U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RITAANN M. WEEKS and U.S. POSTAL SERVICE,
POST OFFICE, Rochester, NY

Docket No. 02-291; Submitted on the Record;
Issued July 10, 2002

DECISION and ORDER

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

The issues are: (1) whether appellant has established that she sustained a recurrence of disability beginning April 8, 2001 causally related to her May 22, 2000 employment injury; and (2) whether the Office of Workers' Compensation Programs properly terminated appellant's authorization for medical treatment.

On May 25, 2000 appellant, then a 36-year-old mailhandler, filed a claim alleging that she sustained an injury on May 22, 2000 in the performance of duty. The Office accepted appellant's claim for lumbar strain and authorized a lumbar laminectomy at L5-S1, which was performed on September 28, 2000.[1] The Office further authorized treatment for appellant at a pain clinic on March 15, 2001.[2] The Office placed appellant on the periodic rolls effective August 13, 2000.

In a report dated March 12, 2001, Dr. James T. Maxwell, a Board-certified neurosurgeon, found that appellant could return to work for four hours per day "with heavy restrictions of no lifting more than 15 pounds, no driving, no prolonged sitting or standing or repetitive lifting or bending or twisting maneuvers." In a work restriction evaluation dated March 13, 2001, Dr. Maxwell opined that appellant could not work full time because she "persist[s] with severe leg pain with minimal activity" but that she could work for four hours per day with listed limitations.

Appellant returned to part-time limited-duty employment on April 2, 2001. Appellant worked part-time on April 2 and April 5 through 7, 2001. She stopped work on April 8, 2001. On May 7, 2001 appellant filed a notice of recurrence of disability commencing April 8, 2001.

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[1] A magnetic resonance imaging study obtained on June 26, 2000 revealed a left lateral herniation at L5-S1 "just touching the ventral aspect of the thecal sac."

[2] Appellant underwent an initial evaluation at the pain clinic on April 12, 2001.

By decision dated August 6, 2001, the Office denied appellant's claim on the grounds that the evidence failed to establish that she was disabled beginning April 8, 2001 due to her accepted employment injury. The Office further terminated appellant's authorization for medical treatment. In a letter dated September 3, 2001, appellant requested a hearing before an Office hearing representative.[3]

The Board finds that the case is not in posture for decision on the issue of whether appellant has established that she sustained a recurrence of disability beginning April 8, 2001 causally related to her May 22, 2000 employment injury.

Where 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 establishes that the employee 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 to show that he or 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 job requirements.[4]

In this case, appellant returned to work on April 2, 2001 for four hours per day.[5] Appellant worked for four days. In an office visit note dated April 18, 2001, Dr. Maxwell indicated that appellant was temporarily totally disabled from employment.[6] In a report dated June 20, 2001, Dr. Maxwell related, "[appellant] has a terrific amount of residual left sciatica. It sounds as if there is a marked increase in the sciatica recently and there is a little bit now down the right leg as well." He noted that he had received approval for appellant to attend a pain clinic. Dr. Maxwell requested authorization for a magnetic resonance imaging of appellant's lumbar spine to rule out a recurrent disc herniation. He stated:

> "[Appellant] is in way too much pain down the leg for work. She cannot sit more than 5 [to] 10 minutes. She cannot walk very far without kicking up a terrible amount of pain. I suspect that she probably does have a recurrent disc herniation and it is this diagnosis that I think gives her a complete medical disability and an inability to do even limited-duty work for four hours a day."

[3] The record contains a decision by the Office denying appellant's request for a hearing as untimely. Appellant has not appealed this decision and therefore it is not currently before the Board. Appellant also requested reconsideration by letter dated October 25, 2001; however, the Office has not issued a decision on the reconsideration request.

[4] *Terry R. Hedman*, 38 ECAB 222 (1986).

[5] The Board notes that appellant remained entitled to compensation for the four hours per day that she did not work.

[6] The record also contains a note dated April 9, 2001 in which a nurse with Dr. Maxwell's office indicated that appellant was totally disabled from employment; however, the office visit notes of a nurse are of no probative value as a nurse is not a physician under the Federal Employees' Compensation Act; *see* 5 U.S.C. § 8101(2).

In a form report dated June 28, 2001, Dr. Maxwell diagnosed a lumbar disc herniation, checked "yes" that the condition was caused or aggravated by employment factors, and found that appellant was totally disabled from May 22, 2000 to the present.

Proceedings under the Federal Employees' Compensation Act are not adversarial in nature, nor is the Office a disinterested arbiter. While appellant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.[7] Although Dr. Maxwell's reports are insufficiently rationalized to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that she had a recurrence of disability due to her accepted employment-related back condition, they raise an uncontroverted inference of causal relationship sufficient to require further development of the record by the Office.[8] The Board notes that there is no medical evidence of record refuting a causal relationship between appellant's current lumbar condition and her employment injury. On remand, the Office should refer appellant, together with the case record and a statement of accepted facts, for examination by an appropriate medical specialist. After such further development as the Office deems necessary, it should issue a *de novo* decision.

The Board further finds that the Office did not meet its burden of proof to terminate appellant's authorization for medical treatment.

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.[9] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[10] In this case, there is no evidence of record which would support a finding that appellant has no further residual condition causally related to her accepted employment injury; therefore, the Office has failed to discharge its burden of proof.

[7] *Dennis J. Lasanen*, 43 ECAB 549 (1992).

[8] *See John J. Carlone*, 41 ECAB 354 (1989).

[9] *Furman G. Peake*, 41 ECAB 361, 364 (1990).

[10] *Id.*

The decision of the Office of Workers' Compensation Programs dated August 6, 2001 is set aside in part and reversed in part and the case is remanded for further proceedings consistent with this opinion of the Board.

Dated, Washington, DC
July 10, 2002

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member