United States Department of Labor
Employees' Compensation Appeals Board

R.L., Appellant	)	
and	)	**Docket No. 09-714**
	)	**Issued: January 4, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Charlotte, NC, Employer	)	

Appearances:
Alan J. Shapiro, 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 January 22, 2009 appellant filed a timely appeal from the June 6 and December 15, 2008 merit decisions of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant established that her disability commencing January 21, 2008 was causally related to her December 28, 2004 injury; and (2) whether the Office properly denied appellant's request for spinal surgery.

FACTUAL HISTORY

On December 28, 2004 appellant, then a 40-year-old casual carrier, filed a traumatic injury claim alleging that she injured her head, neck and low back that day when she fell down steps while working. She stopped work that day. The Office accepted her claim for cervical lumbar and thoracic strains. Appellant returned to work on June 25, 2005.

In a February 4, 2005 report, Dr. W.S. Edwards, a Board-certified orthopedic surgeon, diagnosed cervical, thoracic and lumbar strain/sprains. He also found evidence of symptom magnification. Dr. Edwards stated that there was no anticipated permanent impairment related to appellant's injury and that she should be able to return to work in three weeks. In a March 4, 2005 report, he found some expected tenderness but no focal neurologic deficit in the upper or lower extremities. Appellant's gait and flexibility were normal. Dr. Edwards found no evidence of permanent impairment and discharged her from care. He stated that appellant might experience temporary difficulty with repetitive twisting and turning of her shoulder and neck as well as with repetitive bending and lifting when she returned to work. In a March 4, 2005 attending physician's report, Dr. Edwards released her to sedentary duties. On May 18, 2005 the Office requested that he clarify appellant's work capabilities and whether there were any residuals from the work injury. It noted that appellant had not returned to work.

The Office received reports from Dr. Fred D. McQueen, a Board-certified family practitioner. On May 5, 2005 Dr. McQueen reviewed appellant's history of injury and her complaints of discomfort in her neck, shoulders and anterior chest wall. Appellant had sinusitis with bronchitis and severe muscle spasm of the cervical spine and shoulders. Dr. McQueen recommended home rest and medication until he could determine the kind of work she could perform. On June 6, 2005 he noted that appellant had worked for one day in a sedentary job sliding or casing mail but stopped when her pain became severe. X-rays were negative. Dr. McQueen recommended that appellant not work due to pain.

In a June 17, 2005 report, Dr. Edwards advised that, at her most recent office visit, appellant had been discharged from care and exhibited significant symptom magnification. Appellant informed him that her symptoms continued and her activities were limited by discomfort. Dr. McQueen advised that she did not localize any complaints in a dermatomal pattern, there was no motor weakness or reflex asymmetry and she had inappropriate skin tenderness to even light palpation over her right shoulder and her lumbosacral junction and limited flexibility in all of those areas. X-rays of the cervical, thoracic and lumbar spine were all normal. Dr. McQueen stated that appellant could return to work without restrictions. He recommended that she use good body mechanics and careful lifting techniques. The record reflects that appellant returned to full-time work on June 25, 2005.

In a July 30, 2007 report, Dr. McQueen noted that appellant continued to complain of pain from her work injury. He advised that she had cervical spine pain on examination and spasms of the trapezius muscles bilaterally. Dr. McQueen recommended magnetic resonance imaging (MRI) scan of the cervical spine. He also noted weakness of appellant's right arm as compared to the left and requested nerve conduction studies.[1] Appellant underwent an MRI scan on August 9, 2007. The cervical study showed mild spondylosis with no significant disc herniation. The thoracic spine scan was negative. The lumbar scan showed minimal facet arthropathy with some minimal bulging and possible minimal herniation at L4-5, but neural elements did not appear significantly effected. On October 10, 2007 Dr. McQueen reviewed appellant's diagnostic testing and advised that surgery was not warranted. He stated that she would continue to have muscle spasm and pain. Dr. McQueen provided medication and work

[1] On June 7, 2007 the Office authorized Dr. McQueen to be appellant's designated physician.

restrictions. In a January 3, 2008 report, he advised that she had disc disease of the lumbar spine at L4-5 and was at maximum medical improvement.

