United States Department of Labor
Employees' Compensation Appeals Board

KIM L. MOSLEY, Appellant	)	
and	)	**Docket No. 03-2253**
	)	**Issued: March 4, 2004**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Aurora, IL, Employer	)	

Appearances:
Kathi G. Hamby, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On September 16, 2003 appellant filed a timely appeal of the September 18, 2002 decision of the Office of Workers' Compensation Programs, which denied modification of the March 30, 2001 decision denying appellant's claimed recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of appellant's claim.

ISSUE

The issue is whether appellant sustained a recurrence of disability on May 12, 2000 causally related to her January 16, 1999 employment injury.

FACTUAL HISTORY

On January 18, 1999 appellant, then a 36-year-old mail processor, filed a traumatic injury claim alleging that on January 16, 1999 she developed pain in the upper right side of her back due to repeated pulling and lifting of mail trays. The Office initially accepted appellant's claim

for right upper trapezoid sprain and later expanded the claim to include cervical strain and aggravation of C4-5, C5-6 and C6-7 osteophytes.[1] Appellant worked intermittently following her injury and she ceased all work on April 28, 1999. The Office paid appellant appropriate wage-loss compensation and placed her on the periodic roll beginning July 18, 1999.

Appellant's treating physician, Dr. Andrew G. Chenelle, a neurosurgeon, advised that she should undergo surgery, which appellant refused. In the absence of surgical intervention, Dr. Chenelle advised that appellant was totally disabled. In October 1999, the Office referred appellant for a second opinion examination with Dr. Richard H. Sidell, Jr., a Board-certified orthopedic surgeon. In a November 2, 1999 report, Dr. Sidell diagnosed soft tissue cervical disc with osteophytes and radiculopathy. He explained that, based on appellant's current subjective complaints and objective findings, she could work only on a sedentary basis and was unable to do any significant lifting or bending. Dr. Sidell also completed a work capacity evaluation form (OWCP-5c), which noted a number of restrictions including reaching, reaching above shoulder, twisting, repetitive movements of the wrist and elbow, pushing, pulling and lifting one to three hours and up to five pounds. In a report dated December 17, 1999, Dr. Chenelle advised that he reviewed Dr. Sidell's report and that, while he did not fully agree with the physician's findings, appellant could perform sedentary work, but with no lifting or bending.

The Office determined that a conflict of medical opinion existed between Drs. Chenelle and Sidell. Therefore, the Office referred appellant for an impartial medical evaluation. The Office also advised the employing establishment that pending the results of the impartial medical evaluation, the employing establishment could offer appellant work consistent with the restrictions imposed by her treating physician.

Beginning in March 2000, appellant received three limited-duty job offers as a mail processor clerk. Her modified duties essentially required appellant to sit at a table and sort through various mail and place it in appropriate trays. The offered positions were ostensibly based on the limitations imposed by Dr. Chenelle, however, he found the first two job offers unacceptable and appellant declined them. The third and final job offer, dated May 3, 2000, required sitting eight hours, no standing, no walking, no carrying, no pulling, no twisting, no reaching, no lifting, no pushing, no bending and no climbing. The May 3, 2000 job offer also noted that the duties assigned did not require flexion or extension of the neck and did not require frequent arm movements. The mail processor clerk position was available effective May 12, 2000.

Dr. Helge C. Frank, a Board-certified neurosurgeon and impartial medical examiner, evaluated appellant on March 27, 2000 and diagnosed cervical spondylosis primarily at C5-6 and C6-7. He stated that, while appellant's condition was degenerative in nature, it was aggravated by an injury while lifting over her head. Dr. Frank also noted that appellant had very definite residual objective evidence of C6-7 radiculopathy on examination. He further noted that appellant had not responded to conservative treatment and was a candidate for surgical intervention. Dr. Frank stated that appellant was capable of full-time sedentary work. In an April 18, 2000 Form OWCP-5c, Dr. Frank limited appellant's reaching to one to two hours and

[1] The record also included evidence of cervical disc herniation, which the Office did not accept as employment related.

precluded all reaching above the shoulder. Dr. Frank also restricted appellant's pushing, pulling and lifting to 1 to 2 hours and he imposed a 10-pound weight limitation.

By letter dated May 9, 2000, the Office advised appellant that the position of mail processor clerk was found to be suitable to her work capabilities. Appellant was afforded 30 days to either accept the position or provide an explanation of the reasons for refusing it.

