U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TONIA E. PORTER and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Philadelphia, Pa.

Docket No. 97-1328; Submitted on the Record;
Issued April 27, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained recurrences of disability for intermittent periods in 1994 and 1995, causally related to her June 30, 1993 accepted right knee contusion and strain, or to her April 13, 1992 bilateral knee contusions and sprains.

On June 30, 1993 appellant, then a 44-year-old clerk, fell on her right knee after her shoe got caught in an uncovered electrical outlet.[1] The Office of Workers' Compensation Programs combined both claims and accepted that she sustained bilateral knee contusions and sprain/strain. Appellant returned to light-duty work, but her right knee symptoms persisted.

On April 18, 1994 appellant filed a Form CA-7 claim for compensation for intermittent periods beginning November 18, 1993. On December 15, 1994 appellant claimed a recurrence of disability commencing August 9, 1994. On December 27, 1994 appellant filed a claim for recurrence of disability for the period September 15 to October 31, 1994.

In a March 15, 1995 report, Dr. Pekka Mooar, a Board-certified orthopedic surgeon and appellant's treating physician, noted that a magnetic resonance imaging (MRI) scan after her first accident was "fairly unremarkable," but that an MRI from November 1993 after her second fall "shows significant alteration in the mechanics of her lateral compartment."[2] Dr. Mooar opined that appellant had "a chondral fracture to her lateral compartment at the time of her second fall," and he recommended arthroscopic evaluation.

The Office then referred appellant for a second opinion to Dr. Seymour Shlomchik, a Board-certified orthopedic surgeon, who, by report dated April 26, 1995, replied that there was nothing objective to support appellant's subjective complaints. Dr. Shlomchik opined that

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[1] Appellant had previously filed a claim for traumatic injury to both knees when she fell on April 13, 1992.

[2] The Board notes that a November 1993 MRI report for the right knee is not evident in the present case record.

appellant's current knee conditions, which he diagnosed as degenerative arthritis and internal derangement of the right knee, were not attributable to the work-related injury, and he indicated that she was not totally or partially disabled from employment, as she could certainly perform sedentary work.

The Office determined that a conflict in medical opinion evidence existed between Dr. Mooar and Dr. Shlomchik, and it referred appellant to Dr. John T. Williams, a Board-certified orthopedic surgeon, together with a statement of accepted facts, questions to be addressed and the relevant case record, for an impartial medical examination to resolve the conflict.

By report dated October 23, 1995, Dr. Williams reviewed appellant's history and systems, reported findings upon physical examination, and diagnosed acute sprain/strain/contusion of both knees, right more than left and patellofemoral knee disease, right more than left. Dr. Williams opined that appellant's present complaints were on the basis of her degenerative joint disease involving both patellofemoral joints, which was an aging process of wear and tear and which preexisted her injuries. He opined that the injuries irritated the preexisting pathology temporarily, but would have resolved, leaving her with her preexisting pathology. Dr. Williams reviewed appellant's MRI reports of record, but did not have the November 1993 MRI report, upon which Dr. Mooar based his diagnosis and recommendation, to review. He concluded that appellant had degenerative joint disease involving the knee and a Baker's cyst, due to degenerative processes. Dr. Williams concluded that a November 24, 1993 triple phase bone scan demonstrated some increased uptake along the lateral articulating surface of both the tibia and femur, which was nonspecific, was on the basis of a degenerative process and he opined that appellant's contusions and sprains would have resolved after a couple of months.

By decision dated December 4, 1995, the Office disallowed appellant's claim for compensation for intermittent periods in 1994 and 1995 finding that the evidence of record failed to establish that the claimed medical condition was causally related to the accepted injuries. The Office found that the opinion of the impartial medical examiner was due special weight, and resolved the conflict in medical evidence, establishing that appellant's continued right knee problems were solely the result of her preexisting degenerative joint disease. The Office found that appellant's intermittent work stoppages were not supported by medical evidence.

