

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANICE B. SUGGS and U.S. POSTAL SERVICE,
POST OFFICE, Hartsville, SC

*Docket No. 00-2450; Submitted on the Record;
Issued April 4, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant's avascular necrosis of the right hip is causally related to her June 5, 1998 employment injury; and (2) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation and medical benefits on the basis that she no longer had any disability or residuals causally related to her June 5, 1998 employment injury.

On June 5, 1998 appellant, a 49-year-old letter carrier, sustained multiple injuries as a result of an employment-related motor vehicle accident. The Office accepted appellant's claim for lumbar strain and multiple contusions and she received appropriate wage-loss compensation. Approximately three months after her employment injury, appellant returned to work in a part-time, limited-duty capacity. Appellant's physician limited her to working two hours per day and the Office compensated her for the balance of her workday. In September 1998, appellant was diagnosed with avascular necrosis of the right femoral head.

Beginning in November 1998, appellant submitted a series of Forms CA-8 claiming that her right hip avascular necrosis resulted from the June 5, 1998 employment-related motor vehicle accident and that this condition contributed to her ongoing disability. While the Office paid appellant wage-loss compensation through November 4, 1998, it advised appellant in December 1998 that her claim had not been accepted for avascular necrosis and that additional medical evidence was required in support of her claim for disability compensation on or after November 5, 1998.

After further development of the record, the Office issued a decision on July 19, 1999 finding that appellant's right hip avascular necrosis was not caused or aggravated by the June 5, 1998 employment injury. Accordingly, the Office denied wage-loss compensation and medical benefits with respect to her claimed right hip condition.

In a subsequent decision dated October 6, 1999, the Office terminated appellant's compensation and medical benefits with respect to her accepted conditions of lumbar strain and

multiple contusions.¹ The Office found that the evidence of record established that appellant was no longer disabled and the residual effects of her work-related injury of June 5, 1998 had ceased.

On October 14, 1999 appellant requested reconsideration of both the July 19, 1999 and October 6, 1999 decisions. In response, the Office reviewed appellant's claim on the merits and, in separate decisions dated April 18, 2000, denied modification of the July 19 and October 6, 1999 decisions.

The Board finds that appellant failed to establish that her right hip avascular necrosis was causally related to her June 5, 1998 employment injury.

A claimant seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work, for which she claims compensation is causally related to the employment injury.³ Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁴ Where appellant claims that a condition not accepted or approved by the Office was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.⁵

Appellant's treating physician, Dr. Andrew E. Floren, stated that her avascular necrosis was unrelated to the June 5, 1998 motor vehicle accident. Dr. Floren referred appellant to Dr. Sidney N. Martin, a Board-certified orthopedic surgeon, who similarly found that appellant's right hip condition was not related to the June 5, 1998 employment injury. Appellant subsequently sought treatment from Dr. Robert E. Turner III, a Board-certified internist specializing in rheumatology. In a report dated October 5, 1998, Dr. Turner indicated that appellant had fairly significant post-traumatic avascular necrosis "probably directly related to her on-the-job injury." He explained that "trauma can clearly be related to [avascular necrosis]." A fourth physician, Dr. Joseph W. Dunlap Jr., a Board-certified orthopedic surgeon, examined appellant on November 5, 1998 and noted that her complaints of pain far outweighed the findings of avascular necrosis. Dr. Dunlap further commented that he was not sure what relation the avascular necrosis had to her motor vehicle accident as it was present on a magnetic resonance imaging scan approximately five weeks after her injury.

¹ The Office previously issued a notice of proposed termination of benefits on July 23, 1999.

² 5 U.S.C. §§ 8101-8193.

³ *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁴ *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the claimant's specific employment factors. *Id.*

⁵ *Jacquelyn L. Oliver*, *supra* note 3.

After reviewing appellant's treatment records and additional medical reports, Dr. Floren concluded in a report dated December 1, 1998, that appellant had no objective signs of permanent injury arising from her motor vehicle accident. He further stated that appellant's avascular necrosis preceded her motor vehicle accident and was unrelated to the June 5, 1998 incident. Dr. Floren explained that appellant's avascular necrosis was not the cause of her current pain and that several physicians considered her to be a strong symptom magnifier. He also noted that appellant had an elevated rheumatoid factor, which might possibly be a cause of generalized pain and joint aches. Additionally, Dr. Floren stated that appellant had a significant psychiatric history, which predated the accident and was "probably significantly involved" in her perception of ongoing pain.

In a January 12, 1999 report, Dr. Turner reiterated his earlier opinion that appellant's avascular necrosis was related to her June 5, 1998 employment injury. Dr. Turner stated that trauma was a very common cause of avascular necrosis of the hip and appellant had no hip pain until several days after her "fairly significant injury to her hip area."

Dr. Martin stated in a February 2, 1999 letter, that appellant's accident did not cause the avascular necrosis. He further noted that while he believed appellant was experiencing pain and discomfort, Dr. Martin did not feel that the pain emanated from the "small vocal spot of [a]vascular [n]ecrosis in her hip."

In view of the differing opinions regarding the cause of appellant's right hip condition, the Office referred appellant for a second opinion examination by Dr. E. Neal Powell Jr., a Board-certified orthopedic surgeon. In a report dated March 15, 1999, Dr. Powell stated that appellant's lumbar sprain and contusions had resolved. He explained that there was no objective evidence to indicate a musculoskeletal problem or that appellant had any ongoing pain related to a lumbar sprain. Dr. Powell further noted that appellant's pain seemed well out of proportion to any objective physical findings. Additionally, he explained that nine months had elapsed since the injury and, therefore, the accepted conditions should be totally resolved, requiring no further treatment. As appellant's accepted conditions had resolved, Dr. Powell stated that appellant should otherwise be able to fully perform her job.

