

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VICKIE L. ALBIN and U.S. POSTAL SERVICE,
POST OFFICE, Denver, CO

*Docket No. 03-726; Submitted on the Record;
Issued November 3, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof in establishing that she had any disability subsequent to October 1, 2001 causally related to the December 15, 1993 employment injury.

On May 26, 1994 appellant then a 38-year-old carrier, filed a claim alleging that she developed bilateral carpal tunnel syndrome and a cervical condition as a result of coding and casing letters and flats. The Office of Workers' Compensation Programs accepted appellant's claim for a bilateral carpal tunnel syndrome and cervical disc herniation and authorized bilateral carpal tunnel releases and a cervical discectomy and fusion at C6-7. She stopped work on July 13, 1994 and returned to work on May 13, 1996.

In a report dated May 23, 1994, Dr. F.J. Rust, a Board-certified family practitioner, advised that appellant was treated for work-related neck and arm pain. In reports dated June 19 to August 15, 1994, Dr. Douglas R. Schmidt, a Board-certified plastic surgeon, diagnosed appellant with bilateral carpal tunnel syndrome, which was worse on the right side than left and attributed her condition to her work and advised that it is fairly common in people using the coding equipment appellant is required to use in performing her job duties. His report of August 17, 1994 noted that the majority of appellant's problems stem from her neck and suggested she seek treatment for her cervical spine. Dr. James S. Gebhard, an internist, in reports from July 7 to September 29, 1994, advised that he treated appellant for a cervical sprain and administered trigger point injections to relieve her pain and opined that the most likely cause of the herniation was from the repetitive stress of lifting and overhead activity of her work. On December 29, 1994 she underwent a cervical discectomy and fusion and on March 25 and June 29, 1995 Dr. Schmidt performed right and left carpal tunnel releases respectively.

Thereafter, appellant was treated by Dr. J. Tashof Bernton, a Board-certified internist, who, in reports dated November 27, 1995 to February 20, 1996, noted appellant's continued treatment for cervical pain and depression. He noted in a report dated May 2, 1996 that appellant could return to work part-time limited duty.

In a letter dated May 8, 1996 the employing establishment offered appellant a position as a modified distribution clerk, which was approved by Dr. Bernton and she accepted this position and returned to work on May 13, 1996.

On August 13, 1996 the Office issued a loss of wage-earning capacity determination noting that appellant had been reemployed as a modified distribution clerk machine which fairly and reasonably represented her wage-earning capacity.

The record reflects that due to a worsening of appellant's condition she stopped working and Dr. Bernton advised that she could not continue to work as a modified distribution clerk.

In a letter dated December 6, 1999, the employing establishment offered appellant a position as a modified distribution clerk and she accepted this position and returned to work on December 10, 1999.

On March 10, 2000 the Office issued a loss of wage-earning capacity determination noting that appellant had been reemployed as a modified distribution clerk machine which fairly and reasonably represented her wage-earning capacity.

Appellant submitted various medical records from Dr. Mark Disorbio, a psychologist, who advised that he was treating her for depression.

On October 1, 2001 appellant stopped work. On December 3, 2001 appellant filed a Form CA-7 claim for compensation for total disability as of that date.

Appellant submitted medical records from Dr. Christopher B. Ryan, Board-certified in physical medicine and rehabilitation, dated September 5 to December 5, 2001. Dr. Ryan's report of September 5, 2001 noted that appellant's range of motion had improved, but noted that she was asked to work long hours and exceed her physical restrictions. His report of October 3, 2001 noted that appellant was doing fairly well with better cervical range of motion and less pain, but developed headaches due to an allergy. Dr. Ryan's reports of October 10 to November 15, 2001 advised that appellant experienced neck and jaw pain and she did not want to return to work at this time due to depression and chronic pain. He noted that he wanted to keep her off work until her medications were properly managed and advised that he and appellant's psychologist, Dr. John Mark Disorbio, believed that she would have a difficult time returning to work from a psychological perspective due to her chronic pain and medications. In an attending physicians report dated December 4, 2001, he noted that appellant had a worsening of her neck and arm pain at work and diagnosed her with cervical strain, chronic upper extremity overuse. Dr. Disorbio noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity mentioning that the overuse of arms, hands, shoulder and neck puts strain on the sensitive and previously damaged structures. Dr. Ryan prepared a note which indicated that appellant was to remain off work from October 1, 2001 until January 4, 2002 due to a worsening of her symptoms from working in excess of her restrictions.

