

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOANNE EBELING and U.S. POSTAL SERVICE,
POST OFFICE, Manorville, N.Y.

*Docket No. 97-863; Submitted on the Record;
Issued December 29, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a recurrence of disability commencing March 2, 1995 causally related to her May 14, 1991 employment injury.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to establish that she sustained a recurrence of disability commencing March 2, 1995 causally related to her May 14, 1991 employment injury.

On May 16, 1991 appellant, then a rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 14, 1991, she experienced aches and pain in her leg, upper thigh, lower back and arm when she was hit by a tow truck while driving an employing establishment vehicle. Appellant stopped work on May 15, 1991. Appellant returned to full duty with physical restrictions on May 29, 1991.

On July 2, 1991 the Office of Workers' Compensation Programs accepted appellant's claim for muscle sprain not otherwise specified/ left hip contusion.

On March 8, 1995 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that she experienced constant pain in her neck, arm, shoulder, back and face. Appellant stopped work on March 2, 1995. Appellant indicated that she received medical treatment in February and on March 1, 1995. Appellant further indicated that she was performing light-duty work after the original injury.

By letter dated April 4, 1995, the Office advised appellant that it had received her Form CA-2a. The Office requested appellant to submit additional factual and medical evidence including a well-reasoned medical report from her treating physician providing whether and how her current condition was causally related to the May 14, 1991 employment injury. The Office also advised appellant to submit evidence demonstrating that she was unable to perform the assigned light- or limited-duty work.

By decision dated July 5, 1995, the Office found the medical evidence of record insufficient to establish that the claimed disability was causally related to the May 14, 1991 employment injury.

On June 25, 1996 appellant, through her counsel, requested reconsideration of the July 5, 1995 decision, accompanied by medical evidence and a narrative statement. Appellant alleged that the cause of her recurrence of disability was due to a change in the type of motor vehicle that she was assigned to use by the employing establishment. Appellant further alleged that the accompanying medical evidence was sufficient to establish a recurrence of disability. By letter dated June 28, 1996, appellant submitted an additional narrative statement.

By letter dated July 5, 1996, the Office advised the employing establishment to submit a description and physical requirements of appellant's regular-duty assignment and of any limited-duty assignment appellant performed at the time of the recurrence. The Office also advised the employing establishment to provide whether appellant resumed regular full-time duty work prior to the recurrence and if so, the date when she resumed such duty.

In a September 24, 1996 telephone conversation with the Office, Mary MacDonald, an employing establishment employee, advised the Office that at the time of the recurrence, appellant was working full duty and that appellant had resumed full-duty work prior to the claimed recurrence.

By decision dated September 30, 1996, the Office denied modification of the July 5, 1995 decision.¹

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 disability, for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

In this case, appellant has not submitted rationalized medical evidence addressing whether her current condition was caused by the May 14, 1991 employment injury. The record reveals several medical reports and disability certificates of Dr. Henry Moreta, a Board-certified psychiatrist and neurologist. In a March 1, 1995 medical report, to Dr. Devendra Singh, a Board-certified internist, Dr. Moreta indicated that appellant had neck pain, left upper extremity pain and a herniated disc at C5-6 based on magnetic resonance imaging. Dr. Moreta recommended that appellant undergo cervical traction and physical therapy and that appellant should have a neurological evaluation for her condition if there was no improvement after one

¹ By decision dated January 3, 1997, the Office approved appellant's counsel's application for an attorney's fee in the amount of \$3,000.00.

² *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1993); *Robert H. St. Onge*, 43 ECAB 169 (1992).

month. Dr. Moreta's March 2, 1995 duty status report (Form CA-17) revealed a diagnosis of cervical herniated nucleus pulposus and appellant's physical restrictions. In his April 4, 1995 medical report, Dr. Moreta provided a tentative diagnosis of cervical left shoulder strain, cervical radiculopathy, myofascial pain and a recommendation for diagnostic studies. Dr. Moreta's July 19, 1995 Form CA-17 indicated a diagnosis of cervical herniated nucleus pulposus radiculopathy and appellant's physical restrictions. Dr. Moreta's July 19, 1995 letter indicated the necessity for appellant to have physical therapy. In a report of the same date to Dr. Singh, Dr. Moreta stated that appellant continued to have mild neck pain, radiating pain to the left shoulder and left arm intermittent paresthesias. Dr. Moreta recommended continued physical therapy and neurosurgical consultation. Dr. Moreta's June 14, 1996 medical report, provided appellant's complaints, a history of appellant's medical and social histories and a review of medical records. Dr. Moreta diagnosed cervical radiculopathy, cervical herniated disc, left shoulder tendinitis with rotator cuff tear, lumbar sprain and post-traumatic myofascial pain. The Board finds that Dr. Moreta's reports and letter are insufficient to establish that appellant sustained a recurrence of disability commencing March 2, 1995 causally related to the May 14, 1991 employment injury inasmuch as they failed to address whether appellant's current disability was caused by the accepted employment injury.

