

On September 26, 2001 appellant, who had returned to work on May 10, 2001, filed a claim for recurrence, alleging she sustained a recurrence of disability due to the January 26, 2001 injury on August 7, 2001. She noted that she had “ongoing and increasing pain same location.”

In support of her claim, appellant submitted medical reports by Dr. Ciaran Bolger, appellant’s neurosurgeon, in Ireland. These reports indicate that Dr. Bolger initially saw appellant on February 19, 2001. Dr. Bolger noted that appellant had “compression of the left-sided L5 nerve root caused by a misplaced L5 pedicle screw causing pain to be felt in the distribution of the L5 nerve root together with loss of sensation in the L5 nerve root and intermittent problems with paralysis of the left foot.” He noted that, since the pedicle screw had been removed, appellant had no problems. In a letter dated May 9, 2001, Dr. Bolger indicated that appellant could return to her duties at the employing establishment.

While in Ireland, appellant was also evaluated by Dr. Tim Gleeson, who, in a report dated August 22, 2001, indicated that appellant “is currently suffering from neurological pain as the sequel to the preexisting back pain that she has had for some years, and as an ongoing sequelae to the neurosurgery that she has had earlier this year.” In a report dated August 31, 2001, Dr. Gleeson stated:

“As it is well documented [appellant] had neurosurgery earlier this year by Dr. Bolger for a problem of back pain which preexisted her entrance of this country. This back pain was helped by Dr. Bolger’s surgery but not totally helped and therefore she had residual pain subsequent to her neurosurgery. She has asked me to clarify that this pain was residual from the neurosurgical procedure which was a direct result of previous neurosurgery carried out in the United States.”

Appellant also submitted medical reports by Dr. Kathleen R. Moore, her treating Board-certified orthopedic surgeon in the United States, who treated her both before and after her stay in Ireland. On August 30, 2001 Dr. Moore noted that appellant had surgery in December 1998 for fusion of L3-4 and subsequently L5-S1. Dr. Moore indicated that appellant had an “[o]n-the-job injury with subsequent disc herniations L2-3.” In an attending physician’s report dated September 13, 2001, Dr. Moore checked the box indicating she believed that appellant’s L2-L3 disc herniation was caused by her employment activity. No further explanation was provided. On December 3, 2001 Dr. Moore performed a “laminectomy L1 and L2 with foraminotomy bilaterally L1-2 and L2-3 with posterior instrumented fusion L2-3 and AO pedicle screws and local and allograft bone....” In a report dated January 3, 2002, Dr. Moore indicated:

“When the patient was at work for [the employing establishment] she was doing a lot of twisting and filing and sustained disc herniations with instability at the L2-L3 level. I believe this is an injury that is predisposed because of her fusion operation, but I do believe it occurred at work.

“I think that more than 51 percent of the reason and need for surgery was due to her on-the-job injury at the embassy. I do believe it occurred at work.”

By decision dated February 26, 2002, the Office denied appellant's claim for a recurrence. The Office determined that appellant had not met the requirements for establishing that she sustained a recurrence of disability subsequent to August 7, 2001 causally related to the injury of January 26, 2001.

On March 19, 2002 appellant requested an oral hearing. On October 10, 2002 appellant, through her attorney, requested reconsideration. By correspondence dated October 15, 2002, appellant requested that the Office vacate any hearing request and proceed with the request for reconsideration.

In support of her request for reconsideration, appellant submitted additional medical reports by Dr. Moore dated April 5 and June 19, 2002. In the April 5, 2002 report, Dr. Moore indicated:

"The patient had an injury dated January 26, 2001 where she herniated a dis[c] at L2-3 and I believe was treated inappropriately with hardware removal for the dis[c] herniation.

"Her magnetic resonance imaging (MRI) [scan] after her injury on January 26, 2001 that was from Dublin, Ireland did show her dis[c] herniations at L2-3 at that time. The patient had persistent pain following her surgery with her hardware removal and eventually returned to the United States for treatment and evaluation of this.

"On her initial exam[ination] and evaluation of her MRI [scan] it was noted that she had pain in the same place above her fusion that she had following her work injury. I believe that the pain was the same as it was prior to her surgery in Dublin and from her history she had this persistent pain even following the surgery. Her pain into her groin was definitely related to her dis[c] herniation as well.

