

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOYCE F. WHITE and DEPARTMENT OF THE ARMY,  
WALTER REED ARMY MEDICAL CENTER, Washington, DC

*Docket No. 98-1391; Submitted on the Record;  
Issued March 17, 2000*

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DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant established a back condition that required a laminectomy as a result of her July 10, 1989 employment injury.

On July 12, 1989 appellant, then a 51-year-old secretary, filed a notice of traumatic injury alleging that she injured her left toe, ankle and thigh on July 10, 1989 when she slipped down some steps in the course of her federal employment. On July 26, 1989 the Office of Workers' Compensation Programs accepted the claim for a fracture of the left great toe and a left ankle sprain. On June 11, 1990 appellant filed a claim for a recurrence of disability alleging that on May 29, 1990 a painful knot formed over her broken toe preventing her from wearing a shoe. On June 28, 1990 the Office accepted the claim again for a fracture of the left great toe and authorized surgery to correct osteophyte clawing of the toe. On March 10, 1992 the Office authorized a left tarsal tunnel release and surgical exploration.

On August 13, 1991 Dr. Easton L. Manderson, appellant's treating physician and a Board-certified orthopedic surgeon, diagnosed acute lumbago or iliolumbar sprain as a result of appellant bending over to put on a brace. Dr. Manderson subsequently provided numerous reports indicating that appellant presented with lower back symptoms. On June 9, 1992, February 27 and May 12, 1993 he related appellant's back problems to her inability to bear weight on her left lower extremity.

On March 2, 1993 Dr. Christian Chinwuba, a Board-certified radiologist, interpreted a magnetic resonance imaging (MRI) of appellant's lumbosacral spine and found that it suggested a mild-to-moderate disc herniation central and to the left at L3-4. Dr. Chinwuba also diagnosed severe facet joint disease with hypertrophy of the ligamenta flava at L4-5 and L5-S1 levels.

On April 13, 1993 Dr. Earl C. Mills, an attending physician and a Board-certified neurosurgeon, recorded the history of appellant's injuries and treatment. Following Dr. Mills examination, he diagnosed chronic severe low back pain syndrome and bilateral lower extremity

radiculopathy. On June 15, 1993 Dr. Mills also opined that appellant had a herniated lumbar disc. He subsequently repeated his diagnoses in numerous reports.

Appellant subsequently requested a laminectomy for severe back pain secondary to her inability to bear weight on her left lower extremity.

On January 4, 1995 the Office referred appellant to Dr. Roger L. Raiford, a Board-certified orthopedic surgeon, for a second opinion examination. On February 2, 1995 Dr. Raiford recorded the history of appellant's accepted injury to her left lower extremity and the treatment she received. He noted that appellant first complained of back pain beginning on August 13, 1991 and Dr. Raiford reviewed the treatment appellant received for her back problems. In this regard, he stated that the MRI showed a herniated disc at the L3-4 level. Dr. Raiford stated that appellant complained of pain radiating to the left lower extremity. His examination of the back revealed tenderness to palpation of the paraspinal muscles in the left lower back. Dr. Raiford found tenderness over the left sacroiliac joint and noted that straight leg raising from zero to seven degrees caused back pain. He also found diminished sensation in the left lower extremity. Dr. Raiford opined that appellant developed a herniated disc at L3-4, which could not be directly related to her accepted injuries on review of the record. In support, he stated that appellant did not report any back problems until August 1991 nearly two years after her injury. Dr. Raiford stated that appellant's present disability, a herniated disc at L3-4, was secondary to a nonwork-related injury and that, therefore, the recommended surgery at the L3-4 level could not be attributed to appellant's July 10, 1989 injury.

On April 10, 1995 Dr. Mills again treated appellant for pain in the lumbosacral region of her back, especially on the right side. He reported that appellant still had pain in her left lower extremity. Dr. Mills stated that appellant's left leg gave out and that this was associated with severe left lumbar pain, left buttock and left hip pain. His examination revealed limited bendability of appellant's spine and tenderness to palpation at the lumbosacral region. Dr. Mills diagnosed chronic, severe low back pain syndrome, a herniated disc at L3-4, facet arthropathy and lumbar spinal stenosis. He repeated his conclusions in subsequent reports and on March 5, 1995 indicated that appellant required a lumbar decompressive radiculopathy.

