U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KIMBERLY S. STEINMEIER and U.S. POSTAL SERVICE,
POST OFFICE, Mechanicsburg, PA

Docket No. 99-39; Submitted on the Record;
Issued May 9, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on March 25, 1997 causally related to her March 29, 1995 employment injury.

On March 29, 1995 appellant, then a 30-year-old clerk, sustained employment-related left knee contusions and lumbar and cervical strains when she tripped and fell at work. She did not stop work, was placed on limited duty and returned to full duty on August 15, 1995. On July 2, 1997 appellant filed a recurrence claim, alleging that beginning on March 29, 1995 her neck condition worsened. She was placed on limited duty but stopped work on June 16, 1997 because the employing establishment had no limited duty available. A limited-duty offer was rejected on July 14, 1997.

By letter dated August 12, 1997, the Office of Workers' Compensation Programs informed appellant of the type evidence needed to establish that she sustained a recurrence of disability. In a decision dated October 7, 1997, the Office denied the claim on the grounds that the record contained no medical evidence bridging the period between the March 29, 1995 employment injury and her current condition. Appellant, through counsel, requested a review of the written record[1] and submitted additional evidence. In a June 15, 1998 decision, an Office hearing representative affirmed its prior decision. The instant appeal follows.

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 recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.[2] This burden includes the

[1] Appellant's counsel initially requested a hearing on October 22, 1997. By letters dated April 3 and 8, 1998, he changed the request to a review of the written record.

[2] *Kevin J. McGrath*, 42 ECAB 109 (1990); *John E. Blount*, 30 ECAB 1374 (1974).

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 that conclusion with sound medical reasoning.[3] The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two nor the belief of appellant that the disease was caused or aggravated by employment conditions is sufficient to establish causal relationship.

The relevant medical evidence[4] includes a May 1, 1995 x-ray of the cervical spine that was normal. A magnetic resonance imaging (MRI) scan of the cervical spine dated May 3, 1995 that revealed a tiny extradural defect at C5-6 and C6-7. A June 4, 1997 MRI scan of the cervical spine demonstrated a rather large disc herniation extending across the disc space at C4-5, more prominent on the right and extruding into the right anterior aspect of the canal along the adjacent C4 and C5 vertebral bodies with a smooth right paracentral C3-4 herniation, a small right paracentral C6-7 herniation and a bulging C5-6 disc.

In a June 23, 1997 report, Dr. Richard W. Fideler, a neurosurgeon and appellant's treating physician, noted the 1997 MRI scan findings and advised:

> "[Appellant] clinically has a cervical radiculopathy primarily bilateral C5 referable to the C4-5 disc level and very substantial posterior neck pain referable to C4-5 and probably to C3-4 as well. There is a history of multiple prior motor vehicle accidents in the late 1980s, but [appellant] was asymptomatic in the hours, days and weeks prior to the on-the-job injury of 1995 ... which to a reasonable degree of medical certainty is the major precipitating and causative factor regarding [her] current symptoms, which apparently spontaneously worsened without further trauma [on] March 25, 1997. [She] is in substantial pain and has substantial weakness in both arms on exam[ination] and wants something done about this."

By report dated July 14, 1997, Dr. Fideler advised that appellant could not work.

In a report dated July 22, 1997, an Office medical adviser noted that the MRI scan taken five weeks after the employment injury demonstrated tiny extradural defects at C5-6 and C6-7 and opined that, because the disc herniation at C4-5 was not present in the 1995 MRI scan, it was not a result of the March 29, 1995 work injury.

Dr. Mark P. Holencik, an osteopathic physician, submitted a report dated August 6, 1997 in which he noted appellant's history, made findings on examination and diagnosed large disc

[3] *Frances B. Evans*, 32 ECAB 60 (1980).

[4] Appellant also submitted reports from Dr. John Homza, a chiropractor. Section 8101(2) of the Federal Employees' Compensation Act provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. 5 U.S.C. § 8101(2); *Sheila A. Johnson*, 46 ECAB 323 (1994). This case does not contain a diagnosis of subluxation as demonstrated by x-ray.

herniations with coexisting spondylosis at C3-4 and C4-5 both right with right upper extremity cervical polyradiculopathy and extreme cervical irritability.

Appellant underwent surgical disc fusion at C3-4 and C4-5 on August 8, 1997. Postoperatively, Dr. Holencik continued to submit reports in which he tracked appellant's recovery and provided restrictions to her physical activity.[5]

By report dated April 20, 1998, Dr. Fideler advised:

> "[Appellant's] clinical diagnosis is based on a number of factors including the substantial accuracy of the history as given to me by [her] (which I have no reason to doubt) which details a single major accident on the job during 1995 with [appellant] asymptomatic in the neck and arms prior to this injury but becoming symptomatic in both neck and arms very shortly thereafter with no further known injury. It is very well recognized medically that an injury to one or more cervical discs can occur with an initial accident, which is the proximate causation and precipitating event with injury and fragmentation of one or more cervical discs which may not initially be prominent enough to show on MRI scans taken shortly after injury, but with the associated instability and movement of the cervical vertebra abnormally, in this case of C3 with respect to C4 vertebral bodies and C4 with respect to C5 vertebral bodies, that these injured discs as a result of the 1995 accident can and did spontaneously worsen without substantial known recent injury during late March 1997, to a reasonable degree of medical certainty. The history as given by [appellant] is completely consistent with her multiple cervical MRI scans as well as the findings at anterior cervical discectomy and fusion surgery August 8, 1997 of frank herniations of two discs, at both levels. Again, to a reasonable degree of medical certainty, the on-the-job injury of March 29, 1995 is the major precipitating and causative factor responsible for [her] cervical disc herniations [at] C3-4 and C4-5, which necessitated her subsequent anterior cervical discectomy and fusion C3-4 and C4-5 surgery of August 8, 1997."

In a June 1, 1998 report, Dr. Fideler advised that appellant was making excellent recovery from surgery and noted that she was tolerating work well with a 30-pound weight restriction.

Section 8123 of the Federal Employees' Compensation Act provides that if there is 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.[6]

In the present case, Dr. Fideler opined that appellant's cervical condition was caused by the March 29, 1995 employment injury. The Office medical adviser, however, advised that, because the disc herniation at C4-5 was not present in the 1995 MRI scan, it was not a result of

[5] The record indicates that appellant returned to work in November 1997.

[6] 5 U.S.C. § 8123; *see Shirley L. Steib*, 46 ECAB 309 (1994).

the March 29, 1995 work injury. The Board finds that these opinions are of approximately equal value and are in conflict on the issue of whether appellant had a recurrence of total disability due to his employment injury. The case shall therefore be remanded for referral to an appropriate Board-certified specialist, accompanied by a statement of accepted facts and the complete case record, for a rationalized medical opinion addressing this issue. After such further development deemed necessary, the Office shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated June 15, 1998 is hereby set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
May 9, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member