United States Department of Labor
Employees' Compensation Appeals Board

CHRISTINE A. GRANT, Appellant	)	
and	)	**Docket No. 04-47**
	)	**Issued: May 14, 2004**
U.S POSTAL SERVICE, POST OFFICE, Watertown, NY, Employer	)	

Appearances:
David W. Covino, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On October 6, 2003 appellant filed a timely appeal from a July 3, 2003 decision of a hearing representative of the Office of Workers' Compensation Programs, which reversed a November 29, 2002 decision that found she had refused an offer of suitable work.[1] The hearing representative also affirmed a June 21, 2002 decision in which the Office determined that appellant had not established a recurrence of total disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the recurrence claim.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on March 4, 2002 causally related to her employment-related conditions.

[1] As appellant was not adversely affected by the reversal of the suitable work termination decision, it is not before the Board as an issue in this case. *See* 20 C.F.R. §§ 501.2(c) and 501.3(a).

FACTUAL HISTORY

On September 11, 1991 appellant, then a 40-year-old rural letter carrier, filed an occupational disease claim alleging that factors of employment caused chest and back pain. She did not stop work. By decision dated April 7, 1992, the Office denied the claim. Following a request for reconsideration, in a September 14, 1992 decision, the Office accepted that appellant sustained employment-related fibromyositis of the upper dorsal area and osteochondritis of the right upper chest.

Appellant returned to full duty and came under the care of Dr. Paul S. Curtis, a Board-certified orthopedic surgeon, who submitted copies of treatment notes and reports.

On December 19, 2001 appellant filed a recurrence of disability claim, having stopped work on December 13, 2001. By letter dated February 12, 2002, the Office accepted that she sustained a recurrence of disability in December 2001. In a treatment note dated February 15, 2002, Dr. Curtis advised that appellant could return to work four hours per day and on February 19, 2002 she accepted a limited-duty job offer[2] for fours hours per day of limited duty. On March 4, 2002 she began working one hour per day. Dr. Curtis provided a progress note dated March 6, 2002, in which he restricted appellant to one hour of work per day. At this time she was also being treated by Dr. Charles Wasicek, who is Board-certified in internal medicine and rheumatology. Appellant continued to work one hour per day for several months before stopping completely. She submitted a number of Form CA-7 claims for compensation and received wage-loss compensation for four hours per day.

On March 6, 2002 appellant submitted a recurrence of disability claim. In an attached statement, she reported that, upon her return to a four-hour workday, she realized she could not work that long due to pain which became so severe that she was either fighting tears or crying. Appellant noted that tipping her head to the side and forward while answering the telephone caused pain in her back and neck, that walking caused severe pain and that she could not do repetitive work or push a mail cart. She tried to see a physician on Friday, February 22, 2002, but was unable to get an appointment. Appellant's physician cancelled an appointment scheduled for Monday, February 25, 2002 and could not see her until March 6, 2002.

By letter dated April 30, 2002, the Office informed appellant of the type of evidence needed to support her claim. Thereafter both Dr. Curtis and Dr. Wasicek submitted treatment records in which they related that she could only work one hour per day. Appellant also submitted reports from Donna Widrick, a nurse practitioner in Dr. Curtis' office.[3] Christopher J. Sharrow, supervisor of customer services, submitted statements dated January 25 and March 5, 2002, noting that he had seen appellant run up stairs and that she had been out at a restaurant.

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[2] The job offer provided four hours of limited duty and indicated that appellant would sit and stand at 15-minute intervals in the front office answering telephones. The physical restrictions included a 5-pound lifting restriction, 4 hours of walking at 15-minute intervals, 4 hours of simple grasping with no climbing, kneeling, bandwagon stamping, twisting, reaching above the shoulders or operating machinery.

[3] Reports from a physician's assistant or nurse are not considered medical evidence as they are not considered a physician under the Federal Employees' Compensation Act. *See Ricky S. Storms*, 52 ECAB 349 (2001); *Vincent Holmes*, 53 ECAB __ Docket No. 00-2644, (issued March 27, 2002).

