U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY R. GANG and U.S. POSTAL SERVICE,
POST OFFICE, Akron, OH

Docket No. 00-1033; Submitted on the Record;
Issued March 22, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant met her burden to establish that her claimed condition or disability as of December 10, 1998 was caused or aggravated by her accepted February 7, 1993 low back injury; and (2) whether appellant has established that she has greater than a 27 percent permanent impairment for loss of use of her right and left lower extremities, for which she received a schedule award.

On February 7, 1993 appellant, a 44-year-old mailhandler, injured her lower back while pushing containers loaded with magazines. She filed a claim for benefits on February 8, 1993, which the Office of Workers' Compensation Programs accepted for low back strain/sprain. Appellant missed work for intermittent periods and the Office paid her compensation for appropriate periods. She accepted a limited-duty job as a modified mailhandler on August 17, 1996.

On March 12, 1996 appellant filed a Form CA-7 claim for a schedule award based on partial loss of use of her right and left lower extremities.

By decision dated August 7, 1996, the Office denied the claim for a schedule award, finding that appellant's condition had not reached maximum medical improvement.

By letter dated August 30, 1996, appellant requested reconsideration.

By decision dated September 20, 1996, the Office denied appellant's claim, finding that she did not submit medical evidence sufficient to warrant modification of the August 7, 1996 decision.

On January 7, 1997 the Office granted appellant a schedule award for a 27 percent permanent impairment for loss of use of her right lower extremity and for a 27 percent permanent impairment for loss of use of her left lower extremity for the period August 27, 1996 to August 20, 1999, for a total of 155.52 weeks of compensation.

In a letter dated December 15, 1998, the employing establishment informed the Office that appellant had submitted a disability certificate on December 10, 1998 which indicated she was unable to return to work until January 4, 1999.

In a memorandum of telephone call dated January 27, 1999, the Office advised the employing establishment to inform appellant that she should file a recurrence claim if she wished to received disability compensation for being off work.

On August 20, 1999 appellant filed a Form CA-2 claim for benefits, alleging that she sustained a recurrence of disability on August 20, 1999 which was caused or aggravated by her February 7, 1993 employment injury. Based on her previous correspondence with the employing establishment; however, the Office determined that the beginning of her alleged recurrence occurred on December 10, 1998.

By letter dated September 7, 1999, the Office advised appellant that it required additional medical evidence, including a medical report, to support her claim that her current condition or disability was causally related to her accepted February 7, 1993 employment injury. The Office also requested that appellant submit a factual statement explaining the circumstances of her alleged recurrence and specifically asked appellant to provide evidence supporting the fact that there had been a change in the requirements of her light-duty job or a change in her physical condition. The Office stated that appellant had 30 days in which to submit the requested information.

In a report received by the Office on November 24, 1999, Dr. Frank M. Kousaie, Jr., a Board-certified anesthesiologist, stated that appellant suffered from disc protrusions, disc bulges and herniations at L3-4, L4-5 and L5-S1 with chronic low back pain and radicular leg pain. Dr. Kousaie advised that appellant was unable to fulfill her employment duties with no expectation of a partial recovery or remission of her progressively degenerative disease. He stated that appellant had physical restrictions of no prolonged periods of standing, no prolonged periods of sitting, no reaching above the head and no repetitive bending.

Dr. Kousaie submitted an undated Form CA-20, received by the Office on January 15, 1999, in which he indicated that appellant was totally disabled as of April 13, 1998, the date of his examination. He checked a box "yes" indicating that he believed the condition found was caused or aggravated by appellant's employment, explaining that the requirements of lifting and moving large bulk materials at her work site aggravated the abnormalities in her back to the extent that it rendered her unable to work. Dr. Kousaie advised that appellant was disabled due to her disc bulge, chronic low back pain and bilateral radicular pain, which resulted in decreased range of motion of the lumbar spine. He also noted her inability to lift objects greater than five pounds, sit or stand for long periods of time and opined that she was unable to control her chronic pain.

By decision dated November 29, 1999, the Office denied appellant's claim for a recurrence of disability, finding that she failed to submit medical evidence sufficient to establish that her current lower back condition was caused or aggravated by the February 7, 1993 employment injury.

