

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAMELA W. DOBBINS and U.S. POSTAL SERVICE,
MUNGER STATION, Wichita, KS

*Docket No. 03-1539; Submitted on the Record;
Issued November 19, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on and after May 26, 2001 due to her accepted August 23, 1996 employment injury.

On August 23, 1996 appellant, a 38-year-old distribution clerk, filed an occupational disease claim alleging that on August 1, 1996 she first realized her tendinitis in her shoulders and arms was employment related.¹ The Office of Workers' Compensation Programs accepted the claim for bilateral tendinitis of the shoulders and arms.

On March 3, 1997 appellant filed a traumatic injury claim alleging that she injured her right hand when the door of the BMC hit her right hand and jarred her back and arm.² The Office accepted the claim for a contusion of the right hand.

Appellant filed a traumatic injury claim on June 2, 1997 alleging that on May 31, 1997 she injured her neck and shoulder while lifting.³ The Office accepted the claim for a cervical strain.

On June 19, 1998 the employing establishment offered appellant a permanent light-duty job as modified general clerk due to her employment injuries. Physical restrictions of the position included no lifting or carrying more than 15 pounds for 8 hours per day, no standing more than 8 hours per day, no sitting more than 6 hours per day, 3 hours of intermittent walking per day; no continuous stooping or bending for more than 4 hours per day; no more than 2 hours of intermittent pulling and pushing, 2 hours of intermittent fine manipulation, intermittent reaching over the shoulder of up to 5 pounds, no working more than 18 inches from her body and

¹ This was assigned claim number A11-0152314.

² This was assigned claim number A11-0155819.

³ This was assigned claim number A11-0157359.

no overhead work. The position was located at Munger station with duties listed as maintaining general delivery mail; distributing accountable mail; answering customer telephone questions; answering the dutch door; verifying CFS mail; maintaining AVUS as a backup; data entry of hold mail; liaisoning between carrier and CFS; ordering supplies for the stations; checking carriers in as needed and walling box mail as needed.

On September 9, 1998 the Office issued a loss of wage-earning capacity decision, which found that her reemployment as modified general clerk represented her wage-earning capacity. The Office found that appellant had no loss of wages as her actual wages met or exceeded the wages of the job she held when injured.

Appellant filed a claim for a schedule award. On November 24, 1998 the Office issued appellant a schedule award for an 11 percent impairment of her right upper extremity and a 7 percent impairment of her left upper extremity.

The employing establishment informed appellant that her duty station would be changed to the downtown station effective August 14, 1999, with the same job duties.

The employing establishment issued appellant an official disciplinary letter of warning for failing to assist in walling mail and distributing accountable mail to carriers on April 10, 2001 as instructed by her supervisor.

On April 16, 2001 the employing establishment issued appellant a notice of removal for refusing to wall mail on April 12, 2001.

In an April 23, 2001 letter, Dr. Jerry Niernberger, an attending Board-certified family practitioner, indicated that appellant has "chronic right shoulder pain that has been a problem with recurrence with overuse" and restrictions were imposed. Dr. Niernberger opined that "some tasks at her current job were not recommended."

Dr. Niernberger in treatment notes dated April 23, 2001, reported right shoulder pain more in the posterior shoulder and near the upper parathoracic and lower paracervical muscles "with a trigger point area." A physical examination revealed forward flexion of 30 degrees, hyperextension of 10 to 15 degrees, left rotation of 30 degrees and right rotation of approximately 45 degrees.

On June 12, 2001 appellant filed a claim for compensation for total disability beginning May 26, 2001.

In a June 15, 2001 letter, the Office advised appellant of the evidence required to modify the loss of wage-earning capacity decision. The Office also informed appellant that if her claim was a recurrence then she should file a CA-2a form and provide medical and factual documentation to support her recurrence claim.

In a decision dated August 6, 2001, the Office denied appellant's claim for a recurrence of disability beginning May 26, 2001, on the basis that appellant failed to submit any medical evidence to support her claim.