By decision dated June 21, 2002, the Office found that appellant did not sustain a recurrence of disability on March 4, 2002, noting that she continued to be entitled to wage-loss compensation for four hours per day and for medical benefits. In a June 6, 2002 statement received by the Office on July 18, 2002, Mr. Sharrow advised that on June 1, 2002 he observed appellant driving a classic 1930 Ford automobile in a parade in Brownville, NY. He noted that driving the car in the parade required her to sit and/or drive the car from 5:30 p.m. to 8:00 p.m.

On June 28, 2002 appellant requested a hearing and submitted medical evidence. On September 6, 2002 the employing establishment offered her a limited-duty position for four hours per day.[4] In a letter also dated September 6, 2002, the Office informed appellant that the offered position was considered suitable. She was notified of the penalty provision of section 8106 of the Act and was given 30 days in which to respond. On September 11, 2002 appellant rejected the offered position, stating that she was incapable of working four hours per day. In a letter dated November 8, 2002, the Office advised her that her reasons for refusing the offered position were not acceptable and she was given an additional 15 days to respond. By decision dated November 29, 2002, the Office terminated appellant's wage-loss compensation on the grounds that she declined an offer of suitable work.

Drs. Curtis and Wasicek submitted reports advising that appellant could not work. Appellant also submitted reports from Dr. Douglas A. Sloan, an osteopathic physician.[5]

At a hearing held on April 23, 2003, appellant described the four-hour limited-duty assignment, stating that she answered the telephone which required her to turn her head, cut mail labels and restocked tax forms which required bending and pushing a cart. She testified that the repetitive nature of the work and the employing establishment's air conditioning bothered her and that she knew at the end of the first week that she could not perform the job duties due to severe pain, but continued for two weeks. Appellant described her difficulty in seeing Dr. Curtis and acknowledged that the employing establishment tried to work with her, but that Dr. Curtis stated that she could only work one hour per day, which she did for approximately two months and then stopped completely. Appellant testified that she was required to stand the entire one hour she worked. The record was held open for 30 days for the submission of additional medical evidence.

Appellant submitted statements from Lorri Monroe and Karen Hunt, coworkers, who stated that they had witnessed appellant in pain at work. In a report dated May 27, 2003, Dr. Wasicek stated that he had reviewed appellant's medical records, the limited-duty job description and physical therapy records. He opined that her return to work in February 2002 caused increased pain and tenderness on palpation.

[4] The specific duties were answering telephones, writing messages, copying, retrieving hold mail, completing forms and filing with physical restrictions of lifting 5 pounds intermittently for 4 hours per day; sit, stand or walk at 15-minute intervals for 4 hours each; simple grasping 4 hours per day; fine manipulation at 10-minute intervals for 4 hours with no climbing, kneeling, bending, stooping, twisting or reaching above the shoulder and driving only to and from work.

[5] Dr. Sloan's credentials could not be ascertained.

In a decision dated July 3, 2003, an Office hearing representative affirmed the June 21, 2002 recurrence of disability denial. She reversed the November 20, 2002 suitable work decision.

LEGAL PRECEDENT

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.[6]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[7] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 specific employment factors identified by the claimant.[8]

ANALYSIS

Appellant's claim was accepted by the Office for fibromyositis of the upper dorsal area and costochondritis of the right upper chest. She sustained a recurrence of disability on December 13, 2001 and returned to limited duty for four hours per day on February 19, 2002. On March 4, 2002 she began working one hour per day and continued for several months before stopping work. Appellant continued to receive wage-loss compensation for four hours per day. In support of her claim for additional wage-loss compensation, she submitted a number of reports from her treating physicians, Dr. Curtis, a Board-certified orthopedic surgeon, and Dr. Wasicek, Board-certified in internal medicine and rheumatology.

The medical evidence contemporaneous to the December 2001 recurrence of disability included reports dating from December 12, 2001 to February 15, 2002 in which Dr. Curtis noted that appellant reported a history that she could not work due to severe pain. He advised that she was totally disabled. During this period, appellant was also being followed by Dr. Wasicek, who submitted treatment notes dating from January 3 to 31, 2002. He noted that she continued to exhibit costochondral tenderness. Dr. Wasicek also submitted a number of New York State workers' compensation forms reports, in which he advised that appellant could not work.

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[6] *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Terry R. Hedman*, 38 ECAB 222 (1986).

[7] *See Michael E. Smith*, 50 ECAB 313 (1999).

