

FACTUAL HISTORY

On February 22, 2008 appellant, then a 40-year-old mail carrier, filed a claim for a low back injury occurring on that date when she felt something in her back pull or tear after she lifted a box. The Office accepted the claim for a lumbar back sprain and lumbosacral radiculitis. Appellant stopped work on February 22, 2008 and returned to limited-duty employment on March 4, 2008.

Following her injury, appellant received treatment from Dr. Joseph H. Cerbin, Board-certified in family medicine. On March 6, 2008 Dr. Cerbin discussed her complaints of back pain following a lifting injury at work on February 22, 2008. He referred her for a magnetic resonance imaging (MRI) scan study. A March 10, 2008 MRI scan study revealed a disc protrusion and annular tear at L4-5 “without definite nerve root impingement,” a right paracentral disc protrusion at L5-S1 with a possible small extruded disc fragment and mild degenerative disc disease. In a form report dated March 20, 2008, Dr. Cerbin diagnosed a back strain and checked “yes” that the condition was caused or aggravated by employment. On April 7, 2008 he diagnosed improving back strain with a ruptured disc.

On June 13, 2008 Dr. Kathryn L. Park, a Board-certified physiatrist, discussed appellant’s history of a sudden onset of back pain radiating into her leg beginning on February 22, 2008 while lifting parcels from a hamper. She reviewed the findings on the MRI scan study of an annular tear at L4-5 and a right paracentral disc protrusion and annular tear at L5-S1 and stated:

“[Appellant] has disc bulge at L5-S1, which could have been causing low back pain and lumbar radicular symptoms, but the radicular symptoms are better. She also has annular tear of the disc at L4-5 and L5-S1, and this can cause severe low back pain. This all occurred at work after she lifted a parcel at the [employing establishment]. I believe she has a lumbar strain, but she also has lumbar radiculopathy.”

Dr. Park found that appellant could continue working limited duty.

On July 14, 2008 Dr. Cerbin released appellant to return to work on July 15, 2008 without restrictions.

On October 11, 2008 appellant filed a notice of recurrence of disability beginning on August 9, 2008 causally related to her February 22, 2008 employment injury. She related that on August 9, 2008 she reached up to the top row of mail while casing a route and experienced back pain and spasms.

In a report dated August 15, 2008, Dr. Park indicated that she treated appellant for back pain and spasms beginning August 4, 2008 and severe spasms and symptoms traveling down her legs beginning on August 5, 2008. She diagnosed low back pain with radiculopathy and severe spasms and found that appellant should remain off work until September 1, 2008.

By letter dated October 29, 2008, the Office requested that Dr. Park clarify whether appellant sustained a new injury or a recurrence of disability. It further asked that she address

whether the annular tears were causally related to the lifting injury. In another letter dated October 29, 2008, the Office requested that Dr. Cerbin explain whether he believed that appellant's work stoppage on August 15, 2008 was causally related to her accepted work injury.

On November 19, 2008 Dr. Cerbin related that appellant's condition had not totally resolved when she returned to work on July 15, 2008. He noted that she was seeing a specialist and that he had no knowledge of whether she had exacerbated her condition.

On November 20, 2008 Dr. Park stated:

“[Appellant] did have an original work injury in February 2008 and then she was returned to work light duty and had a recent exacerbation in August of 2008. It is difficult to tell whether this was another second work-related injury in August or if this was an acute exacerbation of her original injury. I am leaning more towards believing this is an acute exacerbation of her original injury. She has degenerative dis[c] changes with annular tear. An annular tear of the dis[c] can in itself cause pain because of irritation of the sinuvertebral nerves.”

Dr. Park explained the mechanism by which an annular tear caused back and leg pain but noted that it was difficult to definitely establish without painful testing. She related that appellant had recovered from the initial injury and would probably slowly recovery from the August injury.

By decision dated January 26, 2009, the Office found that appellant failed to establish an employment-related recurrence of disability on August 15, 2008. It noted that her physicians had not specifically attributed her degenerative back condition to the February 22, 2008 work injury and also failed to explain why she was unable to work beginning August 15, 2008.

In a report dated January 9, 2009, received by the Office on February 2, 2009, Dr. Park discussed appellant's continued complaints of low back pain worse with exercise. She diagnosed “chronic low back pain with radiculopathy. Work[ers'] comp[ensation] injury” and right arm numbness unrelated to her employment injury.