Dr. Moreta's March 2, 1995 disability certificate revealed that appellant was totally disabled from March 2 through April 4, 1995. Dr. Moreta's July 21, 1995 medical certificate indicated that appellant could return to work on July 31, 1995 for four hours per day and make a gradual return to full-duty work when appellant felt that she was able to do so. Dr. Moreta's certificates are insufficient to establish appellant's burden because they failed to indicate a diagnosis and to discuss whether or how the diagnosed condition was caused by appellant's May 14, 1991 employment-related injury.³

In an April 4, 1995 attending physician's report (Form CA-20), Dr. Moreta indicated a history of the employment injury and a diagnosis of cervical herniated disc and radiculopathy. Dr. Moreta further indicated that appellant's conditions were not caused or aggravated by the employment activities by placing a checkmark in the box marked "no." Dr. Moreta's July 19, 1995 Form CA-20 revealed a history of the employment injury and a diagnosis of cervical herniated disc and radiculopathy. Dr. Moreta indicated that appellant's condition was caused or aggravated by the employment activity by placing a checkmark in the box marked "yes." Dr. Moreta explained that appellant's condition was due to the motor vehicle accident. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history is of diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁴ Although Dr. Moreta stated that appellant's condition was caused by the motor vehicle accident, he failed to explain how it was caused by the motor vehicle accident. Because Dr. Moreta failed to provide any rationale for his conclusion that appellant's condition was caused or aggravated by

³ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

⁴ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

factors of her employment, the Board finds that his opinion is insufficient to establish appellant's burden.

Similarly, Dr. Moreta's July 21, 1995 medical report is insufficient to establish appellant's burden. In this report, Dr. Moreta stated that he was unaware during his initial consultation with appellant that the automobile accident she spoke about was work related. Dr. Moreta opined that appellant's condition of cervical herniated disc, radiculopathy was aggravated by the 1991 motor vehicle accident. Dr. Moreta failed to explain how the May 14, 1991 employment injury aggravated appellant's condition.

The record also reveals a March 23, 1995 medical report, of Dr. Singh providing a diagnosis of neuralgia and muscle sprain and a history of appellant's medical treatment covering the period May 18, 1991 through June 8, 1994. An April 11, 1995 report, of Dr. Angela Savino, a Board-certified radiologist, indicated that an x-ray of appellant's left shoulder was negative for recent osseous injury. An April 21, 1995 medical report, of Dr. Anjani Sinha, an orthopedic surgeon, revealed a history of the employment injury and her findings on physical and objective examination. Dr. Sinha diagnosed impingement syndrome and partial tear of the left rotator cuff and recommended medical treatment. The June 20, 1995 medical report of Dr. P. Arjen Keuskamp, indicated appellant's complaints on examination, a history of the employment injury and appellant's medical treatment, findings on physical and neurological examination and a review of medical records. Dr. Keuskamp diagnosed a herniated disc at C5-6 with C6 cervical radiculopathy on the left and ruled out left thoracic outlet syndrome. Dr. Keuskamp recommended continued medical treatment. Dr. Keuskamp's June 20, 1995 prescription indicated medical treatment for appellant's back and shoulder conditions. The reports of Drs. Singh, Savino, Sinha and Keuskamp, and the prescription of Dr. Keuskamp are insufficient to establish appellant's burden because they failed to address whether appellant's conditions were caused by the May 14, 1991 employment injury.

The April 25 and June 23, 1995 reports of Joseph A. Benanti, Jr., a physical therapist, revealing his findings on examination of appellant are insufficient to establish appellant's burden inasmuch a physical therapist is not a physician under the Federal Employees' Compensation Act and, therefore, is not competent to give a medical opinion.⁵

Jacqueline Aitken, appellant's coworker, indicated, *inter alia*, in a narrative statement that since appellant's accident in 1991, there had been a change in appellant's ability to perform her duties. Ms. Aitken also stated that appellant seemed to be in constant pain and continued to work even though she was in such pain. The Board has held that evidence of the nature of any disabling condition and its relationship to a particular employee's work can only be given by a physician fully acquainted with the relevant facts and circumstances of the employment injury

⁵ *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jane A. White*, 34 ECAB 515 (1983); 5 U.S.C. § 8101(2).

and the medical findings.⁶ As a lay person, Ms. Aitken is not competent to render a medical opinion and, therefore, her opinion has no probative value on a medical issue.⁷

As noted above, part of appellant's burden of proof includes the submission of reasoned medical evidence, which addresses whether the claimed disability is causally related to the employment injury. Although the Office advised appellant of the type of medical evidence needed to establish her claim for a recurrence of disability, appellant failed to submit medical evidence responsive to the Office's request. Accordingly, the Board finds that appellant has not established that she sustained a recurrence of disability commencing March 2, 1995 causally related to the May 14, 1991 employment injury.

The September 30, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
December 29, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ *Birger Areskog*, 30 ECAB 571 (1979).

⁷ See *James A. Long*, 40 ECAB 538 (1989); *Susan M. Biles*, 40 ECAB 420 (1989); *Charley V.B. Harley*, 2 ECAB 208 (1949).