A September 13, 1995 MRI of appellant's lumbar spine interpreted by Dr. Doriann R. Thomas, a Board-certified radiologist, indicated that there was desiccation of the discs from L2-3 through L5-S1 and mild spinal stenosis at L4-5 secondary to mild circumferentially bulging disc and ligamentous hypertrophy.

On May 14, 1996 Dr. Mills indicated that appellant sustained an injury to her low back, buttock and hip as a result of her July 10, 1989 work injury. He noted that the MRI revealed disc herniation at L3-4 and severe facet joint disease with hypertrophy of the ligamentum flava noted at L4-5 and L5-S1. Dr. Mills stated that appellant's condition would worsen unless she underwent a decompressive laminectomy with foraminotomy. He continued to submit reports supporting these diagnoses and conclusions.

On November 3, 1997 the Office found that a conflict existed between the opinion of Dr. Mills, appellant's attending physician, and the Dr. Raiford, the Office referral physician, concerning the issue of whether appellant suffered a back condition and needed back surgery as

a result of her July 10, 1989 injury. The Office, therefore, referred appellant, along with a statement of accepted facts and the case record, to Dr. Kevin E. McGovern, a Board-certified orthopedic surgeon, for a referee examination.

On November 17, 1997 Dr. McGovern provided his referee opinion. He reviewed the history of appellant's injury and the treatment she received from Dr. Manderson. Dr. McGovern noted that Dr. Manderson first reported appellant's back pain on August 13, 1991. He stated that an April 17, 1995 MRI, the most recent of record, revealed mild-to-moderate degenerative changes mainly in the form of disc and facet joint disease, but no disc herniations, spinal stenosis or significant disc bulges. Dr. McGovern performed a physical examination, which revealed that straight leg raising gave her back pain and that there was tenderness in the paralumbar muscles. He recorded good motion of the paralumbar spine, but found that back pain was present. Dr. McGovern noted that the x-rays revealed mild degenerative disease. He opined that there was no evidence of a disc herniation or of spinal stenosis based on the April 17, 1995 MRI he reviewed. Consequently, Dr. McGovern found that appellant was not a candidate for a lumbar decompressive laminectomy. He opined that appellant's back pain was related to degenerative disc disease and perhaps musculolumbar sprain both unrelated to her July 10, 1989 employment injury. Dr. McGovern stated that appellant's original injury did not contribute to the existence of her back problems.

By decision dated February 3, 1998, the Office denied appellant's request for surgery. Because it found that her low back pain syndrome was not causally related to her July 10, 1989 work injury. The Office found that the weight of the medical evidence rested with the opinions of Drs. Mills and McGovern who opined that the condition requiring the proposed surgical procedure was not causally related to her injury.

The Board finds that the Office properly found that appellant failed to establish a back condition that required a laminectomy as a result of her July 10, 1989 employment injury.

Due to a conflict in medical opinion between Dr. Mills, appellant's attending physician, and Dr. Raiford, the Office's second opinion physician, regarding whether appellant suffered a back condition and required a laminectomy due to her July 10, 1989 work injury, the Office pursuant to section 8123 of the Federal Employees' Compensation Act<sup>1</sup> properly referred appellant to Dr. McGovern, a Board-certified orthopedic surgeon, for an impartial medical examination.

In situations where there are opposing medical reports of virtually equal weight and the case is referred to an impartial specialist, the opinion of such a specialist will be given special weight if the opinion is based on a proper factual background and is well rationalized.<sup>2</sup> In this case, Dr. McGovern reviewed appellant's entire history of injury and the treatment she received, including her prior MRI findings. Dr. McGovern explained that because appellant's most recent MRI, taken on April 17, 1995, failed to demonstrate that appellant had either a disc herniation or

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<sup>1</sup> 5 U.S.C. § 8128 *et seq.*

<sup>2</sup> See *Jack R. Smith*, 41 ECAB 691 (1990).

spinal stenosis, appellant did not require a laminectomy or have a back condition related to her July 10, 1989 employment injury. Consequently, inasmuch as Dr. McGovern's opinion is based on a proper factual and medical background and his well-rationalized opinion, as that of the referee examiner, constitutes the weight of the medical evidence.<sup>3</sup> Appellant, therefore, failed to establish that she had a back condition requiring a laminectomy as a result of her July 10, 1989 employment injury.

The decision of the Office of Workers' Compensation Programs dated February 3, 1998 is affirmed.

Dated, Washington, D.C.  
March 17, 2000

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>3</sup> *Id.*