of appellant’s preexisting dentals condition. Dr. Vraney provided an opinion that basically stated that he did not know what happened to appellant’s teeth. Without an accurate description of her preexisting conditions, the Board finds that this opinion is not based on an accurate statement of accepted facts and is not sufficient to establish that appellant knew that she was received incorrect payment for the dental services that she received. This lack of proper factual background deprived Dr. Vraney of a proper factual basis on which to form a medical opinion and rendered his opinion of diminished probative value.⁷ The record is unclear with regard to what specific dental services were required. The Board finds that the case is not in posture for a decision on fact of overpayment of compensation.

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.⁸ It will remand the case to the Office for further development of the medical evidence. On remand, the Office shall prepare a statement of accepted facts to include appellant’s preexisting and accepted conditions. The Office should refer appellant for a second opinion examination to determine the extent of appellant’s work-related dental injuries. Following this and such further development as the Office deems necessary, an appropriate decision should be issued.

CONCLUSION

The Board finds that this case is not in posture for decision.⁹

⁷ *Gwendolyn Merriweather*, 50 ECAB 411 (1999).

⁸ *Claudio Vazquez*, 52 ECAB 496 (2001).

⁹ In light of the Board’s findings on the first issue, the second issue is moot.

ORDER

IT IS HEREBY ORDERED THAT the February 26, 2007 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision.

Issued: April 9, 2008
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