In a January 21, 2008 report, Dr. Dion J. Arthur, an orthopedic surgeon, noted the history of injury, appellant's medical treatment and her complaints. He provided findings on examination and his interpretation of the diagnostic texts obtained of the cervical, lumbar and thoracic spine. Dr. Arthur stated that MRI scans showed herniated discs at C4-5, C5-6 and L4-5 levels. He stated that appellant was a candidate for a cervical and lumbar disc decompression at the C4-5, C5-6 and L4-5 levels as she had failed exhaustive conservative management over the past three years.

Appellant stopped work on January 21, 2008. On February 4, 2008 she filed a Form CA-7 claim for wage-loss compensation as of January 21, 2008. On February 13, 2008 appellant requested authorization for surgery. In a February 29, 2008 letter, the Office requested that she submit a detailed medical report from her attending physician.

In a March 6, 2008 report, Dr. Arthur reviewed the history of injury. He opined that appellant had significant injuries which caused disc herniations of both the cervical and lumbar spine. Dr. Arthur noted that she described a very severe traumatic injury with a fast acceleration and deceleration injury to the body which created a significant and rapid flexion and extension injury to the neck and blunt trauma to the low back. Appellant's attempt to protect the back of her head created a rapid snapping backwards and forwards of the neck as the majority of the blunt trauma occurred to the shoulder, upper back and lower back region. Because the neck was unprotected, it resulted in a severe whiplash injury that was significant enough to cause the spinal trauma that she experienced. Dr. Arthur stated that the disc herniations of both the cervical and lumbar spine caused her chronic pain syndromes since 2004. He advised that appellant was not a malingerer and had sustained a significant injury. Dr. Arthur noted that she did not have cervical or lumbar complaints prior to her injury. He found that appellant was a candidate for cervical and lumbar disc decompression surgery. Dr. Arthur stated that she was totally disabled.

The Office referred appellant, together with a statement of accepted facts, a list of questions and the medical record, to Dr. Surendrapal Mac, a Board-certified orthopedic surgeon, for a second opinion examination. In a June 13, 2008 report, Dr. Mac reviewed the history of injury, the medical record, including diagnostic testing and set forth findings on examination. He noted tenderness over the mid-cervical area and painful movements of the cervical spine. Shoulder movements were full and neurological examination revealed no typical nerve or root distribution despite appellant's claims of diminished sensations over the left upper extremity. Examination of the thoracic and lumbar revealed tenderness over the lumbar area with mildly painful movements. X-ray testing of the cervical and lumbar spine revealed mild or minimal degenerative changes. Dr. Mac diagnosed cervical strain, thoracic strain, lumbar strain, mild cervical degenerative arthritis, mild lumbar degenerative arthritis and disc bulging at L4-5. He opined that the accepted cervical, thoracic and lumbar strains had resolved and appellant's current condition more likely than not was unrelated to the strains she sustained in 2004. Dr. Mac found that there was some symptom magnification on examination. As to whether the proposed surgeries would benefit appellant, he noted the 2007 MRI scan did not reveal any clear nerve or spinal cord compression. Since Dr. Mac had no experience doing spine surgery, he

would defer to the surgeon as to whether the procedure would benefit appellant. In a May 28, 2008 OWCP-5c work restriction form, he advised that she was capable of performing her usual job without restriction.

Dr. Arthur submitted additional progress reports. He stated that appellant was totally disabled and needed surgery.

By decision dated June 6, 2008, the Office denied appellant's claim for wage-loss compensation beginning January 21, 2008 and her request for surgery as the claimed medical condition was not due to the accepted work injury. It found that the weight of the medical evidence rested with the opinions of Dr. Edwards and Dr. Mac who found that she had no residuals from the accepted work injury.

