United States Department of Labor
Employees' Compensation Appeals Board

T.M., Appellant	)	
and	)	**Docket No. 07-09**
	)	**Issued: May 17, 2007**
U.S. POSTAL SERVICE, POST OFFICE Baton Rouge, LA, Employer	)	

Appearances:
C.B. Weiser, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 4, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 8, 2006, which denied modification of her recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability commencing on November 17, 2003 causally related to a June 12, 2002 employment injury.

FACTUAL HISTORY

On June 12, 2002 appellant, then a 44-year-old rural mail carrier, sustained an injury to her low back while lifting a tray of mail into a vehicle. She stopped work on the date of the

injury and received appropriate compensation.[1] On July 2, 2002 the Office accepted her claim for a lumbar strain.[2]

Appellant accepted a limited-duty assignment on September 25, 2002. The position comported with restrictions set forth by her treating physician, Dr. Scott D. Nyboer, a Board-certified physiatrist. Appellant answered "dutch doors" from "16:30 to 18:00," telephones and assisted customers and cased within her restrictions.

On October 11, 2002 Dr. Nyboer noted that appellant could work for eight hours daily and adjusted her restrictions. Appellant could sit, walk or stand for up to four hours per day; reach and reach above the shoulder for up to six hours per day; push, pull, lift, squat and kneel for up to four hours per day, with a weight limit of 20 pounds for pushing and pulling and 25 pounds for lifting.

On November 14, 2003 the employing establishment offered appellant a new limited-duty assignment. The position comprised casing mail within her restrictions in the box section for one hour, working return to writer mail and notifying certified mail for one hour, assisting customers in the lobby and general lobby upkeep for one to eight hours. The physical requirements included fine manipulation, writing and using a rubber stamp for one to two hours. They also included lifting 10 to 15 pounds intermittently as needed for up to an hour, standing, sitting, walking on an intermittent schedule per her restrictions from one to eight hours. On November 15, 2003 appellant "refused to accept, reject, read or sign this new assignment."

On December 2, 2003 appellant completed a Form CA-7 claiming a recurrence of disability as of November 17, 2003. By letter dated December 31, 2003, the Office requested that appellant submit additional factual and medical evidence in support of her claim.

In a January 10, 2004 statement, appellant noted that she had a severely ruptured disc due to a prior work injury[3] but that she had recovered and returned to full duty. She alleged that on June 12, 2002, she reruptured the same disc. Appellant accepted a limited-duty assignment within the guidelines set by her physician but stated that, in late October or early November of 2003, she was informed that the limited-duty job assignment would change. If she did not accept a new limited-duty assignment, the employing establishment would have no other work for her. Appellant agreed to consider a new assignment which was a lobby monitor position and attended a training class. However, a week after training, she began working the new assignment and experienced increased back discomfort and fatigue. Appellant attempted to curtail as much as possible any obvious extra toll or strain to her back and began asking other coworkers for more assistance. She alleged that she worked dual assignments for approximately three to four weeks, but was unable to report to work on November 17, 2003. In a January 9, 2004 statement,

[1] Appellant was paid compensation effective July 20, 2002 and placed on the periodic rolls effective August 11, 2002.

[2] The record reflects that appellant had a concurrent preexisting L5-S1 disc herniation documented by a magnetic resonance image (MRI) scan of May 10,1999.

[3] The record does not indicate that the Office accepted any prior back injury as employment related.

R.M. Jackson, a coworker, noted that appellant's job changed because she began to wear office attire and continued to work in the box section at the same time.

In a January 14, 2004 statement, R. Reynolds, a coworker, alleged that appellant's job responsibilities changed. She alleged that appellant worked exclusively in the box area and assisted window clerks as needed. However, in November 2003, Ms. Reynolds noted that appellant began working as the lobby stations monitor and overseeing the box section in addition to her other duties.

In a February 6, 2004 report, Dr. Nyboer noted that appellant returned to restricted work following her June 2002 injury and worked in that capacity until December 2, 2003, when she was seen for increased pain in her low back and radiating to her left buttock. He advised that appellant return to part-time work for no more than six hours per day, which would allow her time to attend physical therapy.

In a statement dated March 2, 2004, Donald S. Moore, a supervisor of customer services, noted that in October 2003, the employing establishment was preparing for the Christmas season and needed a lobby monitor to assist customers. On or about October 28, 2003 he informed appellant that she was a prime candidate for the position and that her off days would be Saturday and Sunday. Appellant would not be working her current assignment or have the same off days. On October 20, 2003 she alleged that she needed a couple of weeks to make child care arrangements for her grand-child which he agreed to. Mr. Moore noted that appellant kept her same schedule, but began the training sessions and began to perform some of the duties of a lobby director. On November 15, 2003 he presented appellant with the new job offer but noted that she would neither accept, reject, read or sign it. Appellant advised him that the hours would not work for her. Mr. Moore informed appellant that "this was the job that they needed her to perform, which was within her restrictions and that the times were indicative of our peak and highest traffic times." He alleged that appellant later called him to advise that she was on bed rest and would not be in for a while. Mr. Moore noted that she did not provide medical documentation and never informed him of a recurrence of a disability. He indicated that appellant's coworkers who had commented on her duties were not familiar with appellant's situation.