On February 28, 1996 appellant underwent an arthroscopic procedure. By report dated April 12, 1996, Dr. Mooar noted that, after reviewing the first and second MRI, appellant "apparently sustained a chondral fracture to her lateral compartment." He noted that the arthroscopic procedure revealed a lateral compartment which was extensively involved with loss of articular surface of the tibia and femur as well as degeneration and a tear of the meniscus, and that she underwent debridement of her lateral compartment, but has had persistent symptoms. Dr. Mooar opined that appellant's knee condition was one that could result from directly loading of the lateral compartment with the falls that she described, and that since she did not have previous complaints regarding her knee prior to these accidents at work, it was within a reasonable degree of certainty that her symptoms were a direct result of these injuries. He further noted that appellant had had significant loss of articular surface in her joint, which would

preclude her from getting complete resolution of her symptoms and he opined that her discomfort would be permanent.

Appellant, through her representative, requested a hearing, which was scheduled for August 12, 1996. By decision dated November 26, 1996, the hearing representative affirmed the prior decision finding that Dr. Williams remained the weight of the medical opinion evidence, establishing that appellant's present problems were as a result of degenerative processes. The hearing representative found that appellant had not submitted any rationalized medical evidence supporting that her present condition was causally related to her accepted employment injuries.

The Board finds that appellant has failed to establish that she sustained recurrences of disability for intermittent periods in 1994 and 1995, causally related to her June 30, 1993 accepted right knee contusion and strain, or to her April 13, 1992 bilateral knee contusions and sprains.

An individual who claims a recurrence of disability due to an accepted employment injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[3] Causal relationship is a medical issue and can be established only by medical evidence.[4] Appellant has not met this burden in this case.

Further, an employee returning to light duty, or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability by the weight of reliable, probative and substantial evidence and to show that he or she cannot perform the light duty.[5] As part of his burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.[6] Appellant has shown none of this.

In the instant case, although Dr. Mooar stated that a November 1993 MRI showed a lateral compartment fracture, which he attributed to appellant's June 30, 1993 fall, such report was not present in the case record for either Dr. Shlomchik's or Dr. Williams' review. Consequently, there is no objective evidence of record to support a lateral compartment fracture. Dr. Mooar opined that appellant's present condition was related to her previous injuries, but the Office second opinion physician, Dr. Shlomchik, opined, with supporting medical rationale, that appellant's present condition was as a result of degenerative processes and not related to her accepted injuries.

[3] *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

[4] *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

[5] *Terry R. Hedman*, 38 ECA 222,227 (1986).

[6] *Id.*

The Federal Employees' Compensation Act at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." This procedure was properly followed in this case and appellant was properly referred to Dr. Williams for an impartial medical examination.

Dr. Williams, in an extensive and detailed, well-rationalized report, determined that appellant's present condition was on the basis of her preexisting degenerative processes. He determined that appellant's accepted conditions should have resolved within a period of several months.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[7]

In this case, Dr. Williams' report was based upon a complete and accurate factual and medical history of appellant and her injuries and was well rationalized and thorough. Therefore, the Office determined that this report was entitled to special weight and according it that special weight resulted in it constituting the weight of the medical evidence of record in establishing that appellant's present condition was not causally related to her accepted employment injuries.

Thereafter, appellant's surgery was not authorized by the Office. Following that surgery, Dr. Mooar merely repeated his earlier assessment regarding appellant's right knee condition, noting only that the arthroscopic examination revealed loss of articular surface and a meniscal tear, which he attributed to her employment injuries. No rationale supporting causal relation was provided.

Moreover, Dr. Mooar was on one side of the conflict that Dr. Williams resolved, his additional report is insufficient to overcome the special weight accorded Dr. Williams' opinion or to create a new conflict with it.[8] As no further rationalized medical evidence was submitted by appellant in support of her contentions, she has failed to establish her recurrences were causally related to either of her accepted employment injuries.

[7] *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

[8] *Dorothy Sidwell*, 41 ECAB 857 (1990); *see also Helga Risor (Windell A. Risor)*, 41 ECAB 939 (1990) (additional reports from Office medical adviser, who was on one side of a conflict resolved by an impartial medical specialist, could not be used as a basis for creating another conflict in medical opinion).

Accordingly, the decision of the Office of Workers' Compensation Programs dated November 26, 1996 is hereby affirmed.

Dated, Washington, D.C.
April 27, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member