On June 14, 2008 appellant, through her attorney, requested a telephonic hearing that was held on October 27, 2008. She testified that she stopped work on January 19, 2008 due to pain in her upper and lower back, neck and arms. Appellant submitted progress reports from Dr. Arthur dated March 20 through May 20, 2008.

In a June 19, 2008 report, Dr. McQueen advised that appellant had depression secondary to chronic pain syndrome that was directly related to her chronic muscle spasms of the cervical spine and lumbar disc disease. He requested that she be allowed certain medication. In an August 6, 2008 report, Dr. Ajay K. Ajmani, a Board-certified internist, noted the history of injury. He provided preliminary diagnoses of nonrheumatologic and nonautoimmune disease, pain syndrome and fibromyalgia. Physical therapy reports from 2005 were submitted to the record.

By decision dated December 15, 2008, an Office hearing representative affirmed the June 6, 2008 decision.

LEGAL PRECEDENT -- ISSUE 1

As used in the Federal Employees' Compensation Act, the term disability means incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.[2] When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[3]

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues, which must be proved by a preponderance of the reliable, probative and substantial medical evidence.[4] Findings on examination are generally

[2] *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(f).

[3] *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

[4] *See Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.[5] The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability, for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[6]

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of the Act provides for the furnishing of services, appliances and supplies prescribed or recommended by a qualified physician which the Office, under authority delegated by the Secretary, considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of monthly compensation.[7] In interpreting section 8103(a), the Board has recognized that the Office has broad discretion in approving services provided under the Act to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.[8] The Office has administrative discretion in choosing the means to achieve this goal and the only limitation on the Office's authority is that of reasonableness.[9]

While the Office is obligated to pay for treatment of employment-related conditions, appellant has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.[10] In order 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. Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.[11] Therefore, in order to prove that the surgical procedure is warranted, appellant must submit evidence to show that the procedure was for a condition causally related to the employment injury and that the surgery was medically warranted.[12] Both of these criteria must be met in order for the Office to authorize payment.[13]

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[5] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008).

[6] *G.T., id.; Fereidoon Kharabi, supra* note 4.

[7] 5 U.S.C. § 8103(a).

[8] *Dale E. Jones*, 48 ECAB 648, 649 (1997).

[9] *James R. Bell*, 52 ECAB 414 (2001); *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that abuse of discretion by the Office is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or administrative actions which are contrary to both logic and probable deductions from established facts).

[10] *Debra S. King*, 44 ECAB 203, 209 (1992).

[11] *Id.; Bertha L. Arnold*, 38 ECAB 282 (1986).

[12] *Joseph P. Hofmann*, 57 ECAB 456 (2006).

[13] *Dona M. Mahurin*, 54 ECAB 309 (2003); *Cathy B. Millin*, 51 ECAB 331, 333 (2000).

ANALYSIS -- ISSUES 1 and 2

The Office accepted that on December 28, 2004 appellant sustained neck, lumbar and thoracic strains due to a fall down steps. In a June 17, 2005 report, Dr. Edwards, a Board-certified orthopedic surgeon and the initial treating physician, clarified for the Office that appellant had been released from care on March 4, 2005 and that she could work without restrictions. He stated that the x-rays of the cervical, thoracic and lumbar spine were normal, appellant's complaints did not follow a dermatomal pattern and there were no motor weakness or reflex asymmetry. Dr. Edwards also stated that appellant exhibited significant symptom magnification.

