

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERESA L. OWENS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION HOSPITAL, Brockton, Mass.

*Docket No. 97-1737; Oral Argument Held January 15, 1998;
Issued March 11, 1998*

Appearances: *John L. Whitehouse, Esq.*, for appellant; *Sheldon G. Turley, Jr., Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on August 9, 1996 causally related to her September 14, 1986 employment injury.

The Board has duly reviewed the case on appeal and finds it is not in posture for a decision.

Appellant sustained a back sprain and herniated nucleus pulposus at L5-S1 as well as bicipital tendinitis due to her September 14, 1986 employment injury. She most recently returned to limited duty on June 10, 1996 lifting no more than five pounds with no prolonged sitting, standing or walking. Appellant filed a notice of recurrence of disability on August 23, 1996 alleging on August 9, 1996 she stopped work due to a recurrence of total disability causally related to her accepted employment injury. The Office of Workers' Compensation Programs denied appellant's claim for recurrence on October 18, 1996. Appellant, through her attorney, requested reconsideration on November 5, 1996 and by decision dated February 7, 1997, the Office denied modification of its October 18, 1996 decision.¹

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establish that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability

¹ Following the Office's February 7, 1997 decision, appellant submitted additional new evidence. As the Office did not review this evidence in reaching a final decision, the Board may not consider it for the first time on appeal; *see* 20 C.F.R. § 501.2(c).

and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.²

Dr. Anthony Weiss, a Board-certified internist, completed a work release note on August 9, 1996 and diagnosed back pain with thoracic paraspinal muscle spasm. He indicated that this was not a work-related injury, but stated that it “may be related to original occupational injury.” Dr. Weiss indicated that appellant could return to work in two weeks. This report is not sufficient to meet appellant’s burden of proof as Dr. Weiss did not offer a definite opinion on the causal relationship between appellant’s current disability and her accepted employment injuries.

In a note dated August 9, 1996, Dr. Harold F. Goodman, a Board-certified orthopedic surgeon, requested that appellant be excused from work due to severe pain in the upper back. In a work release dated August 15, 1996, Dr. Goodman diagnosed thoracic and lumbosacral spine strain and stated that appellant was disabled until August 20, 1996. In his treatment notes of the same date, he diagnosed chronic low back syndrome, osteoarthritis and bilateral foot drop and found appellant was disabled from performing her work duties. On August 20, 1996 Dr. Goodman repeated these findings noting radiation into the thoracic spine from the low back syndrome. On August 27, 1996 Dr. Goodman completed a narrative report noting appellant’s findings on physical examination and concluding, “for all practical purposes she is disabled from gainful employment on the open labor market. She cannot do any work involving any significant lifting, prolonged sitting or repetitive movements of her back.” These reports are not sufficient to meet appellant’s burden of proof as Dr. Goodman did not provide an opinion on the causal relationship between appellant’s accepted employment injuries and her current period of disability.

In a report dated November 5, 1996, Dr. Goodman stated appellant was post-disc excision resulting in osteoarthritis of the lumbar spine, sacral nerve damage, cauda equina syndrome and bladder and rectal sphincter dysfunction. He noted appellant required intermittent self-catherization and that she had bilateral leg weakness, bilateral foot drop, antalgic gait and chronic back pain. He stated:

“By professional opinion, to a reasonable medical certainty, is that the above diagnoses are the direct and proximate result of the employment-related injury. It is further my opinion that [appellant] has been totally disabled from all gainful employment since August 9, 1996 as a result of these conditions.”

Dr. Goodman stated that appellant was totally disabled due to chronic back pain, inability to ambulate without a cane, inability to sit for prolonged periods of time, inability to stoop, bend, twist or lift because of pain and discomfort. Dr. Goodman provided objective findings and concluded that appellant was disabled for her limited-duty assignment.

In this report Dr. Goodman provided objective findings, concluded that appellant was totally disabled and opined that her current condition and disability were causally related to her

² *Terry R. Hedman*, 38 ECAB 222 (1986).

accepted employment injuries. Although this report is insufficient to meet appellant's burden of proof as Dr. Goodman did not provide any medical rationale explaining how or why appellant's employment injuries resulted in her current disability, the Board finds that the medical evidence is sufficient to require the Office to undertake further development of appellant's claim.³ Dr. Goodman has offered an uncontroverted opinion that appellant's recurrence of disability is causally related to her accepted employment injuries. Therefore, on remand the Office should refer appellant, a statement of accepted facts and list of specific questions to an appropriate Board-certified specialist for a well-rationalized narrative report determining if there is a causal relationship between appellant's accepted condition and alleged recurrence of disability on August 8, 1996.

The decisions of the Office of Workers' Compensation Programs dated February 7, 1997 and October 18, 1996 are hereby set aside and remanded for further development consistent with this opinion.

Dated, Washington, D.C.
March 11, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

³ *John J. Carlone*, 41 ECAB 354, 358-59 (1989).