U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA M. METZLER and U.S. POSTAL SERVICE,
POST OFFICE, Rancho Cucamonga, CA

Docket No. 01-2166; Submitted on the Record;
Issued December 9, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on October 9, 1997 causally related to her employment injury.

On December 21, 1993 appellant, then a 34-year-old transitional letter carrier, filed an occupational disease claim, alleging that factors of her employment caused a lumbar sprain. She stopped work on December 14, 1993.[1] On January 13, 1994 appellant filed a traumatic injury claim, stating that she injured her back on December 13, 1993 while lifting trays of mail. By letter dated February 8, 1994, the Office of Workers' Compensation Programs accepted that she sustained an employment-related lumbar subluxation and she underwent a laminectomy on January 9, 1995 for a herniated disc at L4-5.

On July 1, 1997 appellant returned to limited duty for four hours per day in a modified distribution clerk position. On July 14, 1997 she began working six hours per day, which was increased to eight hours per day on October 2, 1997. Appellant stopped work on October 9, 1997 and has not returned. She subsequently filed Forms CA-8, claims for continuing compensation. By letter dated December 20, 1997, the Office informed appellant of the type evidence needed to develop her claim.

In a decision dated February 12, 1998, the Office denied that appellant sustained a recurrence of disability on October 9, 1997, finding the medical evidence insufficient. Her entitlement to medical benefits continued and she continued to receive compensation for two hours per day through April 25, 1998. On April 2, 1998 appellant requested a review of the written record. In a decision dated April 22, 1998, the Branch of Hearings and Review denied appellant's hearing request on the grounds that it was untimely filed.

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[1] Appellant had previously filed a traumatic injury claim on September 4, 1993, stating that she injured her back on August 23, 1993 lifting a tray of mail. She stopped work on August 25, 1993 and returned on September 7, 1993.

The Office continued to develop the claim and referred appellant, along with a statement of accepted facts, a set of questions and the medical record, to Dr. Frank M. Cunningham, a Board-certified orthopedic surgeon, for a second-opinion evaluation. By decision dated December 9, 1998, the Office denied that appellant sustained a recurrence of disability on October 9, 1997. The Office credited the opinion of Dr. Cunningham who advised that appellant could work eight hours per day doing light duty. On December 29, 1998 appellant requested a review of the written record, stating that she was working outside her restrictions when she stopped work and submitted medical evidence. In a decision dated May 24, 1999 and finalized May 25, 1999, an Office hearing representative affirmed the prior decision.

On May 22, 2000 appellant requested reconsideration and submitted additional medical evidence. By decision dated August 28, 2000, the Office denied modification of its previous decision. The instant appeal follows.

The Board finds that appellant has not established that she sustained a recurrence of disability on October 9, 1997.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or 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 and show that he or she cannot perform such light duty. As part of this burden, the employee must show either 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] 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.[3] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the accepted employment injury.[4]

Under the Federal Employees' Compensation Act,[5] the term "disability" means incapacity, because of the employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury, but who nonetheless has the

[2] *Mary A. Howard*, 45 ECAB 646 (1994); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

[3] *Ronald C. Hand*, 49 ECAB 113 (1997).

[4] *See Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[5] 5 U.S.C. §§ 8101-8193.

capacity to earn the wages she was receiving at the time of injury, has no disability as that term is used in the Act.[6]

In the instant case, appellant is contending that she sustained a recurrence of disability on October 9, 1997 because her injury-related condition changed and because there was a change in the nature and extent of the light-duty requirements in that she was forced to work outside her restrictions.

The relevant medical evidence includes a number of reports from Dr. Cynthia T. Murphy, a Board-certified physiatrist who began treating appellant in 1996. Regarding appellant's return to work on July 1, 1997, on August 9, 1997 Dr. Murphy approved the limited-duty job offer for four hours per day.[7] In reports dated July 16, August 12 and August 18, 1997, Dr. Murphy advised that appellant could work six hours per day with restrictions. In a report dated September 3, 1997, he advised that appellant should continue to work six hours per day for four weeks and then increase to eight hours per day. On September 30, 1997 Dr. Murphy completed an employing establishment work restriction form in which she diagnosed lumbar strain, chronic pain syndrome and myofascial pain syndrome. She advised that appellant could work 8 hours a day with restrictions of 4 hours sitting, 4 hours standing, 2 hours walking, 2 hours squatting, 2 hours climbing, 1 hour bending, no kneeling or twisting and 2 hours lifting a weight of less than 10 pounds. On a disability slip dated October 6, 1997, Dr. Murphy again advised that appellant could work eight hours per day, five days per week, beginning October 1, 1997. In disability slips dated November 26 and December 9, 1997, she advised that appellant could not work for the period November 23, 1997 to January 8, 1998. In separate attending physician's reports dated December 1, 1997, Dr. Murphy diagnosed chronic pain syndrome, lumbar radiculopathy and piriformis syndrome and checked the "yes" box, indicating that appellant's condition was employment related. She further advised that appellant could not work and recommended pain management "because all pharmacologic and therapeutic measures have failed."[8]

In a report dated November 13, 1997, Dr. Paul E. Wakim, an osteopathic physician who performed a fitness-for-duty examination for the employing establishment, advised that he had reviewed appellant's magnetic resonance imaging[9] (MRI) scan and an operative report and noted her complaints of back pain and leg tingling with right foot numbness. He advised that she had been involved in a motor vehicle accident on March 27, 1997 and opined that the employment injury probably aggravated a preexisting condition. Dr. Wakim concluded that appellant could perform the modified work duties and provided restrictions to her physical activity of no lifting

[6] *See Maxine J. Sanders*, 46 ECAB 835 (1995).