"The patient eventually had to undergo surgery after being treated nonoperatively with epidural steroids unsuccessfully and did require discectomy and fusion here in December 2001.

"I really do feel this surgery of December 2001 was related to her work injury dated January 26, 2001. I think the evidence of that is on her MRI [scan] that was obtained immediately following her injury. I think her claim should be accepted."

In the June 19, 2002 report, Dr. Moore indicated:

"I will try to more specifically explain what I believe has happened to [appellant] with her on-the-job injury.

"The patient was bending and doing some filing, and she noted fairly sudden onset of back and leg pain. She was evaluated appropriately by Mr. Bulger and was felt to have problems with her instrumentation. Her fusion was solid and her instrumentation was removed. On one side, the patient had persistent symptoms.

The fusion that the patient has had at L5-S1 and at L3-4 has predisposed her to injury at L2-3. This is because these levels are fused. They have no mobility, and they increase the stresses at the L2-3 level as well as increasing the stresses at the L3-4 level. The L3-4 level remains healthy.

“It is my medical belief that the patient’s initial diagnosis was her L2-3 disc herniations and instability. I do not think that the hardware was ever what required her treatment. There was no failure of the hardware. The hardware is in place, and the fusion is solid. The hardware does not have any input to the patient’s symptomatology unless it is within the canal or pinching on a nerve root. It is not causing any pressure on her nerves.”

On June 10, 2003 the Office medical adviser answered questions from the Office by indicating that appellant’s left-sided L5 nerve root compression was related to her work injury of January 26, 2001. He further noted that the surgeries of April and December 1998 by Dr. Moore were unrelated. He then indicated that the MRI scan of March 16, 2001 indicated abnormal findings at L2-L3, but the history and clinical examination revealed occasional foot drop on left and decreased sensation at L5 dermatome. He noted that the false positive rate on MRI scans is greater than 20 percent, and that medically, the finding on clinical examination is considered to be the most accurate.

By decision dated June 30, 2003, the Office reviewed appellant’s case on the merits but did not modify the prior decision.

LEGAL PRECEDENT

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which she seeks compensation was causally related to the employment injury.¹ As part of this burden she must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the injury claimed and the factors of her federal employment.² Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.³ Causal relationship is a medical issue that can be established only by medical evidence.⁴ An

¹ *Dominic M. DeScala*, 37 ECB 369 (1986); *Henry L. Kent*, 34 ECAB 361 (1982).

² *Steven R. Piper*, 39 ECAB 312 (1987).

³ *Id.*

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

award of compensation may not be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.⁵

ANALYSIS

In the instant case, appellant sustained an injury in the course of her federal employment on January 26, 2001, which was accepted for a left-sided nerve root compression L5 aggravation. Appellant alleged a recurrence of this accepted injury on August 7, 2001. However, the evidence does not support appellant's claimed recurrence. Dr. Gleeson, in his August 31, 2001 report, indicates that appellant's back pain was residual from previous neurosurgery carried out in the United States. However, as appellant had prior back problems not related to her employment, this is not sufficient to establish a recurrence on August 7, 2001. Although Dr. Moore indicates in her attending physician's report dated September 13, 2001 that appellant's L2-3 disc herniation was caused by her employment activity, that appellant was inappropriately treated with hardware removal for her disc herniations, and that the MRI scan following her injury on January 26, 2001 did show her disc herniations at L2-3 at that time, her use of the terms "I think" and "I believe" indicate doubt as to her conclusions. Furthermore, the Office medical adviser noted that false positive rates on MRI scans are greater than 20 percent, and that the medical examinations were more accurate. Accordingly, the Office medical adviser noted that only the left-sided L5 nerve root compression was related to the work injury of January 26, 2001. Therefore, appellant has not established by the weight of the rationalized medical evidence that she sustained a recurrence of disability due to her January 26, 2001 injury on August 7, 2001.

CONCLUSION

Under the circumstances described above, the Office properly determined that appellant had not met her burden of proof to establish a recurrence of disability due to her January 26, 2001 injury on August 7, 2001.

⁵ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 30, 2003 is affirmed.

Issued: June 3, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member