

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CYNTHIA K. CRAMER and U.S. POSTAL SERVICE,
POST OFFICE, Akron, OH

*Docket No. 99-2043; Submitted on the Record;
Issued October 3, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability.

On April 23, 1997 appellant, then a 48-year-old rural carrier, sustained employment-related thoracic, and lumbar strains and bilateral shoulder strains with left shoulder adhesive capsulitis when she tried to stop a falling filing cabinet. She stopped work on May 1, 1997 and returned to limited duty for four hours per day on July 2, 1997 and began working eight hours per day on July 28, 1997. On December 17, 1997 appellant filed a recurrence claim, stating that she sustained a recurrence of disability on December 4, 1997 when she stopped work due to continued flare-ups and pain.

By decision dated July 21, 1998, the Office of Workers' Compensation Programs denied the claim on the grounds that the medical evidence was insufficient to establish that she sustained a recurrence of disability. On July 28, 1998 appellant, through counsel, requested a hearing that was held on January 26, 1999. At the hearing appellant testified that she could no longer work due to degenerative arthritis of the hip, shoulder capsulitis and fibromyalgia which cause severe pain and limited motion. In a decision dated April 16, 1999 and finalized April 20, 1999, an Office hearing representative affirmed the prior decision. The instant appeal follows.

The Board finds that this case is not in posture for decision.

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 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.¹

Causal relationship is a medical issue,² and the medical evidence required to establish a causal relationship is rationalized medical evidence. 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.³

The medical evidence relevant to appellant's recurrence claim includes a December 18, 1997 attending physician's report, in which Dr. Mark J. Pellegrino, who is Board-certified in physical medicine and rehabilitation, diagnosed right hip strain and arthritis and fibromyalgia and provided restrictions to her physical activity. He checked the "yes" box, indicating that the conditions were employment related. In a December 19, 1997 report, Dr. Steven B. Lippitt, a Board-certified surgeon, diagnosed left frozen shoulder and advised that it was caused by the April 23, 1997 employment injury. Dr. Paul A. Steurer, appellant's treating Board-certified orthopedic surgeon, submitted attending physician's reports dated January 2, 1998, in which Dr. Steurer diagnosed shoulder adhesive capsulitis, hip and lumbar strains and fibromyalgia. He checked "yes" boxes indicating that these conditions were employment related and that she was totally disabled. In a February 3, 1998 report, Dr. Kevin A. Zacour, an osteopathic physician, noted appellant's multiple diagnoses and advised that she was permanently totally disabled from performing her normal job duties. By report dated March 30, 1998, Dr. Pellegrino advised that the April 23, 1997 employment injury resulted in a worsening of appellant's medical conditions that prevented her from performing "the duties of the available restricted-duty assignment."

Drs. Steurer and Pellegrino continued to submit reports and in an August 13, 1998 report, Dr. Steurer noted appellant's chronic problems with her shoulder, back and hips and advised that these had progressively worsened following the April 1997 employment injury. He concluded that her condition was permanent and that she could not work.

The Board finds that, while the medical reports submitted by appellant are insufficient to establish entitlement, the fact that they contain deficiencies preventing her from discharging her burden does not mean that they may be completely disregarded by the Office. It merely means that their probative value is diminished. Drs. Pellegrino, Steurer and Zacour advised that her conditions were employment related and that she was totally disabled. Their opinions are thus sufficient to require further development of the record.⁴ The Board notes that in the instant case,

¹ See *Mary A. Howard*, 45 ECAB 646 (1994).

² *Mary J. Briggs*, 37 ECAB 578 (1986).

³ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ See *Lourdes Davila*, 45 ECAB 139 (1993); *John J. Carlone*, 41 ECAB 354 (1989).

the record does not contain a medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case for a second opinion evaluation regarding the recurrence of disability. It is well established that proceedings under the Federal Employees' Compensation Act⁵ are not adversarial in nature,⁶ and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁷ On remand the Office should refer appellant to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether appellant's accepted conditions were exacerbated to the point that she could not perform her light-duty work. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decisions of the Office of Workers' Compensation Programs dated April 16, 1999 and finalized April 20, 1999 and dated July 21, 1998 are hereby set aside and the case is remanded to the Office for further proceedings.

Dated, Washington, DC
October 3, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

⁵ 5 U.S.C. § 8101 *et seq.*

⁶ *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

⁷ *See Dorothy L. Sidwell*, 36 ECAB 699 (1985).