

On December 10, 2002 appellant, then a 41-year-old letter carrier, filed a traumatic injury claim alleging that she sustained injury to her neck, back and ribs due to a motor vehicle accident at work on November 27, 2002.

In a form report dated December 11, 2002, Dr. Kimberly R. Johnson, an attending Board-certified family practitioner, diagnosed cervical spine strain, rib contusions and headaches due to the November 27, 2002 accident.

The Office accepted that appellant sustained a chest strain. She stopped work on January 29, 2002 and returned to her regular work for the employing establishment on January 29, 2003. The Office paid appropriate compensation for disability.

Appellant stopped work on August 18, 2003 and claimed that she sustained a recurrence of disability due to her November 27, 2002 employment injury.

Appellant submitted a September 11, 2003 report in which Kristen M. Sorrow, an attending nurse, stated that appellant reported experiencing back and buttocks pain since August 16, 2003 which she believed was due to her repetitive work duties, such as twisting and putting mail in boxes, as well as her November 2002 vehicular accident. Ms. Sorrow noted that appellant had significant lumbosacral pain into the sciatic region of her buttocks, and stated:

“I cannot state whether or not this would be work related from her continuous twisting. It may very well may. Or it could be an injury due to everyday life. It is uncertain how the injury was sustained.”¹

By decision dated October 30, 2003, the Office denied appellant’s claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or after August 18, 2003 due to her November 27, 2002 employment injury.

Appellant submitted a September 18, 2003 note in which Dr. Richard L. Lesser stated that, when seen on August 21, 2003, she complained of pain and numbness in her back and left buttocks. Dr. Lesser reported findings of examination and noted, “She delivers mail in a rural root [sic] so she sits in the car with the gas pedal on the wrong side of the midline so she sits with her back stretched out and I think she has just a plain over-use syndrome.” Regarding whether appellant had a workers’ compensation injury, he stated, “She said it is so I don’t have any problem with billing the Federal Government for it.”²

In a report dated November 13, 2003, Dr. Johnson noted that she saw appellant in 2002 and was aware of her cervical and back problems and the fact that she had returned to work. She indicated that appellant’s sciatica was secondary to “possible mild herniation versus muscle spasm” and that her chronic pain was exacerbated by “the type of work she had been performing.” Dr. Johnson recommended that she undergo further evaluation with magnetic resonance imaging (MRI) scan testing and posited that this testing should be paid under workers’

¹ This report contains a notation in which Dr. Robert L. Lesser, an attending Board-certified family practitioner, states, “This is a summary of the chart.”

² Appellant also submitted numerous notes and reports detailing her physical therapy treatment in 2003.

compensation “as her original injury of the motor vehicle accident was a workers’ compensation claim as well as her repetitive use at work causing the lumbar pain.” She stated:

“With her high repetitive twisting motion, it is my experience especially after sustaining this time [sic] of injury, patients change the way they lift, twist and sometimes do then develop a lower back problem as well. It is my medical opinion that the patient’s low back pain is from repetitive overuse in conjunction with sustaining a motor vehicle accident causing her some upper back and cervical injuries.”

In a report dated December 2, 2003, Dr. Brian Kelly and Dr. Glenn O. Heyman, both attending osteopaths, detailed appellant’s factual and medical history, including her November 2002 vehicular accident, and reported findings on examination. Dr. Kelly and Dr. Heyman stated that appellant had a prior history of intermittent low back pain, current history of constant biomechanical low back pain with a description of recent radicular-type low back pain, left sacroiliac joint dysfunction, left L5-S1 pain and headaches. The physicians indicated that appellant should have an MRI scan testing and stated, “We feel that this should be considered a workers’ compensation injury and the MRI scan should be covered under her workers’ compensation insurance.”

Appellant requested a review of the written record by an Office hearing representative. By decision dated May 13, 2004, the Office hearing representative affirmed the October 30, 2003 decision. She stated that appellant was not precluded from filing an occupational disease claim alleging that she sustained a new condition due to the repetitive duties of her job.

