

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANA L. DENMAN and U.S. POSTAL SERVICE,
POST OFFICE, Fort Worth, TX

*Docket No. 00-1768; Submitted on the Record;
Issued August 21, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability beginning September 30, 1998 due to her September 26, 1995 employment injury.

On September 26, 1995 appellant, then a 45-year-old computer operator, injured her lower back when she sat in a chair that collapsed. The Office of Workers' Compensation Programs accepted that appellant sustained a lumbar contusion and lumbosacral sprain. Appellant stopped work on September 28, 1995 and remained on total disability until returning to a limited-duty position, four hours per day, on May 18, 1998.

Accompanying appellant's claim was a medical report from Dr. James J. Box, a Board-certified orthopedic surgeon, dated October 2, 1995. The medical report from Dr. Box indicated a history of appellant's work injury on September 26, 1995 and diagnosed appellant with moderately severe contusion and strain of the lumbar spine. He indicated that appellant had a previous lumbar fusion.¹ Dr. Box noted appellant was not to return to work for 10 days and recommended physical therapy.

Appellant continued to submit treatment notes from Drs. Box and Daniel L. Handel a Board-certified family practitioner, indicating that she remained disabled and under treatment for contusion of lumbar area and lumbosacral sprain.

Thereafter, in the course of developing the claim, the Office referred appellant to several second opinion physicians and also to an impartial medical examiner. On December 31, 1997 the Office referred appellant to Dr. John Sazy, a specialist in orthopedics. Dr. Sazy determined that appellant demonstrated nonanatomic findings and exaggeration of all symptoms. The Office determined that a conflict existed between appellant's treating physician, Dr. Box, who concluded appellant was still totally disabled from her work-related injury and an Office referral

¹ The record indicated appellant underwent a previous lumbar fusion. However, there is no indication in the record that this was a work-related injury or that a claim was filed by appellant.

physician, Dr. Sazy, who concluded appellant had no continuing disability. Appellant was referred to an impartial medical specialist's Dr. Joe F. Schooler, a specialist in physical medicine, rehabilitation and orthopedics, in April 1998 to resolve the conflict. In a report dated May 19, 1998, Dr. Schooler diagnosed appellant with pseudoarthrosis. He noted appellant was partially impaired due to the pain and tenderness on movement at the fusion site L4-S1-S1. Dr. Schooler indicated appellant could continue to work, however, not eight hours a day. He determined that appellant's condition, pseudoarthrosis, was due to the September 26, 1995 work injury.

In a report dated June 15, 1998, Dr. Handel's indicated appellant could return to work limited duty for four hours per day.

The employing establishment offered appellant a limited-duty position, which complied with the medical restrictions set forth by her treating physicians. Appellant returned to work on limited duty, four hours per day.

Thereafter, appellant submitted reports from Dr. Handel dated June 15, August 17 and October 12, 1998 and from Dr. Box dated October 1, 1998. Dr. Handel's report dated June 15, 1998, diagnosed appellant with continued low back syndrome, failed back surgery syndrome and chronic pain syndrome. Dr. Handel's August 17, 1998 report, noted appellant was doing very well and had returned to work part time without difficulty. Dr. Handel's October 12, 1998 indicated that appellant was working four hours a day and "has not tolerated that." He noted appellant's pain had gradually increased. Dr. Handel indicated upon physical examination there was discrete tenderness along the paraspinous muscles in the low thoracic and upper lumbar; mild spasm of the iliolumbar muscles bilaterally; and left sided radiculopathy to the lateral ankle. He diagnosed appellant with persistent radicular pain causing inability to work and failed surgery, low back. Dr. Box's report dated October 1, 1998, noted appellant had returned to work from June to September 1998, for four hours per day, however, she developed severe muscle spasms, which prevented her from continuing work. He noted upon physical examination appellant could forward flex 40 to 45 degrees with painful extension. Dr. Box indicated appellant was to remain off work for two weeks.

On November 5, 1998 appellant filed a CA-2a, notice of recurrence of disability. She indicated a recurrence on September 30, 1998, noting that experienced persistent muscles spasms in her back and low back pain since the employment-related injury of September 26, 1995. Appellant stopped work on October 12, 1998.

Thereafter, appellant submitted a report from Dr. Box dated November 9, 1998 and an attending physician's report dated November 12, 1998. Dr. Box's report dated November 9, 1998, noted appellant's continued complaints of muscle spasms. He indicated appellant was limited in her ability to bend and was walking with a cane. Dr. Box indicated that appellant was unable to work for four weeks. The attending physicians report dated November 12, 1998, diagnosed appellant with lumbar radiculitis with a date of injury of September 26, 1995. He indicated with a checkmark "yes" that appellant's present condition was due to the injury for which compensation was claimed. Dr. Box further noted appellant's prognosis was guarded and appellant would not be able to return to work for at least 90 days.

By letter dated November 23, 1998, the Office requested detailed factual and medical evidence from appellant, stating that the information submitted was insufficient to establish a recurrence on the above date.

Appellant submitted two reports from Dr. Handel dated November 17, 1998 and January 19, 1999. Dr. Handel's report dated November 17, 1998, indicated appellant was doing well. He noted upon examination of appellant that there were no significant trigger points. Dr. Handel indicated the low back pain was lessening more since appellant has been off work. The January 19, 1999 report noted appellant was having increased agitated depression. He indicated that appellant experience increased pain since she began using a treadmill. Dr. Handel recommended that appellant continue her exercise routine and noted appellant "is doing better."