In a letter dated December 5 and January 15, 2002, the employing establishment wrote to Dr. Ryan and enclosed a copy of the December 10, 1999 work assignment and requested that he comment on the duties which were difficult for appellant to perform and advised that some of the duties could be lessened or eliminated in an effort to return appellant to work.

In letters dated December 20, 2001 and January 7, 2002 the employing establishment controverted appellant's claim for wage-loss compensation benefits, noting that she was accommodated with a light, sedentary modified job assignment on December 10, 1999 and had not been working outside these duties and restrictions at any time since December 10, 1999.

In a note dated January 3, 2002, Dr. Ryan indicated that appellant would remain off work from January 3 to 18, 2002.

In a letter dated January 18, 2002, the Office acknowledged receipt of appellant's Form CA-7 and requested that since she was claiming a recurrence of disability she submit a Form CA-2a, notice of recurrence of disability and medical evidence to support her claim.

Appellant submitted reports from Dr. Ryan dated January 18 to April 8, 2002 and an MRI scan dated January 8, 2002. In his note of January 18, 2002, Dr. Ryan advised that appellant would remain off work through March 4, 2002 due to a worsening of her symptoms. His report of February 11, 2002 indicated that appellant was disabled as a result of her work injuries and believed appellant suffered either a new injury or an aggravation of a preexisting work condition. Dr. Ryan noted that appellant's increased muscle tension was probably caused by an increase in her job duties, he indicated that appellant's job required that she direct people to different areas of a facility using hand and arm motions and this repetitive stress, along with her regular repetitive work activities contributed to her current condition. He further advised that due to her ongoing psychological stressors at work as well as the repetitive use of her arms resulted in a worsening of her symptoms and constituted a consequential injury or an aggravation and ultimately lead to her work stoppage. He noted that in appellant's current job she was given multiple tasks and that she had been recently asked to learn a number of other jobs. Dr. Ryan advised that appellant's chronic pain, inability to work and depression was caused by her job at the employing establishment. He submitted two notes dated March 4 and 21, 2002 advising that appellant would be off work from March 4 to 8, 2002 and from March 8 to May 8, 2002 due to an exacerbation of her symptoms. Dr. Ryan's report of March 21, 2002 advised that the combination of psychological and physical factors necessitated that appellant not return to work at this time. The MRI scan of the cervical spine revealed a status post anterior fusion at C6-7 and broad-based disc protrusion at C5-6 causing narrowing of the left neural foramen.

On February 18, 2002 appellant filed a Form CA-2, notice of occupational disease, claiming that her repetitive work duties aggravated her bilateral carpal tunnel syndrome, herniated cervical disc, chronic pain and depression. She noted that she realized the disease was caused or aggravated by her employment on October 1, 2001.¹

In letters dated March 11 and April 17, 2002, the employing establishment wrote to Dr. Ryan and enclosed a copy of the December 10, 1999 work assignment and requested that he comment on the duties which appellant could perform and advised that alternative duties were available.

¹ The record reveals that page one of the Form CA-2 was received on March 12, 2002; however, page two which was to be processed by the employing establishment was not present. Appellant's counsel submitted a letter dated March 8, 2002 requesting that the Form CA-2 filed by appellant on February 18, 2002 be processed expeditiously.

In a decision dated May 6, 2002, the Office denied appellant's claim for disability compensation beginning October 1, 2001 as the claimed disability was determined to be related to a new work factor occurring after appellant's return to work in December 1999.

In a letter dated June 3, 2002, appellant, through her attorney, requested a review of the written record and submitted reports from Dr. Ryan dated April 8 to September 27, 2002. He advised that appellant continued to be plagued with chronic pain and psychological problems and did not advocate that she return to work at this time, but recommended vocational rehabilitation. Dr. Ryan's note of May 8, 2002 advised that appellant would be off work from May 8 to June 12, 2002. He indicated in his reports of June 12 and August 28, 2002, that appellant was experiencing substantial stress and was on high doses of psychiatric medication to manage her depression and overdosed during the summer. Dr. Ryan's report of September 27, 2002 advised that appellant continued to have significant neck and back pain; however, her major difficulty at this time was psychiatric and he recommended vocational rehabilitation.²

In a letter dated September 24, 2002, the employing establishment noted that appellant at no time indicated that she was working out of her medical restrictions or that her absence from work was related to her modified position which was approved by her physician. The employing establishment advised that at no time prior to October 1, 2001 did appellant advise that she was having problems with her work assignment, rather she volunteered to sort office mail.

In a decision dated October 24, 2002, the hearing representative affirmed the decision of the Office dated May 6, 2002.

