

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSE MARIE A. CALLAHAN and DEPARTMENT OF VETERANS
AFFAIRS, MEDICAL CENTER, Brockton, Mass.

*Docket No. 95-3021; Submitted on the Record;
Issued January 12, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained a recurrence of disability causally related to the accepted employment injuries involving her lumbar spine.

The Board has reviewed the record and finds that this case is not in posture for decision.

Under the Federal Employees' Compensation Act,¹ an employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.² As part of this burden the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition,³ and supports that conclusion with sound medical reasoning.⁴

Section 10.121(b) provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a medical report covering the dates of examination and treatment, the history given by the employee, the findings, the results of x-ray and laboratory tests, the diagnosis, the course of treatment, the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions, and the prognosis.⁵ Thus,

¹ 5 U.S.C. §§ 8101-8193.

² *Dennis J. Lasanen*, 43 ECAB 549, 550 (1992).

³ *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

⁴ *Lourdes Davila*, 45 ECAB 139, 142 (1993).

⁵ 20 C.F.R. § 10.121(b).

the medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated, or aggravated by the accepted injury.⁶

In this case, appellant, then a 52-year-old nursing administrator, filed a notice of recurrence of disability on August 12, 1993, claiming that her back fatigue was increasing, that her pain tolerance level was decreasing, and that she had to use sick leave when her back muscles were stressed.⁷

An office note from Dr. Douglas G. Bentley, a Board-certified orthopedic surgeon who had treated appellant since April 1989, indicated a diagnosis of degenerative disc disease of the lumbar spine. Dr. Bentley stated that appellant had reported a flare-up of lower back pain over the past two weeks with no new trauma. A magnetic resonance imaging (MRI) scan administered on August 17, 1993 revealed small central disc protrusions at L4-L5 and L5-S1.

On November 16, 1993 the Office denied the claim on the grounds that appellant had failed to establish that the August 1993 flare-up was causally related to the accepted April 11, 1991 condition. The Office noted that the previous injuries were sprains or strains and that the degenerative disc disease diagnosed by Dr. Bentley was not caused by work factors.

Appellant timely requested a hearing, which was held on July 27, 1994. Appellant testified that on August 6, 1993 she was at a day-long executive meeting and had to stand most of the time. Appellant added that she rested over the weekend, but the pain worsened so much that by Wednesday, after she had taken a heavy manual down from a shelf, she went to the emergency room, and then went home. Appellant also stated that she returned to work three days a week in December 1993 but had to stop work on June 22, 1994 when she had “crushing chest pain” and was taken to a hospital.

In a decision dated October 7, 1994, the hearing representative denied the claim on the grounds that the medical evidence was insufficient to establish that appellant’s recurrence of disability was causally related to the previous lumbar conditions accepted by the Office. The Office noted that Dr. Bentley’s latest report provided no rationale for his conclusion that appellant’s degenerative disc disease was caused by her various work injuries.

Appellant timely requested reconsideration and submitted a June 5, 1995 report from Dr. Bentley. On August 15, 1995 the Office denied modification of its prior decision on the grounds that Dr. Bentley’s opinion was speculative and therefore insufficient to establish the requisite causal relationship.

The Board finds that this case must be remanded for further development of the medical evidence.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁷ Appellant has filed four other claims for back injuries, on March 19, 1986, August 20, 1987, March 22, 1989 and April 11, 1991. All but the 1987 claim were accepted as work-related lumbar strains.

Proceedings under the Act are not adversarial in nature, and the Office is not a disinterested arbiter.⁸ While appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁹ In this case, appellant submitted additional medical evidence in response to the Office's denials and nothing in the record refutes appellant's account of the worsening back pain she experienced in trying to work or Dr. Bentley's repeated conclusion that appellant's degenerative disc disease was caused in part by work factors.

When Dr. Bentley examined appellant in August 1993 for a flare-up of low back pain, he diagnosed degenerative disc disease of the lumbar spine and noted appellant's report of progressively worsening lower back pain at work over the past two weeks "with no particular history of new trauma." He ordered an MRI scan, which revealed small central disc protrusions at L4-5 and L5-S1.

Dr. Bentley saw appellant again on November 8, 1993 and stated in a report dated November 29, 1993 that the August 11, 1993 pain was a flare-up of the preexisting condition "which was work related dating back to April 11, 1991." Dr. Bentley added that appellant had been on light duty since then and had continued to have chronic back pain, but could return to work three days a week, starting on December 6, 1993, with restrictions.

Dr. Bentley's next report, aside from his office treatment notes¹⁰ and completed disability forms, is dated July 29, 1994. Dr. Bentley stated that appellant's degenerative disc disease "is a direct and proximate result of her multiple work-related injuries to her back."

In a report dated June 5, 1995, Dr. Bentley diagnosed recurrent lumbar spine strains, degenerative lumbar facet syndrome, and degenerative disc disease with herniation. He noted that prior to 1986 appellant was asymptomatic, and that every injury since then had led to the "gradual demise and degeneration" of appellant's spine. Dr. Bentley opined that because appellant had had no lumbar injuries other than those clearly documented as having occurred at work, these injuries have resulted in degenerative disc disease and herniation, which have caused her chronic pain and forced her to retire from nursing. He concluded that appellant's current back condition was causally related to previous lumbar injuries and was unlikely to improve.

While Dr. Bentley's opinion is not fully rationalized, he attempted to explain why he concluded that appellant's degenerative disc disease was causally related and there is no medical evidence to the contrary. Thus his opinion is sufficiently probative to require the Office to

⁸ *Richard Kendall*, 43 ECAB 790, 799 (1992) and cases cited therein.

⁹ *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

¹⁰ In a note dated July 21, 1994, Dr. Bentley stated that appellant had been to a number of different physicians since he last saw her, that she had had intermittent periods of weakness on the left side of her body, indicating possible choroid-artery stenosis, and that she had decided to apply for disability retirement. In a December 13, 1994 note, Dr. Bentley indicated that appellant had retired.

develop the evidentiary record more thoroughly.¹¹ Therefore, appellant's case shall be remanded for further development of the evidence.¹²

The October 7, 1994 and August 15, 1995 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
January 12, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

¹¹ See *Thelma Rogers*, 42 ECAB 866, 870 (1991) (finding that, regardless of the employee's health condition, if employment factors constitute the precipitating cause of disability such disability is compensable as having resulted from accidental injury arising out of the employment). *Charles A. Duffy*, 6 ECAB 470, 471 (1954) (finding that the aggravation of a preexisting disease or defect is as compensable as an original or new injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

¹² See *Delores C. Ellyett*, 41 ECAB 992, 995 (1990) (finding that the Office may not completely disregard medical opinions of diminished probative value but rather must further develop the record).