By letter dated April 20, 2000, appellant requested reconsideration of the January 7, 1997 schedule award decision. In support of her request, appellant submitted an October 11, 1999 impairment evaluations from Dr. Bina Mehta, Board-certified in physical medicine and rehabilitation, who concluded that appellant had a 41 percent whole person impairment pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition), citing Table 39, page 77. Dr. Mehta arrived at this conclusion by calculating lumbar forward flexion of 15 percent, which translates to an 8 percent impairment, 0 percent lumbar extension, which translates to a 7 percent impairment and a 10 degree left lateral flexion [bending], which translates to a 3 percent impairment. He combined these totals with an eight percent whole person impairment based on L5 radiculopathy and an additional five percent derived from medically-documented treatment.

In his January 4, 2000 report, Dr. Kousaie stated his concurrence with Dr. Mehta's rating of 41 percent whole person impairment.

An Office medical adviser, Dr. Nabil F. Angley, a Board-certified orthopedic surgeon, reviewed the reports from Drs. Kousaie and Mehta and indicated that he was unable to determine her permanent impairment. Dr. Angley noted that the Federal Employees' Compensation Act does not provide for a schedule award for the back and neck unless it could be demonstrated that the accepted back and neck condition resulted in a permanent partial impairment of the extremities. Based on this reasoning, Dr. Angley advised that the range of motion of the spine calculated by Dr. Mehta was inapplicable. Dr. Angley further noted that Table 39 on page 77 was applicable only on the grade of muscle weakness for the lower extremities, not for degrees of range of motion of the spine as indicated by Dr. Mehta. Dr. Angley further stated:

> "[Dr. Mehta] stated that the impairment secondary to L4 and L5 radiculopathy to be 18 percent of the whole person, but he did not show how he reached that figure. Also impairment that is designated in whole person impairment is unacceptable to [the Office].
>
> "Lower extremity impairment secondary to a lumbar spine problem must be related to a lumbar nerve root or roots deficit which can be right, left or both, and must be identified by the examiner. The sensory and motor deficit of each of the involved lumbar nerves must be determined. This is done by grading the sensory deficit of each nerve root, utilizing Table 11 on page 48 which is located in the upper extremity section of the [A.M.A., *Guides*], but is also used for lumbar nerve roots, in the same way as for the cervical nerves.
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> "Then, using Table 12 on page 49 to grade the motor deficit for each lumbar nerve. Multiplying the grading results, thus obtained for each nerve root, by the maximum deficit of the nerve as it appears in Table 83, on page 130, the sensory and the motor deficit for each nerve root are obtained. The sensory and motor deficits are then combined to obtain the total deficit for the nerve root. By combining the total deficit of all the involved nerve roots of one leg, will result in the total percentage [permanent partial impairment] for that leg. By repeating the same process, the [permanent partial impairment] rating for the other extremity is obtained.

> "Therefore, I suggest that you ... ask Dr. Kousaie or Dr. Mehta to reevaluate [appellant] along the lines [outlined] above to obtain the correct [permanent partial impairment] [r]atings. When the requested information becomes available, I shall be [glad] to provide you with the [p]ermanent functional loss of use of the extremities."

The Office, noting Dr. Angley's difficulty in calculating the appropriate impairment rating, referred appellant to a specialist, Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon, for May 16, 2000.

In a report dated May 16, 2000, after reviewing a statement of accepted facts, the medical records, and stating findings on examination, Dr. Kaffen concluded that appellant had a five percent impairment in her right and left lower extremities, pursuant to the A.M.A., *Guides*. He calculated these findings by determining that a five percent whole person impairment based on nerve root impairment at L5 in both lower extremities, pursuant to Table 83 at page 130 of the A.M.A., *Guides*.

In a report and impairment evaluation worksheet dated June 13, 2000, an Office medical adviser calculated that appellant had a five percent impairment in his right and left lower extremities. With regard to each lower extremity, the Office medical adviser found that appellant had no weakness or atrophy, with only a partial sensory loss and that this translated to a maximum five percent impairment pursuant to Table 83, page 130. He stated that appellant's "Major causalgia" was 100 percent, pursuant to Table 11 at page 48; this totaled to a 5 percent permanent impairment in each extremity.

