

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

D.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Des Moines, IA, Employer**

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**Docket No. 10-583
Issued: November 18, 2010**

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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 30, 2009 appellant, through her attorney, filed a timely appeal from the November 3, 2009 merit decision of the Office of Workers' Compensation Programs denying her claims for recurrence of disability and surgery authorization. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that her December 22, 2008 lumbar surgery was necessitated by residuals of her accepted work injuries sustained in 1999; and (2) whether she met her burden of proof to establish that she sustained a recurrence of total disability for the periods November 22 to 23, 2008 and December 2 to 30, 2008 due to her accepted work injuries sustained in 1999.

FACTUAL HISTORY

On November 6, 1999 appellant, then a 40-year-old clerk, filed an occupational disease claim alleging that she sustained back and neck problems due to performing her work duties,

including putting mail in sacks and pulling sacks weighing up to 100 pounds.¹ The Office accepted that she sustained pelvic and thigh joint pain, aggravation of lumbosacral spondylosis without myelopathy, aggravation of lumbar disc displacement without myelopathy, lumbar sprain, lumbago, chest pain, aggravation of a herniated C6-7 disc and cervical sprain. Appellant began working in a limited-duty position in October 1999 and she received compensation from the Office for periods of disability. She was restricted from lifting more than 40 pounds as tolerated and from engaging in repetitive bending and twisting.

On September 27, 2000 Dr. Peter Wirtz, a Board-certified orthopedic surgeon serving as an Office referral physician, determined that the aggravation of appellant's underlying spinal conditions caused by her work in 1999 did not cause any permanent functional limitation as this aggravation was temporary in nature.

Appellant's limited-job duties changed over time and on February 14, 2008, Dr. Dawn M. Schissel, an attending Board-certified family practitioner, reduced her work limitations to six hours of sitting a day, one to two hours of walking or standing, four hours of reaching with no twisting or reaching above shoulder height and one hour of bending or stooping. She also restricted appellant from lifting, pushing or pulling more than 10 pounds, kneeling or climbing stairs for more than two hours a day or engaging in any squatting. These restrictions were put in place after appellant fractured her left fibula at the ankle in December 2007 due to a nonwork-related fall.

Dr. Don Crank, an attending podiatrist, treated appellant for her left ankle fracture until May 31, 2008. Appellant used a walking boot and crutches for a period and reported that she had increased neck and back pain after the fall. The employing establishment sent her a written job offer on June 27, 2008 after Dr. Crank released her from his care.

On July 6, 2008 appellant presented to the Iowa Methodist Medical Center emergency room with an acute exacerbation of her low back pain that had been present for two days. Although the records noted that she "denied injury" another portion of the records showed that she indicated that she "fell in December."

On November 13, 2008 Dr. William R. Boulden, an attending Board-certified orthopedic surgeon, indicated that he disagreed with the radiologist physician who evaluated magnetic resonance imaging (MRI) scan test results of her lumbar spine which were obtained on September 12, 2008. Dr. Boulden stated that the test results showed mild lateral recess stenosis at L4-5 and a central-to-left disc herniation at L5-S1 affecting the S1 nerve root whereas the radiologist physician only saw central bulging at L4-5 and L5-S1 bilaterally which contacted, but did not displace the nerve roots. He recommended that appellant undergo surgery at L4-5 and L5-S1.

Appellant requested authorization from the Office for lumbar surgery. On December 22, 2008 Dr. Boulden performed a bilateral decompression laminectomy at L4-5 and partial discectomy at L5-S1 on the left.

¹ Appellant indicated that she first became aware of her claimed condition on October 19, 1999.

In a January 23, 2009 letter, the Office requested that appellant submit additional evidence in support of her claim.

In a January 29, 2009 report, Dr. Boulden described appellant's recovery from the December 22, 2008 surgery. He indicated that she was disabled from December 22, 2008 to January 3, 2009 due to the surgery and the resultant pain and need for pain medication. Appellant could perform limited-duty work after January 3, 2009.