In a letter dated August 20, 2001, appellant disagreed with the denial of her claim and requested an oral hearing. A hearing was held on May 28, 2002, at which appellant was represented by counsel and allowed to testify.

After the May 28, 2002 hearing appellant's counsel submitted legal argument, medical and factual evidence in support of her claim.

Dr. Niernberger reported appellant continuing "to have aching and needle-like pain in both the anterior and posterior aspects of her right shoulder" in a March 27, 2000 treatment note. Appellant related that she believed "that she has lately been overusing her shoulder at work...."

In an April 13, 2001 treatment note, Dr. Niernberger noted right shoulder pain and that appellant was ordered to perform "a job task that was not recommended by me due to her shoulder problem."

In a November 21, 2001 statement, Lori Jenkins indicated that she worked at the north station during 1999 and 2000. Ms. Jenkins noted that appellant helped with some computer inputs and mark-up mail at the north station post office. She stated that during one week when appellant was assigned to working the box section she complained of shoulder pain due to the repetitive movements. Ms. Jenkins indicated that appellant's duties while at the north station included answering telephone calls, computer data input and marking up mail.

Ms. Jenkins stated that appellant initially stamped mail for four hours at the downtown station, which increased to eight hours. Subsequently, filing and data input was added to appellant's duties in addition to the stamping.

By decision dated October 11, 2002, the hearing representative found the evidence of record insufficient to establish a recurrence of disability.⁴

The Board finds that appellant has not sustained a recurrence of disability on and after May 26, 2001 due to her accepted August 23, 1996 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.⁵

⁴ Subsequent to the October 11, 2002 hearing representative's decision, the Office received additional evidence. Further, appellant submitted new evidence on appeal. However, the Board cannot consider evidence that was not before the Office at the time of the final decision; *see Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501.2(c).

⁵ *Carlos A. Marrero*, 50 ECAB 117 (1998).

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁶ Rationalized medical evidence is medical evidence that includes a physician's rationalized 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.⁷

Appellant has failed to present evidence to corroborate that her light-duty work exceeded her restrictions. Ms. Jenkins' statements noted appellant's duties during 1999 to 2000, during the time she was at the downtown office. Ms. Jenkins does not have any knowledge of appellant's duties in 2001, as she was not working with appellant at that time. Further, appellant's statements that her work exceeded her restrictions were noted by Dr. Niernberger in his reports, but there is no independent evidence of appellant's assertion.

In order to support the claim for a recurrence of disability, medical evidence is needed to establish a clear connection between the accepted work-related condition and the renewed symptoms. The Board has held that to be probative, a medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury.⁸ The only relevant evidence in this case pertaining to the issue of whether appellant sustained a recurrence of disability are the reports by Dr. Niernberger, who in reports dated April 13 and 23, 2001, diagnosed right shoulder pain and related appellant's statement that she had been ordered to perform a task outside of her restrictions on use of her shoulder. Dr. Niernberger failed to discuss any causal relationship of this condition to appellant's present work beyond noting that she had been given a task outside her restrictions. He does not specify what the task was that appellant was given which was allegedly outside the physical restrictions Dr. Niernberger had given appellant. Therefore, his reports are insufficient to meet appellant's burden of proof to establish that her recurrence of disability was causally related to her accepted shoulder injury.

The Board finds that appellant has not established a recurrence of disability. The evidence does not establish that there was a change to the light-duty job that was outside appellant's work restrictions, nor is there medical evidence showing a change in the nature and extent of the employment-related condition at the time appellant stopped working. Accordingly, the Board finds that the Office properly denied the claim in this case.

⁶ *John F. Glynn*, 53 ECAB ____ (Docket No. 01-1184, issued June 4, 2002).

⁷ *Patricia J. Glenn*, 53 ECAB ____ (Docket No. 01-65, issued October 12, 2001).

⁸ *Kathleen M. Fava*, 49 ECAB 519, 523 (1998).

The decision of the Office of Workers' Compensation Programs dated October 11, 2002 is hereby affirmed.

Dated, Washington, DC
November 19, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member