U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEVERLY S. LANGMAN and DEPARTMENT OF THE NAVY, HUMAN RESOURCE OFFICE, Great Lakes, IL

Docket No. 98-1435; Submitted on the Record;
Issued February 4, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether appellant met her burden of proof in establishing that she sustained a recurrence of disability, due to her July 1, 1994 employment injury, beginning December 27, 1996.

The Office of Workers' Compensation Programs accepted appellant's claim for a sprain of the right shoulder with synovitis of the acromioclavicluar joint and arthroscopy with Mumford. Appellant returned to work after the July 1, 1994 employment injury but had difficulty lifting her arm as in filing the top cabinets. The Office issued appellant a schedule award for 19 percent of her right upper extremity from March 5, 1996 to April 23, 1997.

On February 4, 1997 appellant filed a claim for a recurrence of disability, Form Ca-2a, stating that, on December 27, 1996, she awoke with pain, and as the day progressed, the burning and pain progressed. Appellant stated that she awoke at 1:00 a.m. "to some pain, loose or slight cracking noise and a burning sensation" that she had even after cortizone shots. She also stated that, on the same day, she reached to take a small package from her 83-year-old aunt and the burning became more pronounced. Appellant stated that, even with a cortizone shot, she was still experiencing looseness, pain and a burning sensation and "the movement" was similar to what she experienced in the beginning. Further, she stated that, since the July 1, 1994 employment injury, she lost a lot of movement in that she cannot lift heavy weights, bowl, vacuum or clean windows without pain, and cannot type for a long period of time.

In a report dated January 20, 1997, appellant's treating physician, Dr. Dennis J. Taylor, noted that appellant had a significant flare-up of her shoulder. He stated:

> "This is on top of the low grade symptoms she continues to have. She says she [ha]s always known that the shoulder is not the same as the other. She will get aches and pains. However, on December 27, 1996, she reached for something or moved her arm, and had a feeling of something being different. She says it

almost feels like the shoulder is loose and does n[o]t move normally. Since then, she [ha]s had a burning pain present, which is mostly anterior and superior."

Dr. Taylor stated that appellant's shoulder showed a limitation of motion compared to her last examination, *i.e.*, on March 5, 1996. He noted that he could not get her up to a real cocked arm position, her arm could not be extended back, she lost some internal rotation, and she could not fully flex or abduct. Dr. Taylor stated that it "looks to be a strain, which is a result of the incomplete rehabilitation of her shoulder." He aseptically injected her with Kenalog and Marcaine on the subacromial space with the hope of reducing her pain.

By letter dated March 31, 1997, the Office requested additional information including a medical report from her treating physician describing whether her ongoing effects of her medical condition were due to the July 1, 1994 employment injury or the December 27, 1996 incident.

In a statement dated April 7, 1997, appellant stated that she did not feel that she had a new injury on December 27, 1996 as she used her arm "in a very normal manner." She stated that her aunt's suitcase which she picked up on December 27, 1996 was not heavy. Appellant stated that she felt pain and later a burning and stinging sensation but that she was also having a grinding sound "again" in her shoulder.

By decision dated May 6, 1997, the Office denied appellant's claim, stating that the evidence of record failed to establish that the claimed medical condition or disability beginning December 27, 1996 is causally related to her July 1, 1994 employment injury.

In a report dated April 21, 1997, Dr. Taylor stated that appellant had ongoing problems with her shoulder since her July 1, 1994 employment injury, and although she was markedly improved with surgical intervention, she never recovered full and normal function. He stated that appellant continued to have aching discomfort down in the parascapular and shoulder musculature and any added use or demands placed on the arm resulted in aching discomfort. Dr. Taylor opined that appellant had continued muscular pain and weakness that was secondary to the July 1, 1994 employment injury. He stated that he did not think that she was ever fully rehabilitated and never regained full strength. Further, Dr. Taylor stated that appellant's endurance was compromised, and when she overdid it, she paid for it with increasing pain. He recommended that appellant undergo reconditioning and a therapy program to build up strength and endurance which would afford her the possibility of regaining near normal function. Dr. Taylor opined that the overuse type of symptomatology appellant had in the shoulder musculature were the direct result of her July 1, 1994 employment injury.

By letter dated May 28, 1997, appellant requested an oral hearing before an Office hearing representative which was held on January 14, 1998. At the hearing, she testified that she had a significant flare-up to her shoulder on December 27, 1996 when she took a bag from her great aunt whom she took to the airport. Appellant stated that the bag was a "little tiny makeup case" and was not heavy. She testified that, when she reached for the bag, she knew "something was wrong." Appellant stated that she believed she hurt herself because she already had a problem. She also stated that Dr. Taylor gave her a shot in her arm. Referring to Dr. Taylor's January 20, 1997 report, appellant testified that, by "incomplete rehabilitation," Dr. Taylor meant that she did not receive authorization to finish the surgery or therapy. She testified that,

on December 27, 1996, appellant felt pain in her arm before reaching for the package, stating that "[if] I sleep that way, it hurts," and that taking the package made the burning pain more pronounced. Appellant stated that she continued to work after the incident.