Appellant returned to full-time work on June 25, 2005. She stopped work on January 21, 2008 and filed a claim for wage-loss compensation commencing January 21, 2008 due to her December 28, 2004 employment injury. Appellant also requested authorization for spinal surgery. The Office determined that the weight of the medical evidence that she had no remaining residuals from her work injury was represented by Dr. Mac's second opinion. In a June 13, 2008 report, Dr. Mac opined that the accepted cervical, thoracic and lumbar strains had resolved and appellant's current conditions were not related to the accepted injuries. He advised that she exhibited some symptom magnification during his May 28, 2008 examination and that she was capable of performing her usual job without restrictions. Dr. Mac also stated that he did not know whether decompression of the subligamentous disc bulge would help appellant as the MRI scan did not have any clear nerve or spinal cord compression.

The Board finds that appellant did not submit sufficient medical evidence to establish that her disability on or after January 21, 2008 or her request for spinal surgery was causally related to her December 28, 2004 employment injury.

Dr. Arthur opined that appellant's subligamentous disc herniations of the cervical and lumbar spine were caused by the December 28, 2004 work injury and that she was a candidate for cervical and lumbar disc decompression. On January 21, 2008 he indicated that she had herniated disc at C4-5, C5-6 and L4-5 levels based on his review of the 2007 MRI's scans and recommended cervical and lumbar disc decompression as she had failed conservative management. Dr. Arthur opined, on March 6, 2008, that appellant's subligamentous disc herniations of the cervical and lumbar spine were caused by the December 28, 2004 work injury. He explained this was due to the nature of appellant's fall and that she had not had any cervical or lumbar medical management or complaints prior to this injury. Dr. Arthur further opined that she was totally disabled. Although the above-referenced reports addressed appellant's lumbar and cervical herniated disc conditions and discussed the possible need for corrective surgery, he failed to provide adequate medical rationale explaining how a fall down the stairs on December 28, 2004 or the herniation caused total disability for work beginning January 21, 2008.[14] Furthermore, there is no bridging evidence which would relate her

[14] *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). *See also*, *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001).

diagnosed cervical and lumbar herniations to the accepted neck, lumbar and thoracic strains.[15] This is important in view of Dr. Edwards more contemporaneous reports indicating that appellant was released from his care and her x-rays were normal. Therefore, Dr. Arthur's reports are insufficient to establish that her disability beginning January 21, 2008 or her requested surgery were due to the December 28, 2004 work injury.

Dr. McQueen advised, in his January 3, 2008 report, that appellant had lumbar disc disease of the lumbar spine at L4-5. In his June 19, 2008 report, he opined that she had depression due to chronic pain syndrome that was directly related to her chronic muscle spasms of the cervical spine and her lumbar disc disease. However, the reports of Dr. McQueen do not establish appellant's claim because he provided no indication that her disability on or after January 21, 2008 was due to her December 28, 2004 employment injury.[16] Additionally, he did not provide any discussion to establish causal relationship of appellant's additional diagnosed conditions of lumbar disc disease and depression, which are not accepted conditions, nor did he address whether the need for the requested surgery was employment related.

The remaining medical evidence of record does not contain an opinion as to the cause of appellant's disability beginning January 21, 2008 or the need for the requested surgery. Thus, it is of limited probative value and is insufficient to establish her claim.

Appellant has failed to provide rationalized opinion evidence establishing that her disability commencing January 21, 2008 was causally related to her accepted December 28, 2004 employment injuries. Accordingly, she has not met her burden of proof. As appellant has not established that the requested surgery is for an employment condition or that it is medically warranted, the Office did not abuse its discretion in declining to authorize surgery.

CONCLUSION

The Board finds that appellant failed to establish that she had any disability on or after January 21, 2008 causally related to her December 28, 2004 work injury. The Board further finds that the Office did not abuse its discretion in denying her request for surgery.

[15] When there is a long delay between the testing on which the opinion is based and the employment incident, the probative value of the opinion offered is diminished. The longer the period of time between the testing and the employment incident, the greater the likelihood that an event not related to employment has caused or worsened the condition. *Mary A. Ceglia*, 55 ECAB 626, 629 (2004).

[16] *S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated December 15, 2008 is affirmed.

Issued: January 4, 2010
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