[7] The modified distribution clerk, flat sorter operator duties were: distribution of mail, process bar coded mail through the flat sorter machine which would entail placing flats weighing less than one pound onto the feed belt to flow to a scanner that would automatically sort the mail piece. The work would entail standing and resting as needed and appellant would be allowed to stand and sit at will. Physical restrictions included lifting of no more than 10 pounds with light reaching above the shoulder. Appellant was not required to squat, kneel, climb or bend at the waist.

[8] Dr. Murphy continued to submit reports in which she reiterated her findings and conclusions.

[9] An MRI scan done on November 17, 1993, prior to appellant's surgery, demonstrated central disc protrusions at L4-5 and L5-S1.

greater than 3 pounds on a frequent basis and 30 pounds on an occasional basis with no repetitive bending or lifting.

Electromyography and nerve conduction studies of the lower extremities done on May 1, 1998 were normal. In a report dated May 18, 1998, Dr. Frank Cunningham, a Board-certified orthopedic surgeon who performed a second opinion evaluation for the Office,[10] conducted a thorough physical examination and diagnosed a history of lumbar strain with resultant low back pain and right radiculitis, status postlumbar surgery, with no evidence of radiculopathy by examination and electrodiagnostic study. He opined that appellant experienced "minimal constant pain with slight intermittent pain of the lumbar spine that becomes moderate with any heavy lifting or frequent bending or stooping," that was employment related. Dr. Cunningham concluded that, while appellant could not return to the letter carrier position, she was capable of working eight hours per day in a light-work category with restrictions on not lifting in excess of 10 pounds, pushing and/or pulling in excess of 20 pounds, no kneeling, climbing or operating a motor vehicle and that she be provided the opportunity to change position from sitting to standing and alternate tasks of sitting, walking and standing with 15 minute breaks each hour. An MRI scan of the lumbar spine dated May 3, 2000 revealed mild to moderate degenerative disc disease at L4-5 and L5-S1 status postlaminectomy.

In a statement dated April 14, 1999, Fortino Cortez, distribution supervisor at the employing establishment, advised that appellant was assigned to the flat sorter in a light-duty capacity where her job duties included keying or inputting mail from a seated position. Additional duties included setting up empty equipment by pushing rolling stock of flat tubs to the sorter machine. Appellant also had to attach labels into the flat tubs which weighed less than one pound. Mr. Cortez stated that if appellant complained about not feeling well, she was given the task of removing rubber bands from bundles of letters weighing less than one pound that could easily be reached with no bending and placing them in a tray at less than shoulder level. He further advised that appellant was instructed not to remove letter bundles from hampers if it required bending and reaching. In a statement dated April 15, 1999, Helene S. Jones, an employing establishment supervisor, advised that appellant's job duties, as a modified distribution clerk, had been approved by Dr. Murphy, for five days a week, eight hours per day. The record further provides that appellant worked five days per week following her return to work on July 1, 1997 until she stopped on October 9, 1997.

The Board initially finds that there is no evidence of record to indicate that appellant's light-duty position changed. Dr. Murphy approved the limited-duty job offer and advised that appellant could return to full duty on October 1, 1997. The employing establishment submitted evidence that appellant was working at this position five days a week. Appellant, therefore, failed to establish that she sustained a recurrence of disability because the nature and extent of the light-duty requirements changed.

The Board further finds that the medical evidence in this case does not support that appellant sustained a recurrence of disability on October 9, 1997 causally related to the accepted employment injury.

[10] Dr. Cunningham was furnished with a copy of the statement of accepted facts and the medical record.

While Dr. Murphy submitted disability slips dated November 26 and December 9, 1997 advising that appellant could not work and checked the "yes" box, indicating that her condition was employment related on attending physician's reports dated December 1, 1997, the Board has long held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.[11] Furthermore, whereas Dr. Murphy diagnosed chronic pain syndrome, lumbar radiculopathy and piriformis syndrome, none of these are accepted conditions. She did not explain or provide medical rationale in support of her conclusion that appellant could not work. The Board, therefore, finds that, as these reports were merely conclusory, they were of diminished probative value and insufficient to support a change in the nature or extent of appellant's injury-related condition and to establish appellant's recurrence claim.[12] Both Dr. Wakim, who performed a fitness-for-duty examination for the employing establishment and Dr. Cunningham, who performed a second-opinion evaluation for the Office, advised that appellant could work eight hours per day of limited duty. Appellant thus, failed to discharge her burden of proof and the Board finds that she failed to establish that she sustained a recurrence of disability on October 9, 1997.

The decision of the Office of Workers' Compensation Programs dated August 28, 2000 is hereby affirmed.

Dated, Washington, DC
December 9, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

[11] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[12] *Albert C. Brown*, 52 ECAB ____ (Docket No. 98-2320, issued November 29, 2000).