By decision dated March 6, 1998, the Office hearing representative affirmed the Office's May 6, 1997 decision. The hearing representative found that the December 27, 1996 event of appellant's taking the bag from her aunt was not work related and broke the chain of causation. She therefore found that appellant's recurrence of disability was not related to the July 1, 1994 employment injury and denied the claim.

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

An individual 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 disability for which compensation is claimed is causally related to the accepted injury.[1] 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.[2] An award of compensation may not be made on the basis of surmise, conjecture or speculation or an appellant's unsupported belief of causal relation.[3]

It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.[4] In discussing how far the range of compensable consequences is carried, once the primary injury is causally connected with the employment, Professor Larson states:

> "When the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of 'direct and natural results' and of claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury."[5]

[1] *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

[2] *See Nicolea Bruso*, 33 ECAB 1138 (1982).

[3] *See William S. Wright*, 45 ECAB 498, 503 (1994).

[4] Larson, *The Law of Workmen's Compensation* § 13.00; *Charlotte Garrett Smith*, 47 ECAB 562, 564 (1996).

[5] *Id.* at § 13.11.

Thus, it is accepted that, once the work connected character of any condition is established, the "subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause."[6]

In the present case, while Dr. Taylor's opinion as expressed in his January 20 and April 21, 1997 reports is supportive that appellant's current shoulder condition is work related, his opinion is not sufficient to establish the requisite causal connection between appellant's current disability and her federal employment. In his January 20 and April 21, 1997 reports, Dr. Taylor did not discuss whether the December 27, 1996 incident wherein appellant took a small, light bag from her great aunt and sustained increasing burning and pain in her arm as well as loss of range of motion, was a consequence of the July 1, 1994 employment injury or a new and distinct injury. In his January 20, 1997 report, Dr. Taylor reported that appellant had a significant flare-up of her shoulder and stated that was "on top of" the low grade symptoms she continued to have. He stated that appellant said that she had a feeling of "something being different" and that her shoulder felt loose and did not move normally. Dr. Taylor also noted that she had a burning pain present. His description of appellant's account of the incident is more consistent with a new injury rather than a recurrence of disability since appellant described new symptoms and sensations. Dr. Taylor also stated, however, that appellant's condition "looked to be a strain, which is a result of the incomplete rehabilitation of her shoulder," but he did not specifically describe the role appellant's reaching for her aunt's bag had in affecting appellant's condition. In describing the December 27, 1996 incident, he merely stated that appellant "reached for something or moved her arm" and did not specifically relate the details of the incident. In his April 21, 1997 report, in which he reiterated that appellant never fully rehabilitated and regained full strength, that her endurance was compromised, and that she suffered increased pain when she overdid it, Dr. Taylor also did not address the significance of appellant's reaching for the bag on December 27, 1996 and how it affected her condition. Dr. Taylor's opinion therefore that the "overuse type of symptomatology" that appellant had in the shoulder musculature was the direct result of the July 1, 1994 employment injury is general and incomplete given appellant's history of injury.

The evidence of record raises the question as to whether appellant sustained a new, nonwork-related injury on December 27, 1996 or whether she sustained an injury that was the direct and natural result of the July 1, 1994 injury, and Dr. Taylor's opinion is insufficient to resolve the issue, the case must be remanded for further development. On remand, the Office should prepare a statement of accepted facts to include a description of the bag appellant lifted on December 27, 1996, the approximate weight for the bag and appellant's medical history. The Office should refer appellant with the statement of accepted facts and the medical records for an opinion by an appropriate physician to address whether the December 17, 1996 event of appellant's taking the bag from her aunt and her resulting medical problems was the result of a consequential injury or a new nonwork-related traumatic injury. The physician should address whether the lifting of the small bag appellant described was considered normal use of her extremity, whether she had incomplete rehabilitation of the extremity prior to December 27, 1996 and identify the cause of the symptoms requiring treatment on December 27, 1996. Upon

[6] *Id*. at 13.11(a); *see also Stuart K. Stanton*, 40 ECAB 859 (1989).

such further development as the Office deems necessary, the Office shall issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs dated March 6, 1998 and May 6, 1997 are hereby set aside, and the case is remanded for further action consistent with this decision.

Dated, Washington, D.C.
February 4, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member