By decision dated March 12, 2004, the Office denied appellant's claim for a recurrence of disability beginning November 17, 2003. The Office determined that the medical evidence did not support that she was totally disabled or that her condition had worsened or changed such that she could not longer work.

On March 12, 2004 appellant accepted the limited-duty assignment.

On April 5, 2004 appellant requested a hearing. This was later changed to a request for a review of the written record.

In reports dated March 2, 2004, Dr. Nyboer noted that appellant was currently being treated for an exacerbation of an L5-S1 lumbar disc herniation which occurred in June 2002. He stated that her current pain was an "exacerbation of her previous injury and is not a new injury."

On July 12, 2004 Dr. Nyboer noted that appellant still had intermittent pain; however, she had reached maximum medical improvement. In a September 3, 2004 report, he stated that appellant returned to work and after two and a half weeks stopped because her back "went out." Dr. Nyboer diagnosed low back pain, lumbar radiculopathy and an S1 disc herniation. On October 18, 2004 he diagnosed chronic low back pain, lumbar radiculopathy and L5-S1 disc herniation. Dr. Nyboer recommended that appellant continue with her work restrictions.

In a November 11, 2004 report, Dr. Nyboer noted that in July 2003 appellant presented with increased low back and left leg pain which she attributed to increased activities at work. In October, appellant was seen in follow up and Dr. Nyboer recommended that she continue with her light duty. In December 2003, she related that her pain was worsening which she attributed to doing more at work in July 2003. Dr. Nyboer started appellant on medication and physical therapy to help strengthen her back muscles and recommended placing her off work while she was receiving physical therapy. He stated that she was "on temporary disability from November 18, 2003 until February 6, 2004 due to her aggravation of her preexisting back injury." Dr. Nyboer opined that appellant's reaggravation was causally related to her disc herniation at L5-S1 from her original 1998 work injury and the subsequent aggravation that occurred in June 2002. He opined that appellant's symptoms improved in February and she returned to part-time work.

In a November 19, 2004 statement, appellant's representative submitted copies of her medical records. Counsel contended that appellant's claim was incorrectly listed as an accepted lumbar strain instead of an aggravation of a prior work-related injury. He referenced a 1998 work-related accident and included the medical records pertaining to that claim. He noted that the medical evidence supported that appellant's disability commencing in November 2003 was causally related to the original work-related injury. Counsel contended that appellant's condition was due to a change in the nature and extent of her light-duty assignment.

In a December 17, 2004 decision, the Office hearing representative found that appellant had not established a recurrence of disability in November 2003. He modified the Office's March 12, 2004 decision to accept that her work exacerbated her preexisting L5-S1 disc herniation in June 2002.[4] The Office affirmed the March 12, 2004 decision as modified.

On December 5, 2005 appellant alleged that in November 2003, she was required to work dual assignments as a lobby monitor and a box section clerk. This required an extensive amount of walking, standing, lifting and bending in excess of five to six hours a day. She alleged that she had to walk back and forth between the two work areas in excess of four to five hours a day, while serving customers. Appellant alleged that her requests for assistance were regularly ignored by her supervisors, whom attributed the extra work as necessary because of the holiday period. During this time frame, her physician prescribed an ergonomic chair but that she had not been provided with one.

On December 16, 2005 appellant's representative requested reconsideration, contending that the medical evidence supported a recurrence of disability beginning in October 2003. As the

[4] The Office hearing representative also found that there was a record that appellant had an employment injury in 1998.

limited assignment became more demanding, it did not meet the physical restrictions of her medical provider. Appellant's representative noted that she was not given an ergonomic chair as prescribed by her physician. He contended that the physical requirements of the light-duty positions exceeded the medical restrictions provided by her physician.

By decision dated August 8, 2006, the Office denied modification of the December 17, 2004 decision.

LEGAL PRECEDENT

The Office's regulation defines the term recurrence of disability as follows:

Recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[5]

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, generally, is rationalized medical evidence.[7] This consists of 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.[8] The physician's opinion 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.[9]

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[5] 20 C.F.R. § 10.5(x).

[6] *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

[7] *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

[8] *Duane B. Harris*, 49 ECAB 170, 173 (1997).