By decision dated June 21, 2000, the Office denied appellant's claim, finding that she did not submit medical evidence sufficient to warrant modification of the January 7, 1997 decision.

The Board finds that appellant has not met her burden to establish that her claimed condition or disability as of December 10, 1998 was caused or aggravated by her accepted February 7, 1993 low back injury.

When an employee, who is disabled from the job he 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 job requirements.[1]

In the instant case, the record does not contain any medical opinion showing a change in the nature and extent of appellant's injury-related condition. Indeed, appellant has failed to submit any medical opinion containing a rationalized, probative report, which relates her condition or disability as of December 10, 1998 to her employment injury. For this reason, she

[1] *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

has not discharged her burden of proof to establish her claim that she sustained a recurrence of disability as a result of her accepted employment injury.

The only medical evidence which appellant submitted consisted of the undated Form CA-20 and November 24, 1999 report from Dr. Kousaie. These reports provided a history of injury, a diagnosis of the condition, indicated that appellant was totally disabled, and imposed physical restrictions on certain work activities, but did not constitute a probative, rationalized medical opinion sufficient to establish that appellant's condition and disability as of December 10, 1998 was causally related to her February 7, 1993 employment injury.

Dr. Kousaie's report does not constitute sufficient medical evidence demonstrating a causal connection between appellant's employment injury and her current condition and disability. Causal relationship must be established by rationalized medical opinion evidence. Dr. Kousaie's opinion on causal relationship is of limited probative value in that he did not provide adequate medical rationale in support of his conclusions.[2] His reports failed to provide an explanation in support of his opinion that appellant was totally disabled from December 10 through May 9, 1998. Thus, Dr. Kousaie's reports did not establish a worsening of appellant's condition and therefore did not constitute a probative, rationalized opinion demonstrating that a change occurred in the nature and extent of the injury-related condition.

In addition, the Board finds that the evidence fails to establish that there was a change in the nature and extent of appellant's limited-duty assignment such that she no longer was physically able to perform the requirements of her light-duty job. The record demonstrates that appellant returned to work in a modified job on August 17, 1996, at which she worked until December 10, 1998, but did not indicate the reason for this work stoppage. Appellant has submitted no factual evidence to support a claim that a change occurred in the nature and extent of his limited-duty assignment during the period claimed. Accordingly, as appellant has not submitted any factual or medical evidence supporting her claim that she was totally disabled from performing her light-duty assignment as of December 10, 1998, as a result of her employment, appellant failed to meet her burden of proof.

As there is no medical evidence addressing and explaining why the claimed condition and disability as of December 10, 1998 was caused or aggravated by her employment injury, appellant has not met her burden of proof in establishing that she sustained a recurrence of disability. The Board therefore affirms the Office's decision denying benefits based on a recurrence of her work-related disability.

The Board finds that appellant has no more than a 27 percent permanent impairment for loss of use of her left and right lower extremities, for which she received a schedule award.

The schedule award provision of the Act[3] and its implementing regulation[4] set forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of

[2] *William C. Thomas,* 45 ECAB 591 (1994).

[3] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[4] 20 C.F.R. § 10.304.

the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.[5] However, neither the Act nor its regulations specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides* (fourth edition) have been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.[6]

In the instant case, the Office determined that appellant was not entitled to an additional award under the schedule by adopting the findings of the Office medical adviser, who took Dr. Kaffen's calculations based on L5 nerve root impairment in appellant's left and right lower extremities, applied these findings to the applicable tables of the A.M.A., *Guides,* and calculated the total percentage of impairment in appellant's right and left lower extremities based on the applicable figures and tables of the A.M.A., *Guides.*

The Board concludes that the Office medical adviser correctly applied the A.M.A., *Guides* in determining that appellant has no additional impairment for loss of use of her right and left lower extremities, for which she has received a schedule award from the Office, and that appellant has failed to provide probative, supportable medical evidence that he has greater than the 27 percent impairment already awarded.

The decisions of the Office of Workers' Compensation Programs dated November 29, 1999 and June 21, 2000 are hereby affirmed.

Dated, Washington, DC
March 22, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

[5] 5 U.S.C. § 8107(c)(19).

[6] *Thomas D. Gunthier,* 34 ECAB 1060 (1983).