Appellant reported to work on May 12, 2000 and performed her assigned duties for about two hours. That same day she declined the job offer on the basis that it did not conform to her physician's restrictions. Appellant explained that she attempted to perform her duties but there was constant arm movement and flexion of the neck, which caused severe pain in her neck and arms.

By letter dated May 24, 2000, the Office advised appellant that her May 12, 2000 work stoppage constituted a recurrence of disability and she should file a Form CA-2a, notice of recurrence of disability. The Office also advised appellant that, because she had returned to work, she was dropped from the periodic roll and would have to file Form CA-7 for further compensation.

Appellant filed a notice of recurrence of disability on June 9, 2000 alleging that she suffered a recurrence of disability on May 12, 2000 causally related to her January 16, 1999 employment injury. She alleged that her limited-duty job offer did not conform to her physician's restrictions because the job required frequent arm movements and flexion and extension of the neck. Appellant also stated that she aggravated her preexisting condition while performing her job duties on May 12, 2000.

In a report dated June 19, 2000, Dr. Chenelle noted that appellant attempted to return to light-duty work on May 12, 2000 filing letters in trays and after working two hours she experienced increased bilateral trapezius spasm and increased right arm pain. He also noted that appellant had daily headaches and increasing muscle spasms since May 12, 2000. Dr. Chenelle indicated that he reviewed the mail processor clerk job description and even though there appeared to be no physical restrictions other than sitting eight hours, "the frequent arm movements necessary in [appellant's] case would exacerbate her condition and are responsible for the current worsening of her symptomatology."

The employing establishment denied that the position required frequent arm movements or extension of the neck. In a July 25, 2000 statement, Cara Mottley, appellant's supervisor, explained that appellant came to work for two hours and sat at a table in a chair and "faced mail." Ms. Mottley further stated that the trays of mail were placed in front of appellant on the table and she "fingered the mail with her left hand." According to Ms. Mottley there was very little movement of appellant's head, arm or hand. After two hours of work appellant reportedly told Ms. Mottley that, because of the medication she was on, she had to go home and lay down.

Appellant also submitted a July 25, 2000 statement indicating that she was seated at a table on May 12, 2000 and Ms. Mottley delivered a tray of mail that needed to be verified. She stated that she began to verify the letters one at a time, placing them in their proper trays. Appellant reportedly began to experience severe pain on the right side of her neck and in her

right arm and when Ms. Mottley returned to see how appellant was doing, appellant stated that she told her she was in severe pain and was unable to do the job.

In a decision dated July 31, 2000, the Office denied appellant's claim for recurrence of disability. Appellant requested a hearing, which was held January 10, 2001. By decision dated March 30, 2001, the Office hearing representative affirmed the denial of appellant's claim for recurrence of disability.

On March 30, 2002 appellant requested reconsideration. Appellant's representative submitted a March 22, 2002 statement from Rebecca Delis, a former postal worker, who opined that appellant could not perform her mail processor clerk duties without reaching and frequently moving her neck. The Office also received various reports and treatment records from Dr. Chenelle attesting to appellant's ongoing disability.[2]

In a decision dated September 18, 2002, the Office denied modification.

LEGAL PRECEDENT

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 of establishing 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 employment-related condition or a change in the nature and extent of the light-duty job requirements.[3]

ANALYSIS

Regarding appellant's ability to resume work, the Office properly determined that a conflict of medical opinion existed based on the opinions of Drs. Chenelle and Sidell. Therefore, the Office properly referred appellant to an impartial medical examiner.[4] As previously noted, Dr. Frank, the impartial medical examiner, found that appellant was capable of full-time, sedentary work. He limited appellant's reaching to one to two hours and precluded all reaching above the shoulder. Dr. Frank also restricted appellant's pushing, pulling and lifting to 1 to 2 hours and he imposed a 10-pound weight limitation. The Board finds that the Office properly relied on the impartial medical examiner's March 27, 2000 evaluation in determining appellant's work capabilities. Dr. Frank's opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant but also reviewed

[2] The reports cover the period February 2001 through August 2002.

[3] *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

[4] The Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician, who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

appellant's medical records. Dr. Frank also reported accurate medical and employment histories. Accordingly, the Office properly accorded determinative weight to the impartial medical examiner's findings.[5]

The Board also finds that the Office properly determined that the May 3, 2000 modified mail processor clerk position was suitable for appellant's work capabilities. The position did not exceed the limitations imposed by Dr. Frank, the impartial medical examiner, or Dr. Chenelle, appellant's treating physician. The May 3, 2000 job offer specifically noted that the position did not require flexion or extension of the neck and did not require frequent arm movements. These specific limitations were in keeping with Dr. Chenelle's April 6, 2000 report.[6] However, the Board notes that the impartial medical examiner did not specifically impose limitations with respect to flexion and extension of the neck nor did he preclude frequent arm movements.