[9] *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

ANALYSIS

The Office accepted appellant's claim for lumbar strain and exacerbation of a preexiting L5-S1 disc herniation. In support of her claim for a recurrence of disability commencing on November 17, 2003 appellant submitted the reports of Dr. Nyboer. On February 6, 2004 Dr. Nyboer noted that appellant returned to restricted work until December 2, 2003 when she was seen for increased pain in her low back and radiating to her left buttock. He recommended that she return to work on a part-time basis of no more than six hours per day, which would allow her time to attend physical therapy. However, Dr. Nyboer did not address her disability beginning as of November 17, 2003 or how it was related to the accepted employment injury. On March 2, 2004 he treated appellant for an exacerbation of a L5-S1 lumbar disc herniation. Dr. Nyboer stated that her current pain was an "exacerbation of her previous injury and is not a new injury." However, he did not explain how appellant's work-related condition had worsened such that she was no longer able to perform her limited-duty work as of November 17, 2003.

In a November 11, 2004 report, Dr. Nyboer noted that in December 2003 appellant related that her pain was worsening which was attributed to doing more at work in July 2003. He stated that appellant was "on temporary disability from November 18, 2003 until February 6, 2004 due to her aggravation of her preexisting back injury." Appellant's reaggravation was causally related to her disc herniation at L5-S1 from her original 1998 work injury and the "subsequent aggravation that occurred in June 2002 was the reason [appellant] was placed on light-duty status and continues with work restrictions." Furthermore, she did not claim that her recurrence occurred in July 2003 but rather in November 2003 when she was presented with a new light duty-position. It is well established that medical reports must be based on a complete and accurate factual and medical background and medical opinions based on an incomplete or inaccurate history are of little probative value.[10] Dr. Nyboer did not offer a rationalized medical opinion as to how appellant's employment caused or aggravated her condition such that she had a recurrence of disability on November 17, 2003. He did not explain how appellant's work-related condition had worsened such that she could no longer perform her limited-duty work. Other reports from Dr. Nyboer did not address the cause of the claimed recurrence of disability.

The Board also notes that appellant has not shown a change in the nature and extent of her light-duty job requirements. Appellant submitted a January 9, 2004 statement, from Mr. Jackson who alleged that appellant's job changed because she began to wear "office attire" and worked in the box section at the same time. She submitted a January 10, 2004 statement, in which she alleged that in late October or early November 2003, she was informed by her supervisor that the limited-duty job assignment would change. Appellant alleged that a week after she attended the training class for the lobby monitor position, she began working the new assignment while still working the old assignment. She stated that she worked the dual assignments for approximately three to four weeks but that her back pain increased and she was unable to report to work on November 17, 2003. Appellant also provided a January 14, 2004 statement, from Mr. Reynolds, who noted that appellant worked exclusively in the box area and assisted window clerks as needed until November 2003, when she began working as the lobby

[10] *Douglas M. McQuaid*, 52 ECAB 382 (2001).

stations monitor and overseeing the box section in addition to her other duties. In a December 5, 2005 statement, appellant noted that new job entailed an extensive amount of walking, standing, lifting and bending while serving customers. She also alleged that supervisors ignored her complaints and requests for assistance. However, Mr. Moore, a supervisor, explained the context of appellant's reassignment noting that the employing establishment needed a lobby monitor to assist customers and that the position did not exceed her physician's work restrictions. He noted advising appellant in October 2003 about the position and stated that she would not continue working her current assignment or have the same off days. Appellant subsequently started the training sessions and began to perform some of the duties of the lobby director. He advised that, on November 15, 2003, when he presented appellant with the new job offer, she would "neither accept, reject, read, nor sign the job offer." Mr. Moore explained that after he informed appellant that she must accept the offer or present documentation from her physician explaining why the position was unacceptable, she informed him the hours would not work for her. Appellant was advised that this was the job that they needed her to perform and was within her physical restrictions. Subsequently she contacted him to advise that she "was on bed rest and would not be in for a while."

The Board finds that appellant has not shown that the nature and extent of her light-duty position changed. The Board notes that appellant received a new light-duty position which was consistent with the restrictions recommended by her physician, Dr. Nyboer. Although appellant preferred the schedule of her former light-duty position, there is no evidence that the new light-duty position exceeded her work restrictions that were necessitated by her employment injury. There also is no evidence that the employing establishment did not make appropriate light-duty work available to appellant for the period in which she claims a recurrence of disability. Appellant submitted statements from coworkers noting that her job changed but these statements do not show that her new duties exceeded her work restrictions. While appellant stated that she worked both positions, there is no evidence that they exceeded her light-duty restrictions. Instead, the record indicates that during a brief transition period between the two positions, before appellant stopped work, she adjusted her duties between the two positions while working within her restrictions. Thus, appellant has not shown that the nature of her light-duty position was changed.[11]

For these reasons, the Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability beginning November 17, 2003 causally related to her June 12, 2002 employment injury.

CONCLUSION

The Board finds that appellant did not establish that she sustained a recurrence of disability commencing on November 17, 2003 causally related to an accepted June 12, 2002 employment injury.

[11] The Board also notes that appellant made an argument that her prescription for an ergonomic chair was not provided. However, the record does not contain a prescription nor a decision on that matter and that issue is not presently before the Board.

ORDER

IT IS HEREBY ORDERED THAT the August 8, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 17, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board