

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOYCE E. SCHAEFER and DEPARTMENT OF COMMERCE,
BUREAU OF THE CENSUS, Indianapolis, IN

*Docket No. 02-2242; Submitted on the Record;
Issued January 21, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant's May 3, 2000 employment injury caused disability for work commencing January 1, 2001.

On May 3, 2000 appellant, then a 48-year-old crew leader, sustained an injury in the performance of duty while lifting and carrying heavy boxes. She stopped work that day and received continuation of pay. The Office of Workers' Compensation Programs accepted her claim for epigastric hernia and authorized a surgical repair. Appellant received compensation for temporary total disability.

Appellant was placed on a preoperative weight-loss program to reduce the risk of complications during and after appellant's epigastric hernia surgery. The Office approved the weight-loss program. Appellant underwent surgery on October 23, 2000.

On October 31, 2000 the Office field nurse reported that appellant was to remain off work until November 28, 2000 but that the employing establishment no longer had a job for appellant. On November 13, 2000 the employing establishment explained that appellant was hired for a temporary appointment that ended July 8, 2000: "Census 2000 operations have concluded. No jobs exist at this time."

On November 7, 2000 appellant's surgeon, Dr. Mark A. Edwards, reported that appellant was totally disabled for work from May 8 through December 31, 2000. On November 28, 2000 an ultrasound revealed that appellant's gallbladder was filled with stones.

On December 1, 2000 Dr. Edwards reported as follows: "Due to elevated liver function tests and [an ultrasound] indicating gallstones, I recommend that this patient have laparoscopic cholecystectomy as soon as possible. This may have been precipitated by her weight loss prior to ventral hernia repair done on October 26, 2000 [sic]." Surgery was scheduled for December 5, 2000 but appellant cancelled because she did not have authorization from the Office.

Appellant received compensation for wage loss through December 31, 2000.

The Office obtained a second opinion on whether the formation of gallstones was causally related to the accepted employment injury. On February 5, 2001 Dr. A.M. Ardalan, a vascular and general surgeon, reported that it was possible that appellant formed gallstones for the past few years and that her dieting plan during the summer of 2000 “may be the contributing factor.” He added: “At the present time she is asymptomatic; therefore, she should be able to resume her normal work without restriction.”

The Office broadened its acceptance of appellant’s claim to include the precipitation of gallstones and authorized the laparoscopic cholecystectomy scheduled for April 24, 2001.

On March 27, 2001 Dr. Edwards reported that appellant remained totally disabled for work from May 8, 2000 through April 30, 2001. He anticipated that appellant would be able to resume regular work on May 1, 2001.

Appellant filed a claim for wage loss commencing January 1, 2001.

The Office requested that appellant support her claim with a narrative report from Dr. Edwards explaining the reason that she was incapable of working for the period claimed as a result of her gallstones.

Dr. Edwards responded to the Office’s request on April 18, 2001. He reported that he could not document appellant’s symptoms during the period in question because he did not see her during that period. He explained:

“I had prescribed Vicodin for [appellant] on November 21, 2000, the last time I saw her in a clinical setting. It was during that encounter that I recommended surgery at the earliest possible time. Any delay in the scheduling of surgery rests solely with [appellant’s] efforts to have workman’s compensation pay for the surgery. Based upon a telephone conversation with the office on January 8, 2001, I authorized an additional prescription of Vicodin based on [appellant’s] description of her condition at that time. Since I did not see [appellant] during this period, I cannot provide any opinion as to whether or not she was incapable of performing any work. While it is inadvisable to operate a vehicle while taking Vicodin, this does not preclude others from providing necessary transportation and does not necessarily relate to one’s ability to perform work.”

Dr. Edwards reported that he had read Dr. Ardalan’s notes and, as he had not seen appellant over a four-month period, he was unable to refute Dr. Ardalan’s observations. Dr. Edwards added:

“[Appellant] and her husband have provided descriptions of gallbladder attacks during the time in question; however, I believe she was only seen by Dr. Ardalan during this period for a directed second opinion.

“Since I am not [appellant’s] primary care physician, I am not in any position to comment on her ability to work other than as it relates to the surgical condition

presented, which normally allows for a postoperative nonwork period of two weeks from the date of surgery.”

In a decision dated May 4, 2001, the Office denied appellant’s claim for wage loss.

On February 22, 2002 an Office hearing representative affirmed the denial of appellant’s claim for wage loss. The hearing representative found that the medical evidence failed to establish that appellant was disabled for work from January 1 through April 23, 2001.

The Board finds that appellant has not met her burden to proof to establish that her May 3, 2000 employment injury caused disability for work commencing January 1, 2001.

A claimant seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of proof to establish the essential elements of her claim by the weight of the evidence,² including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.³

The Office accepted that appellant sustained an epigastric hernia in the performance of duty on May 3, 2000. It approved the hernia repair and the preoperative weight-loss program, which caused the formation of gallstones and need for additional surgery. Appellant has the burden to establish that these employment-related conditions disabled her from work from January 1 through April 23, 2001, the period for which she seeks compensation for wage loss.

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her claimed disability and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant’s employment injury, and must explain from a medical perspective how the claimed disability is related to the injury.⁴

Appellant has submitted no such evidence to support her claim. Although her surgeon, Dr. Edwards, signed a March 27, 2001 form indicating that appellant remained totally disabled for work from May 2000 through April 30, 2001, his narrative report of April 18, 2001 made clear that he did not see appellant during the period in question. He stated that he could provide no opinion on whether she was incapable of performing any work. Further, he stated that he was unable to refute the notes of the second-opinion surgeon, Dr. Ardalan, who reported that appellant was asymptomatic on February 5, 2001 and should therefore be able to resume her

¹ 5 U.S.C. §§ 8101-8193.

² *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

normal work without restriction. Without positive medical opinion evidence to support her claim, appellant has not met her burden of proof.⁵

The February 22, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
January 21, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁵ Appellant is entitled, nonetheless, to compensation for any wage loss caused by Dr. Ardalan's Office-directed medical examination on February 5, 2001.