The Office asked Dr. Boulden to indicate whether appellant's December 22, 2008 surgery was necessitated by her accepted work injuries. On February 19, 2009 Dr. Boulden stated:

"In reference to number seven, as to the causal relationship between the current condition and the original injury, the patient has had a claim accepted for lumbar disc displacement. She underwent surgery for sciatica pain, and that has been successful.

"At this point in time, the patient is recovering nicely from the sciatica pain. [Appellant] still has residual back pain. She continues to work on exercises and rehabilitation. [Appellant] is to return to work on a restricted basis.

"Finally, I do not feel there were any precipitating factors capable of causing the condition by itself, because this has been accepted as a clinical diagnosis and covered by the United States Postal Service."

On March 10, 2009 Dr. Daniel Zimmerman, a Board-certified internist serving as an Office medical adviser, indicated that treatment and testing in 2002 revealed right greater than left side symptoms of the lumbar spine. He noted that later examination and diagnostic testing records showed greater symptoms on the left. Dr. Zimmerman pointed out that, without other intervening incidents, radicular pain rarely changed from one side to the other. He concluded that appellant's December 22, 2008 surgery was not necessitated by employment factors.

In late 2008 and early 2009, appellant filed claim forms alleging that she sustained a recurrence of total disability for the periods November 22 to 23, 2008 and December 2 to December 30, 2008. On July 11, 2008 she filed a claim for a schedule award. In a November 20, 2008 decision, the Office denied appellant's claim for schedule award compensation.

In a May 6, 2009 decision, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of total disability for periods between November 22 and December 30, 2008. It also found that appellant had not shown that her December 22, 2008 lumbar surgery was necessitated by residuals of her accepted work injuries sustained in 1999.

Appellant requested a telephonic hearing with an Office hearing representative. During the August 10, 2009 hearing, she testified that she was unsure about what treatment, if any, she received on November 22 and 23, 2008, but she noted that she had a flare-up of back pain around that time. Appellant stated that her physician took her off work for half days beginning on December 2, 2008 until her surgery on December 22, 2008 and noted that she was off work for

about two weeks after the surgery. She noted her belief that her current medical condition is related to her 1999 work injury because her condition had progressively worsened since that time. Appellant testified that she did have a nonwork injury due to a fall on December 26, 2007 and suffered a fractured left fibula. She noted that she used crutches and wore a boot, which aggravated her back pain after the fall. Counsel indicated that it was unclear whether the Office accepted that appellant sustained a herniated lumbar disc and posited that a reasoned determination on her disability and surgery claims could not be made until this matter was clarified.

In a November 3, 2009 decision, the Office hearing representative affirmed the Office's May 6, 2009 decision.

LEGAL PRECEDENT -- ISSUE 1

Section 8103(a) of the Federal Employees' Compensation Act states in pertinent part: "The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation."² In order to be entitled to reimbursement of medical expenses, appellant has the burden of establishing that the expenditures were incurred for treatment of the effects of an employment-related injury or condition.³ Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.⁴

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained pelvic and thigh joint pain, aggravation of lumbosacral spondylosis without myelopathy, aggravation of lumbar disc displacement without myelopathy, lumbar sprain, lumbago, chest pain, aggravation of a herniated C6-7 disc and cervical sprain. These conditions were caused by work duties performed in 1999, including putting mail in sacks and pulling sacks weighing up to 100 pounds. In late 2008, appellant requested authorization for lumbar surgery to be performed by Dr. Boulden, a Board-certified orthopedic surgeon. On December 22, 2008 Dr. Boulden performed a bilateral decompression laminectomy at L4-5 and partial discectomy at L5-S1 on the left. The Office denied appellant's claim indicating that she had not shown that the December 22, 2008 surgery was necessitated by residuals of the accepted work injuries sustained in 1999.

The Board finds that appellant did not submit sufficient medical evidence to establish that her December 22, 2008 lumbar surgery was necessitated by residuals of her accepted work injuries sustained in 1999.

² 5 U.S.C. § 8103.

³ *Bertha L. Arnold*, 38 ECAB 282, 284 (1986).