In a decision dated March 21, 1999, the Office denied appellant's claim for recurrence of disability on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or about September 30, 1998, which was causally related to the accepted employment injury sustained September 26, 1995.

Appellant requested an oral hearing and submitted various medical records, many of which were duplicates of those already in the record. Appellant also submitted reports from Dr. Box dated March 2, April 13, June 22, September 21 and October 1, 1999 and from Dr. Handel dated March 2 and 30 and May 6, 1999. Dr. Box's report of March 2, 1999 indicated a diagnosis of herniated nucleus pulposus lumbar spine and chronic low back pain syndrome. He noted appellant worked from June to September 1998 for four hours a day; however, by September her pain and muscle spasms in the low back had progressed where appellant could work only 1.5 hours before having to stop. Dr. Box's reports dated April 13 and June 22, 1999, indicated appellant was still experiencing low back pain and leg pain. Dr. Box's report dated September 21, 1999, noted appellant continued to experience muscle spasms. He diagnosed appellant with herniated nucleus pulposus and lumbar spine. Dr. Box's October 1, 1999 report noted appellant still experienced pain from myofascial syndrome with chronic low back pain and muscle spasms. He noted appellant was on pain medication and limited functionally. Dr. Box recommended physical therapy. Dr. Handel's report dated March 2, 1999, noted appellant had experienced three days of increasing spasms. He noted upon examination that appellant was having mild spasms of the trapezius, rhomboids and paraspinals in the lower cervical region; with a normal upper extremity examination and shoulder examination. Dr. Handel's report of March 30, 1999 indicated appellant had weakness of abduction of the thumbs bilaterally, however, he did not mention appellant's lumbar condition. Dr. Handel's report of May 6, 1999 noted appellant had an acute flair up of pain causing restriction of movement and aggravation of her condition.

The hearing was held on October 26, 1999. Appellant testified that she had not experienced a change in the nature or extent of her limited duties. She noted that in May 1998 she returned to work for four hours per day, which was reduced from the eight-hour workday prior to the work incident of September 26, 1995.

By decision dated April 10, 2000, the hearing representative affirmed the decision of the Office dated June 17, 1999.

The Board finds that the evidence fails to establish that appellant sustained a recurrence of disability beginning on September 30, 1998 as a result of her September 26, 1995 employment injury.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that 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 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 requirements.²

Appellant has not submitted sufficient evidence to support 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.³ On November 23, 1998 the Office advised appellant of the type of medical evidence needed to establish her claim.

Appellant submitted a report dated October 1, 1998 from Dr. Box, which noted appellant had returned to work from June to September 1998 for four hours per day; however, she developed severe muscle spasms which prevented her from continuing work. He indicated appellant was to remain off work for two weeks. Dr. Box's report dated November 9, 1998, noted appellant's continued complaints of muscle spasms. He indicated that appellant was limited in her ability to bend and was walking with a cane. The attending physicians report dated November 12, 1998, diagnosed appellant with lumbar radiculitis and noted a date of injury of September 26, 1995. Dr. Box indicated with a checkmark "yes" that appellant's present condition was due to the injury for which compensation was claimed. However, none of Dr. Box's reports, most contemporaneous with the recurrence-of-injury noted a specific date of a recurrence of disability nor did he note a particular change in the nature of appellant's physical condition, arising from the employment injury, which prevented appellant from performing her light-duty position. These notes are vague regarding the time of the onset of the claimed recurrence of disability and are unrationalized regarding how the 1995 employment injury would have caused a particular period of disability beginning in September 1998.⁴ Dr. Box neither address whether appellant was totally disabled due to her work injury on or after October 12, 1998 nor does he offer any reasoned support for causal relationship of the claimed condition or disability to the accepted work-related injury of September 26, 1995. Dr. Box indicated with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. However, 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

² *Terry R. Hedman*, 38 ECAB 222 (1986).

³ Appellant testified at the October 26, 1999 hearing that she had not experienced a change in the nature and extent of her limited duties.

⁴ *See Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁵

Other reports from Dr. Box provided no specific opinion on causal relationship between conditions diagnosed and appellant's claimed recurrence of total disability. For example, the physician in March 2 and September 21, 1999 reports, diagnosed a herniated disc, however, he did not explain, how, over three years following the accepted contusion lumbar area and lumbosacral sprain, it was exacerbated by appellant's employment factors to result in a totally disabling herniated disc or any other totally disabling condition, for the claimed period. Further, the Office never accepted that appellant sustained herniated nucleus pulposus of the lumbar as a result of her September 26, 1995 work injury and there is no medical evidence to support such a conclusion. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.⁶

Likewise, Dr. Handel's reports and various other reports submitted by appellant did not specifically address whether appellant's total disability beginning October 12, 1998 was caused or aggravated by the September 26, 1995 employment injury or any other condition caused or aggravated by her employment. Thus, these reports are also insufficient to meet appellant's burden of proof.

Appellant has not met her burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements, which would prohibit him from performing the light-duty position she assumed after she returned to work.

The April 10, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 21, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

⁵ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

⁶ *See Theron J. Barham*, *supra* note 4.