With respect to appellant's avascular necrosis, Dr. Powell noted that there was no history to indicate that appellant's hip was injured in the June 5, 1998 motor vehicle accident. He explained that while avascular necrosis may occasionally develop after trauma, the development of this condition was more common after severe trauma such as a hip fracture or dislocation. Dr. Powell further explained that avascular necrosis often took a considerable period of time to develop even after injury. In this case, the time from appellant's injury to diagnosis seemed much too short to logically assume that the motor vehicle accident was the causative factor. In conclusion, he noted that appellant's history of significant alcohol consumption represented a significant risk factor for the development of avascular necrosis and Dr. Powell opined that alcohol consumption was the etiology of appellant's problem.

As the opinions of Drs. Powell and Turner were in conflict, the Office referred appellant for an impartial medical examination. In a report date May 5, 1999, Dr. Terrence W. Hassler, a Board-certified orthopedic surgeon and impartial medical examiner, noted that appellant had

recently undergone a core decompression of the right hip.⁶ Regarding the etiology of appellant's avascular necrosis, Dr. Hassler explained that as appellant did not have a significant trauma to her right hip nor dislocation on June 5, 1998 it would be rather unusual for avascular necrosis to result from the accident. He further noted that appellant had a history of alcohol intake and steroid use during hospitalization and that these were risk factors for developing avascular necrosis. Dr. Hassler also explained that 50 percent of cases of avascular necrosis were idiopathic in nature. As such, he opined that appellant's avascular necrosis was either idiopathic in nature or possibly related to prior alcohol consumption and steroid usage.

In this case, the Office correctly determined that a conflict of medical opinion existed based on the opinions of Drs. Powell and Turner. Therefore, the Office referred appellant to Dr. Hassler, an impartial medical examiner who concluded that appellant's avascular necrosis was not related to her June 5, 1998 employment injury.⁷ The Board finds that the Office properly relied on the impartial medical examiner's opinion as a basis for concluding that appellant's right hip condition was not employment related.⁸ Dr. Hassler's opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed appellant's medical records. Dr. Hassler also reported accurate medical and employment histories. Accordingly, the Office properly accorded determinative weight to Dr. Hassler's findings regarding the lack of a causal relationship between appellant's avascular necrosis and her June 5, 1998 employment-related motor vehicle accident.⁹

Following Dr. Hassler's examination in May 1999, appellant continued under the care of Drs. Turner and Dawson, both of whom entertained the possibility of performing hip replacement surgery. Dr. Turner stated in an October 4, 1999 report that appellant needed the surgery. However, he did not otherwise revisit the issue of the cause of appellant's avascular necrosis. Also Dr. Dawson's treatment notes reflect an uncertainty as to the cause of appellant's avascular necrosis. The physician's most recent notes, dated July 28, 1999, indicate Dr. Dawson explained to appellant that there "might be a [1] chance in [50]" that the accident caused her avascular necrosis, however, he was unsure.

The recent reports of Drs. Dawson and Turner are insufficient to overcome the weight of the impartial medical examiner's opinion. Accordingly, the Office properly found that appellant

⁶ Dr. Alfred G. Dawson, a Board-certified orthopedic surgeon, performed the core decompression on March 26, 1999.

⁷ The Act provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

⁸ In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

⁹ The fact that the etiology of a disease or condition is unknown or obscure neither relieves appellant of the burden of establishing a causal relationship by the weight of the medical evidence nor does it shift the burden of proof to the Office to disprove an employment relationship. *Judith J. Montage*, 48 ECAB 292, 294-95 (1997).

failed to establish a causal relationship between her June 5 1998 employment injury and her right hip condition.

The Board also finds that the Office met its burden of proof in terminating appellant's compensation and medical benefits.

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.¹⁰ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.¹¹

In a report dated March 22, 1999, Dr. Dawson, stated that the majority of appellant's hip pain emanated from her back. He noted evidence of a disc bulge at L4-5 and opined that appellant was unable to work due to her lumbar disc injury. In subsequent treatment notes dated April 28, 1999, Dr. Dawson stated: "I don't know 100 [percent] if the hip pain is coming from [appellant's] hip or infact (sic) from her back." Nonetheless, he continued to provide appellant disability slips as recently as August 19, 1999, indicating she was disabled for work due to lower back problems. In contrast, both Dr. Powell and the independent medical examiner, Dr. Hassler, clearly indicated that appellant no longer suffered residuals of her employment-related lumbar strain and multiple contusions. Similarly, appellant's treating physician of record, Dr. Floren, indicated that she had no objective signs of permanent injury arising from her motor vehicle accident.

As it is apparent from Dr. Dawson's treatment notes that he was unsure of the source of appellant's pain, his opinion regarding whether appellant has any continuing employment-related disability or residuals is of limited probative value. The weight of the medical evidence regarding the presence and extent of any employment-related disability or residuals is represented by the reports of Drs. Floren, Powell and Hassler, each of whom provided well-rationalized medical opinions. Accordingly, the Board finds that the Office met its burden to terminate appellant's compensation and medical benefits.

¹⁰ *Curtis Hall*, 45 ECAB 316 (1994).

¹¹ *Jason C. Armstrong*, 40 ECAB 907 (1989).

The April 18, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
April 4, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member