⁴ *Zane H. Cassell*, 32 ECAB 1537, 1540-41 (1981); *John E. Benton*, 15 ECAB 48, 49 (1963).

The Office had asked Dr. Boulden to indicate whether appellant's December 22, 2008 surgery was necessitated by her accepted work injuries. On February 19, 2009 Dr. Boulden stated that "as to the causal relationship between the current condition and the original injury, appellant has had a claim accepted for lumbar disc displacement. Appellant underwent surgery for sciatica pain, and that has been successful." Dr. Boulden has not, however, provided a clear, rationalized decision that appellant's accepted 1999 work injuries contributed to the need for lumbar surgery about nine years later in 2008.

Dr. Boulden did not describe appellant's accepted work injuries or explain how they could have contributed to her need for surgery at such a later date. Appellant had preexisting degenerative disc condition prior to sustaining her work injuries in 1999 and Dr. Boulden did not explain why her continuing back problems and need for surgery were not due to the natural progression of her underlying condition. When Dr. Boulden recommended surgery, he indicated that appellant had a mild lateral recess stenosis at L4-5 and a central-to-left disc herniation at L5-S1 affecting the S1 nerve root. However, appellant's claim was only accepted for the lesser conditions of aggravation of lumbosacral spondylosis without myelopathy and aggravation of lumbar disc displacement without myelopathy. Appellant sustained a left ankle fracture due to a nonwork-related fall in December 2007 and reported increased back symptoms after that point. Dr. Boulden did not provide any assessment of this condition or evaluate the extent that it might have contributed to the need for surgery on December 22, 2008.⁵

For these reasons, appellant did not submit sufficient evidence to show that her December 22, 2008 lumbar surgery was necessitated by a work-related condition and the Office properly denied her claim.

LEGAL PRECEDENT -- ISSUE 2

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.⁶

⁵ Moreover, the record contains evidence showing that appellant's December 22, 2008 lumbar surgery was not necessitated by work-related residuals. On March 10, 2009 Dr. Zimmerman, a Board-certified internist serving as an Office medical adviser, concluded that appellant's December 22, 2008 surgery was not necessitated by work factors. He noted that treatment and testing in 2002 revealed right greater than left side symptoms of the lumbar spine. Later examination and diagnostic testing records showed greater symptoms on the left and Dr. Zimmerman pointed out that, without other intervening incidents, radicular pain rarely changed from one side to the other.

⁶ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

ANALYSIS -- ISSUE 2

Appellant had returned to light-duty work after she sustained her injuries in 1999 and she claimed that she sustained a recurrence of total disability for the periods November 22 to 23, 2008 and December 2 to 30, 2008 due to these injuries. The Board finds that appellant did not submit sufficient medical evidence to establish that she had work-related disability for these periods.

In a January 29, 2009 report, Dr. Boulden indicated that appellant was disabled from December 22, 2008 to January 3, 2009 due to the December 22, 2008 surgery and the resultant pain and need for pain medication. However, for the reasons explained above, appellant has not established that her December 22, 2008 surgery was necessitated by residuals of her accepted work injuries sustained in 1999. Dr. Boulden did not advance any other reason he felt that appellant was disabled from December 22, 2008 onwards. Appellant did not present any other medical evidence addressing her claim that she sustained a recurrence of total disability for the periods November 22 to 23, 2008 and December 2 to 30, 2008. Months prior to the surgery, Dr. Schissel, an attending Board-certified family practitioner, had increased appellant's work restrictions. However, she did not provide any indication that the restrictions were changed due to residuals of a work injury.

Appellant has not submitted rationalized medical evidence showing that she sustained a recurrence of total disability for the claimed periods and the Office properly denied her claim.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her December 22, 2008 lumbar surgery was necessitated by residuals of her accepted work injuries sustained in 1999. The Board further finds that she did not meet her burden of proof to establish that she sustained a recurrence of total disability for the periods November 22 to 23, 2008 and December 2 to 30, 2008 due to her accepted work injuries sustained in 1999.

ORDER

IT IS HEREBY ORDERED THAT the November 3, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 18, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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