The Board finds that appellant has failed to establish that her condition during the claimed period of disability is causally related to the accepted employment injury of December 15, 1993.

Under the Federal Employees' Compensation Act, the term "disability" means the incapacity, because of an 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 wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury has no disability as that term is used in the Act.³

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the period of claimed disability was caused or adversely affected by the employment injury. As part of this burden, she must submit rationalized medical opinion

² The record reveals that appellant filed a separate claim for occupational disease on September 14, 2002 claiming that her repetitive work duties aggravated her bilateral carpal tunnel syndrome, herniated cervical disc, chronic pain and depression. She noted that she realized the disease was caused or aggravated by her employment on October 1, 2001.

³ *Cherly l. Decavitch*, 50 ECAB 397 (1999).

evidence based on a complete factual and medical background showing a causal relationship between his disability and the federal employment.⁴

The Office accepted appellant's claim's for bilateral carpal tunnel syndrome and cervical disc herniation. However, the medical evidence submitted in support of the wage-loss compensation claim for disability, for the period beginning October 1, 2001, is insufficient to establish that the claimed period of disability was caused or aggravated by the accepted employment injury.

The medical records from Dr. Ryan indicated that appellant was doing fairly well with better cervical range of motion and less pain, but developed headaches due to any allergy. His reports of October 10 to November 15, 2001 advised that appellant experienced neck and jaw pain and she did not want to return to work at this time due to her depression and chronic pain. Even though Dr. Ryan noted that appellant was still experiencing symptoms of her neck condition, he did not specifically address whether appellant had employment-related disability beginning October 1, 2001 due to her accepted work-related conditions from December 15, 1993. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.⁵ Dr. Ryan further noted that he wanted to keep appellant off work until her medications were properly managed and advised that he and appellant's psychologist, Dr. Disorbio, believed that she would have a difficult time returning to work from a psychological perspective due to her chronic pain and medications.⁶ The Board notes that depression is not an accepted condition in appellant's case and there is no medical rationalized evidence to support such a conclusion.⁷ The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.⁸

In an attending physician's report dated December 4, 2001, Dr. Ryan noted that appellant had a worsening of her neck and arm pain at work, diagnosed her with cervical strain, chronic upper extremity overuse and noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity mentioning overuse of arms, hands, shoulder, neck puts strain on sensitive and previously damaged structures. He opined that appellant has worsened due to working in excess of her restrictions. 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 condition was related to the history given is of little probative value.

⁴ See *Nicolea Brusco*, 33 ECAB 1138 (1982).

⁵ See *Theron J. Barham*, 34 ECAB 1070 (1983).

⁶ The Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence; see *Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971).

⁷ For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship. *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁸ *Supra* note 5.

Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁹

Other reports from Dr. Ryan appear to attribute appellant's disability after October 1, 2001 to a new injury or an aggravation of a preexisting injury rather than to the December 15, 1993 employment injury. Specifically, his report of February 11, 2002 indicated that appellant was disabled as a result of her work injuries and believed she "suffered either a new injury or an aggravation of a preexisting work condition." This report is equivocal with regard to the cause of appellant's cervical condition. The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.¹⁰ Dr. Ryan noted that appellant's increased muscle tension was probably caused by an increase in her job duties or her working in excess of her restrictions, however, there is no evidence to substantiate this contention and the employing establishment advised that appellant was accommodated with a light, sedentary modified job assignment on December 10, 1999 and had not been working outside these restrictions at any time since December 10, 1999. Dr. Ryan's report's of March 21 to September 27, 2002 indicated that appellant was experiencing substantial stress and was on high doses of psychiatric medication to manage her depression and advised that she continued to have significant neck and back pain; however, her major difficulty at this time was psychiatric. As noted above the Office never accepted depression as a work-related condition and there is no rationalized medical evidence to support such a conclusion.

The remainder of the medical evidence fails to provide a specific opinion on causal relationship between the claimed period of disability and the accepted employment injury of December 15, 1993. Consequently, the medical evidence did not establish that the claimed period of disability was due to appellant's employment injury of December 15, 1993.

⁹ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

¹⁰ Speculative and equivocal medical opinions regarding causal relationship have no probative value; *see Alberta S. Williamson*, 47 ECAB 569 (1996); *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Paul E. Davis*, 30 ECAB 461 (1979).

The decisions of the Office of Workers' Compensation Programs dated February 11, 2003 and June 11, 2002 are hereby affirmed.

Dated, Washington, DC
November 3, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member