On February 5, 2009 appellant requested an oral hearing. At the telephonic hearing, held on May 15, 2009, counsel contended that the medical evidence was sufficient to show that she sustained an employment-related recurrence of disability.²

By decision dated August 6, 2009, an hearing representative affirmed the January 16, 2009 decision. He found that the Office had not accepted disc conditions as related to the accepted work injury and that Dr. Park's opinion contained insufficient medical rationale to establish that her annular tears were due to the February 22, 2008 employment injury.

² Appellant related that she had a prior history of severe back pain at work in September 2006. She was transported from the employing establishment to the hospital by ambulance. Appellant filed a claim but it was denied. After the September 2006 incident she underwent physical therapy and went back to work.

On appeal, counsel maintains that the medical evidence is sufficient to show that she sustained a recurrence of disability.

LEGAL PRECEDENT

When an appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. This burden includes the necessity of furnishing evidence from a qualified 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 this conclusion with sound medical reasoning.³

Section 10.5(x) of the Office's regulations provide 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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”⁴

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility to see that justice is done.⁵

ANALYSIS

The Office accepted that appellant sustained lumbar back sprain and lumbar radiculitis due to a February 22, 2008 employment injury. She stopped work on February 22, 2008, returned to limited-duty work on March 4, 2008 and resumed work without restrictions on July 15, 2008. On October 11, 2008 she filed a notice of recurrence of disability beginning August 9, 2008. Appellant related that she experienced back pain and spasms when she reached up while casing mail.

At the time of her initial injury, a March 10, 2008 MRI scan study revealed a disc protrusion and annular tear at L4-5 and a disc protrusion with a small extruded disc fragment at L5-S1. On June 13, 2008 Dr. Park noted that appellant had an annular tear at L4-5 and L5-S1 and a disc bulge at L5-S1 which “occurred at work after she lifted a parcel....” She diagnosed lumbar strain and radiculopathy.

On August 15, 2008 Dr. Park diagnosed low back pain with radiculopathy and found that appellant was disabled from employment. In response to the Office's request for information, on November 20, 2008 Dr. Park opined that she most likely experienced an exacerbation of her

³ *Ricky S. Storms*, 52 ECAB 349 (2001); *Helen Holt*, 50 ECAB 279 (1999).

⁴ 20 C.F.R. § 10.5(x).

⁵ *Phillip L. Barnes*, 55 ECAB 426 (2004); *Jimmy A. Hammons*, 51 ECAB 219 (1999).

February 2008 injury rather than a new injury. She explained that appellant had an annular tear and degenerative disc disease which caused pain due to irritation of the nerves.

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.⁶ The Board has reviewed Dr. Parks' reports and notes that she diagnosed degenerative changes, an annular tear and lumbar radiculopathy which she related to appellant lifting a parcel at work on February 22, 2008. Dr. Park found that appellant was unable to work due to a reexacerbation of her condition in August 2008. Her opinion is supportive, unequivocal, bolstered by objective findings and based on a firm diagnosis and an accurate work history. Dr. Parks' opinion, however, lacks an explanation of why appellant sustained annular tears and degenerative disc disease due to her February 2008 work injury and why her condition worsened beginning August 15, 2008.⁷ Consequently, the medical evidence from her is insufficiently rationalized to meet appellant's burden of proof to establish that she sustained a recurrence of disability. It does, however, raise an undisputed inference of causal relationship sufficient to require further development by the Office.⁸ Accordingly, the Board will remand the case to the Office. On remand, the Office should further develop the medical record to determine whether appellant's annular tears were related to her accepted employment injury and whether she sustained a recurrence of disability beginning August 15, 2008. Following this and such further development as the Office deems necessary, it shall issue a *de novo* decision.

CONCLUSION

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

⁶ See A.A., 59 ECAB 726 (2008); *Phillip L. Barnes*, *supra* note 5.

⁷ Where appellant claims that a condition not accepted or approved by the Office was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence. See *JaJa K. Asaramo*, 55 ECAB 200, 204 (2004).

⁸ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 6, 2009 is set aside. The case is remanded for further proceedings consistent with the opinion of the Board.

Issued: April 26, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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