[8] *Leslie C. Moore*, 52 ECAB 132 (2000).

Dr. Curtis did not see appellant again until March 6, 2002, when he advised that she continued to have tenderness over the costocartilages. Regarding her ability to work, he noted that appellant had returned to work on February 15, 2002 but felt she could only work one hour per day making copies and getting mail and could not answer the telephone because it aggravated her neck and chest pain.

Both Dr. Curtis and Dr. Wasicek reiterated their findings and conclusions in additional medical submissions. In an attending physician's report dated April 19, 2002, Dr. Curtis diagnosed neck and upper back pain and costochondritis and advised by marking "yes," that the condition was employment related. By report dated May 3, 2002, Dr. Wasicek advised that appellant was not able to work four hours a day, but could only work one hour per day, concluding, "This is all related to her original work injury." On June 19, 2002 Dr. Curtis again reported examination findings of significant tenderness to palpation in the anterior chest on the right and left over the costal cartilages.[9] He stated that his assessment was unchanged and that "[appellant] will continue to work one hour per day." A July 15, 2002 magnetic resonance imaging (MRI) of the cervical spine demonstrated mild cervical spondylosis at C5-6 and C6-7.

In a treatment note dated October 3, 2002, Dr. Wasicek noted that he had been following appellant since January 3, 2002 and reported that since 1991 she had persistent pain in the upper back and chest with radiation into her neck "related to repetitive activities at work." He advised that working aggravated her condition. Regarding appellant's return to work on February 18, 2002, the physician stated:

> "[Appellant's] work involved repetitive motions with bending forward to write messages and answering a [tele]phone. When she repetitively answered the [tele]phone and had to angulate her neck, this caused muscle spasms. This was also aggravated by the air conditioner with the cold aggravating a tendency toward muscle spasms. When [appellant] combined this with having to do walking back and forth, with lifting, with carrying held mail, she began having intense pain in terms of her back radiating into her chest.

By reports dated December 2, 2002 and March 31, 2003, Dr. Curtis noted appellant's continued complaints of pain and diagnosed fibromyalgia. Dr. Wasicek submitted a report dated May 27, 2003, in which he reviewed the limited-duty job description and her medical records and stated that she reported increased complaints of pain, increased tenderness and muscle spasm after she tried to return to work and had less muscle spasm and pain on, palpation when she ceased working in March 2002, which he felt was consistent with the job causing her injury to worsen. He stated that angulating appellant's neck while sitting and taking telephone messages would likely stretch and aggravate the injured muscles of the upper back. Dr. Wasicek concluded that his opinion that appellant's return to work aggravated her work-related injuries was supported by the physical therapy and Dr. Curtis' records.

[9] A chest x-ray dated June 18, 2002 demonstrated no acute cardiopulmonary disease with a stable chest. Thoracic spine x-ray that same day was read as showing some mild dextroconvex curvature of the thoracic spine but no compression fracture or focal lesion.

Although Drs. Curtis and Wasicek restricted appellant to one hour of work per day, neither physician explained this restriction with sufficient medical restriction with sufficient medical rationale as to why she could not perform her limited-duty job.[10] While the reports of Drs. Curtis and Wasicek indicate that appellant continued to experience pain, she did not submit medical evidence supported by medical rational and objective findings that her condition has worsened to such degree as to necessitate a reduction in work hours. The comtemporaous records appeared to base the reduction of hours soley on appellant's complaints without a discussion of how her accepted conditions caused or contributed to a recurrence of disability. Moreover, it appears that her complaints focused on the performance at her limited-duty job activities rather than a spontaneous change in her condition resulting from her accepted injuries. The medical record is insufficient to establish appellant's claim for a recurrence of disability. As she has failed to establish that she had a change in the nature or extent of her modified duties and did not submit a rationalized medical report based on a complete factual and medical background establishing a change in the nature or extent of her employment-related conditions such that she could no longer perform her part-time limited-duty job, the Board finds that appellant has failed to discharge her burden of proof.[11]

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 3, 2003 be affirmed.

Issued: May 14, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[10] Medical conclusions unsupported by rationale are of diminished probative value. *Albert C. Brown*, 52 ECAB 152 (2000).

[11] *Alberta S. Williamson*, 47 ECAB 569 (1996).