LEGAL PRECEDENT

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 This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.⁴ Where no such rationale is present, medical evidence is of diminished probative value.⁵

ANALYSIS

The Office accepted that appellant sustained a chest strain due to a vehicular accident at work on November 27, 2002. After a period of work stoppage, she returned to her regular work as a letter carrier for the employing establishment. Appellant stopped work on August 18, 2003

³ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

⁴ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁵ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

and claimed that she sustained a recurrence of disability due to the November 27, 2002 employment injury. The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or after August 18, 2003 due to her November 27, 2002 employment injury.

Appellant submitted a November 13, 2003 report in which Dr. Johnson, an attending Board-certified family practitioner, stated that her chronic pain was exacerbated by “the type of work she had been performing” and indicated that MRI scan testing should be paid under workers’ compensation “as her originally [sic] injury of the motor vehicle accident was a workers’ compensation claim as well as her repetitive use at work causing the lumbar pain.” Dr. Johnson also suggested that appellant engaged in repetitive work activities, such as lifting and twisting, which adversely affected her back. She stated, “It is my medical opinion that the patient’s low back pain is from repetitive overuse in conjunction with sustaining a motor vehicle accident causing her some upper back and cervical injuries.”

Although Dr. Johnson suggested that appellant’s November 27, 2002 employment-related injury caused her to sustain medical problems in late 2003, her report is of diminished probative value on the relevant issue of this case. Dr. Johnson did not provide adequate medical rationale in support of her apparent conclusion on causal relationship.⁶ Dr. Johnson did not provide a detailed description of appellant’s November 27, 2002 employment injury, accepted for a chest strain, or explain how it would be competent to cause disability on or after August 18, 2003, as alleged.⁷ She suggested that appellant’s upper back and cervical condition was due in part to the November 27, 2002 injury, but did not provide medical rationale describing how that injury caused or contributed to her medical condition in late 2003. Moreover, Dr. Johnson did not adequately explain what particular medical condition she felt was still related to the November 27, 2002 injury or provide a clear opinion regarding the extent of appellant’s disability from work. She suggested that appellant’s low back pain was related to her repetitive duties at work, but it does not appear from the record that appellant has filed an occupational disease claim and this matter is not currently before the Board on this appeal.

In a report dated December 2, 2003, Dr. Kelly and Dr. Heyman, both attending osteopaths, stated that appellant had a prior history of intermittent low back pain, current history of constant biomechanical low back pain with a description of recent radicular-type low back pain, left sacroiliac joint dysfunction, left L5-S1 pain and headaches. The physicians suggested that appellant had some sort of employment-related medical condition because they indicated that appellant’s MRI scan testing “should be covered under her workers’ compensation insurance.” However, the physicians did not provide any clear opinion about the nature of this

⁶ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

⁷ Appellant’s claim has not been accepted for any specific back or neck injury and the record does not adequately support that she sustained such an injury. The record contains a December 11, 2002 form report in which Dr. Johnson diagnosed cervical spine strain and rib contusions. However, this brief report does not contain any findings on examination or diagnostic testing and the basis for this diagnosis remains unclear.

condition or otherwise address how appellant sustained a recurrence of disability on or after August 18, 2003 due to residuals of her November 27, 2002 employment injury.⁸

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.⁹ Appellant failed to submit rationalized medical evidence establishing that her claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied her claim for compensation.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability on or after August 18, 2003 due to her November 27, 2002 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' May 13, 2004 and October 30, 2003 decisions are affirmed.

Issued: October 14, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

⁸ Appellant also submitted a September 18, 2003 note in which Dr. Lesser, an attending Board-certified family practitioner, suggested that the manner in which she stretched her back while delivering mail in her vehicle contributed to an overuse syndrome in her back. However, Dr. Lesser did not provide any opinion that she sustained an employment-related recurrence of disability due to her November 27, 2002 injury and, as previously noted, the issue of whether she sustained a new occupational injury is not the subject of the current appeal.

⁹ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).