U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLAUDETTA STOKES and U.S. POSTAL SERVICE,
AMC ANNEX, Dallas TX

Docket No. 02-550; Submitted on the Record;
Issued September 16, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issue is whether appellant established that she sustained a recurrence of disability from May 10 to June 11, 2001 causally related to her July 26, 2000 employment injury.

The Board has duly reviewed the case record in the present appeal and finds that this case is not in posture for a decision.

On July 29, 2000 appellant, then a 45-year-old mail clerk, filed a claim for traumatic injury, Form CA-1, alleging that on July 26, 2000 she sustained a back injury while lifting a heavy box in the performance of duty. Appellant stopped work on August 1, 2000 and returned to light duty on August 14, 2000. The Office accepted appellant's claim for lumbar strain.

Appellant continued to work light duty until May 10, 2001, when she stopped work on the recommendation of her physician. Appellant was off work until June 11, 2001, when she was released to light duty. On July 17, 2001 appellant filed a Form CA-7a requesting leave buy back for the period May 10 to June 11, 2001. By letter dated August 15, 2001, the Office informed appellant of the type of medical and factual evidence necessary to establish her claim for a recurrence of disability for the period May 10 to June 11, 2001. In a decision dated October 15, 2001, after reviewing the additional medical and factual evidence submitted, the Office denied appellant's recurrence claim.

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 job requirements.[1] This burden includes the necessity of furnishing

[1] *George DePasquale*, 39 ECAB 295 (1987); *Terry R. Hedman*, 38 ECAB 222 (1986).

evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[2] Causal relationship is a medical issue[3] 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.[4]

In the present case, while appellant does not allege a change in the nature and extent of the light-duty job requirements, she does allege that she was required to work outside of her restrictions. In support of her assertion, appellant submitted witness statements from three coworkers each of whom stated that appellant's supervisor, Wendy Ferrell, required appellant to work outside of her light-duty restrictions. However, as none of the coworkers demonstrates a knowledge of what appellant's physical restrictions actually were, these statements are insufficient to establish that there was a change in the nature of appellant's light-duty work. The record shows that on August 14, 2000 appellant returned to work in a limited-duty capacity with certain work restrictions, and that she continued to work until May 10, 2001, when her physician took her off work. Therefore, the record does not establish that the claimed March 15, 1994 recurrence of total disability was caused by a change in the nature or extent of the light-duty job requirements.

The evidence relevant to the issue of whether appellant suffered a worsening of her accepted injury-related conditions such that she could no longer perform her light-duty work beginning May 10, 2001, includes a series of medical reports from her treating physician, Dr. Ranil Ninala, a Board-certified physiatrist. In treatment notes dated March 22 and April 12, 2001, Dr. Ninala noted that appellant's back was mildly tender but that she had no spasms or trigger points and retained forward flexion to 80 degrees, extension to 10 degrees, right and left lateral flexion of 15 degrees, and right and left rotation to 20 degrees. In addition, her motor examination was 5/5, sensation was intact, reflexes were symmetrical and her gait was normal. In his March 22, 2001 note, Dr. Ninala diagnosed lumbosacral strain/sprain and recommended that appellant continue her modified duty. In his April 12, 2001 note, Dr. Ninala stated that appellant had undergone magnetic resonance imaging which revealed a herniated nucleus pulposus at L4-5 and a disc bulge at L5-S1. Dr. Ninala did not discuss the cause of these newly diagnosed conditions, and again recommended that appellant continue her modified duty. In a treatment note dated May 10, 2001, the day appellant stopped work, Dr. Ninala noted that appellant reported doing much worse over the past few weeks, with increased low back pain and swelling in her lower extremities. Dr. Ninala noted that appellant still had discomfort with

[2] *Frances B. Evans*, 32 ECAB 60 (1980).

[3] *Mary J. Briggs*, 37 ECAB 578 (1986).

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

palpation of the lumbosacral spine, but that she had no spasm or trigger points. In addition, appellant had flexion to only 50 degrees, extension to 15 degrees, and right and left lateral flexion of 25 degrees. Appellant's motor examination was 5/5, sensation was intact, reflexes were symmetrical, trace pitting edema was noted in the lower extremities and her gait was slow paced but otherwise normal. Dr. Ninala concluded that he would take appellant off work for two weeks, but anticipated returning her to modified duty shortly thereafter. In a follow-up report dated May 24, 2001, Dr. Ninala noted appellant's improvement, but kept her off work for an additional two weeks, and on June 7, 2001 he released her back to her modified-duty position.

In a narrative report dated August 23, 2001, in response to an Office inquiry, Dr. Ninala explained the circumstances surrounding appellant's work stoppage from May 10 to June 11, 2001. Dr. Ninala explained that appellant reported on May 10, 2001 that she was having worsening back pain as a result of working outside of her restrictions. The physician stated that due to these worsening symptoms, including limitations in range of motion of the lumbosacral spine, discomfort of the lumbosacral spine and paraspinals, he recommended that she take off work for a few weeks. He concluded that, since her return to work on June 11, 2001, her physical restrictions had been followed and she has been able to tolerate her modified duty.

Proceedings under the Federal Employees' Compensation Act are not adversarial in nature, nor is the Office a disinterested arbiter. While a claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[5]

While the medical reports of Dr. Ninala are not sufficiently well rationalized to establish a change in the nature and extent of appellant's injury-related condition, as Dr. Ninala did not offer sufficient physical findings or medical rationale in support of his decision to take appellant off work completely on May 10, 2001, the Board finds that Dr. Ninala's medical reports, which show a decrease in appellant's spinal flexion from 80 degrees to 50 degrees by May 10, 2001, taken together, raise an inference of causal relationship between appellant's May 10, 2001 recurrence of disability and her accepted employment injuries and are sufficient to require further development of the case record by the Office.[6] Additionally, the Board notes that the record contains no medical opinion contrary to appellant's claim and that the Office did not seek advice from an Office medical adviser or refer the case for a second opinion on the issue of recurrence of disability.

On remand, the Office should further develop the medical evidence by referring appellant, together with a complete statement of accepted facts and copies of the relevant medical evidence of record, to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether appellant sustained a recurrence of disability on May 10, 2001 causally related to her accepted back condition.

[5] *William J. Cantrell*, 34 ECAB 1223 (1983).

[6] *See John J. Carlone*, 41 ECAB 354 (1989).

The decision of the Office of Workers' Compensation Programs dated October 15, 2001 is set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, DC
September 16, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member