

In the prior appeal of this case,¹ the Board found that a conflict in medical opinion existed on whether the employment incident of May 16, 2001 caused or contributed to increased endplate edema at L4-5 or multiple radiculopathy involving the L5-S1 nerve root. The Board set aside Office decisions and remanded the case for referral to an impartial medical specialist under 5 U.S.C. § 8123(a). The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

The Office referred appellant, together with case record and a statement of accepted facts, to Dr. Randall N. Smith, a Board-certified orthopedic surgeon, to resolve the conflict. On August 20, 2004 Dr. Smith noted appellant's past history, which included arthritis, shortness of breath, a laminectomy in May 1997 and a second one done at a different level in January 2000. He related that she caught her heel on a rug and tripped at work on May 16, 2001. Dr. Smith noted her complaints. He described his findings on physical examination and reviewed diagnostic studies obtained before and after the May 16, 2001 employment injury. Dr. Smith offered his opinion on the question presented stating:

“The conclusion is that [appellant] does have postlaminectomy syndrome with peridural adhesions and low back syndrome with sciatica. The chart indicates that a statement of accepted facts includes the fact that she was injured when she tripped on carpet causing a lumbar sprain, preexisting conditions included herniated discs at L4-5 and L5-S1 for which she had undergone surgery and left her with peridural adhesions, she also had obesity and tells me that she has gained weight even more since this happened. She has undergone multiple cortisone injections following the second operation which would suggest that she had not fully recovered although she tells me that [she] felt fine prior to this slip and fall incident. I have reviewed the MRI [magnetic resonance imaging] [scan] and do not see any significant progression on the MRI [scan]s up to the most recent MRI [scan]. Records indicated that she did have right buttock and low back pain after the first operation before the second operation and after the second operation as well.

“After review of all the medical records it is my opinion that [appellant] does have the residual of her two herniated discs, peridural adhesions, low back syndrome and sciatica. The accepted injury was a lumbar sprain and strain and thus this aggravated a preexisting condition. At this point in time though I do not think that this aggravation can be blamed for ongoing symptoms, I think that the MRI [scan] studies, the history and the records indicate that she had a temporary aggravation but her present symptoms are from the initial disc herniations and not from the recent injury of tripping on the carpet. I think her size that is the obesity has a definite factor on why she has not gotten any better. I think she does need ongoing treatment and I do not think she can be working but I don't think these are related to the fall on the rug injury. There is no significant change in her clinical picture or the MRIs, there is an obese female with significant preexisting lumbar disc pathology and I believe this is why she has ongoing symptoms.

¹ Docket No. 03-0783 (issued July 16, 2003).

“I do n[o]t believe her endplate edema at the L4-5 level and radiculopathy are as a result of the work injury but are just a normal progression of her disc herniations and peridural adhesions. The preexisting disability is the reason why she is presently disabled. I do not believe she is continuing to suffer any residuals from this trip on the carpet.”

In a decision dated September 13, 2004, the Office denied appellant’s claim for additional lumbar conditions. The Office found that Dr. Smith’s opinion represented the weight of the medical evidence.

In a decision dated March 4, 2005, an Office hearing representative reviewed the written record and affirmed. Noting appellant’s complaint that Dr. Smith had performed another referee examination within three days of hers, the hearing representative found that Dr. Smith was properly selected to resolve the conflict in this case.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees’ Compensation Act² has the burden of proof to establish the essential elements of her claim by the weight of the evidence,³ including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.⁴

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant’s employment injury, and must explain from a medical perspective how the current condition is related to the injury.⁵

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 When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁷

² 5 U.S.C. §§ 8101-8193.

³ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

⁶ 5 U.S.C. § 8123(a).

⁷ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

ANALYSIS

The Office provided Dr. Smith, the impartial medical specialist, with appellant's case record and a statement of accepted facts so that he could base his opinion on a proper factual and medical background. His August 20, 2004 report demonstrates an accurate review of the facts of this case and a close examination of appellant's medical history. Of particular importance is his review of the diagnostic studies obtained both before and after the May 16, 2001 employment injury, including MRIs, x-rays and CT scans. After reviewing all the medical records, Dr. Smith concluded that appellant's endplate edema at the L4-5 level and radiculopathy were not the result of the tripping incident on May 16, 2001, but represented a normal progression of her preexisting disc herniations and peridural adhesions. He pointed to her history of obesity, preexisting lumbar disc pathology and prior back surgeries, from which she had not fully recovered, as the explanation for her ongoing symptoms. Dr. Smith reasoned that there was no significant change in her clinical picture or the MRI scans following the tripping incident to support any causal connection to her present symptoms.

The opinion of the impartial medical specialist is clear and unequivocal. It is based on a proper history and rationally explains from a medical perspective that appellant's endplate edema at the L4-5 level and radiculopathy are not causally related to the tripping incident on May 16, 2001. The Board finds that this evidence is entitled to special weight in resolving the conflict found on the prior appeal. As the Board noted in that appeal, appellant bears the burden of proof to establish a causal relationship with respect to these unaccepted lumbar conditions. As the weight of the medical evidence negates the essential element of causal relationship, the Board finds that she has not met her burden of proof. The Board will affirm the Office's September 13, 2004 and March 4, 2005 decisions.

Appellant's attorney questioned whether the Office properly selected Dr. Smith from its rotating list of impartial medical specialists, alleging that he had performed a referee examination in another case within three days' time. The attorney submitted no evidence to support his allegation or to corroborate that the selection was in fact improper. As the Board's jurisdiction is limited to the evidence that was before the Office at the time of its final decision,⁸ the Board finds no basis in the record for rejecting Dr. Smith's opinion.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that the employment incident of May 16, 2001 caused or contributed to increased endplate edema at L4-5 or multiple radiculopathy involving the L5-S1 nerve root. The opinion of the impartial medical specialist, Dr. Smith, constitutes the weight of the medical evidence on this issue and negates the element of causal relationship.

⁸ 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the March 4, 2005 and September 13, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 1, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board