Appellant claims that the work she performed on May 12, 2000 exceeded the limitations imposed by Dr. Chenelle in that her duties required constant arm movement and flexion of the neck, which caused severe pain in her neck and arms. Ms. Mottley, appellant's supervisor, observed appellant at work on May 12, 2000 and stated that there was very little movement of appellant's head, arm or hand. According to Ms. Mottley, appellant came to work for two hours, during which time she sat at a table in a chair and "faced mail." Additionally, Ms. Mottley stated that the trays of mail were placed in front of appellant on the table and she "fingered the mail with her ***left*** hand." The record includes a March 22, 2002 statement from Ms. Delis, a former postal worker, who opined that appellant's modified mail processor clerk duties could not be performed without reaching and frequently moving one's neck. However, unlike Ms. Mottley, Ms. Delis did not have the opportunity to observe appellant at work on May 12, 2000. Accordingly, Ms. Delis' opinion is of limited probative value in determining whether appellant was required to work outside the limitations of her modified mail processor clerk position.

Appellant failed to demonstrate a change in the nature and extent of the light-duty job requirements. The record establishes that the modified mail processor clerk position was suitable for appellant. Furthermore, appellant failed to substantiate her allegation that the duties she was required to perform on May 12, 2000 exceeded her physical limitations. The record does not support appellant's allegation that on May 12, 2000 she engaged in constant arm movement and flexion of the neck while performing her modified duties.

The record also fails to demonstrate a change in the nature and extent of appellant's employment-related condition. Dr. Chenelle reported on June 19, 2000 that appellant attempted to return to light-duty work on May 12, 2000 filing letters in trays. He also noted that after working two hours appellant experienced increased bilateral trapezius spasm and increased right arm pain. Dr. Chenelle further stated that, since May 12, 2000, appellant experienced daily headaches and increasing muscle spasms. Additionally, the physician explained that he reviewed

[5] In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

[6] Dr. Chenelle indicated that appellant was capable of performing "sedentary work only," with restrictions of no lifting, no bending, "no frequent arm motion" and "no flexion/extension of the neck."

the mail processor clerk job description and even though there appeared to be no physical restrictions other than sitting eight hours, "the frequent arm movements necessary in [appellant's] case would exacerbate her condition and are responsible for the current worsening of her symptomatology."

Appellant continued to receive treatment from Dr. Chenelle and in a February 8, 2001 report, he referenced his earlier report of June 19, 2000 and explained that appellant attempted to return to limited duty on May 12, 2000 but was unable to perform these duties due to pain exacerbation. On March 22, 2001 Dr. Chenelle reported that appellant was incapacitated and unable to work due to pain. In an April 30, 2001 report, Dr. Chenelle stated that appellant was incapacitated secondary to neck pain and radicular pain that was secondary to an on-the-job injury, which was exacerbated May 12, 2000. On May 24, 2001 Dr. Chenelle reported that appellant was totally disabled secondary to a work injury, cervical herniated nucleus pulposus (HNP) and a weak right arm. Additionally, on August 21, 2001 Dr. Chenelle reported diagnoses of HNP at C4-5 and C6-7 and cervical radiculopathy. He also indicated that appellant was totally incapacitated from any employment. Dr. Chenelle continued to find appellant totally disabled through August 2002. In an August 22, 2002 note, Dr. Chenelle reported that appellant would be off work indefinitely and that she had been off since May 2000. He stated that appellant was totally incapacitated from any type of employment secondary to a herniated cervical disc.

Dr. Chenelle's initial reports attributing appellant's ongoing disability to her May 12, 2000 "exacerbation" were based on the faulty premise that appellant's duties that day required "frequent arm movements." As previously discussed, appellant has not established that the two hours of work she performed on May 12, 2000 involved frequent arm movements and/or flexion and extension of the neck. Furthermore, Dr. Chenelle has not provided an otherwise rationalized opinion explaining how appellant's condition changed such that she could no longer perform her limited-duty job as a modified mail processor clerk.

With respect to Dr. Chenelle's more recent reports, beginning in May 2001, he attributed appellant's ongoing disability to cervical HNP and in August 2002 appellant's herniated cervical disc was the only reported reason for her inability to work. The Office has not accepted cervical disc herniation as a condition arising from appellant's January 16, 1999 employment injury.[7] Additionally, Dr. Chenelle did not offer any explanation of how appellant's current disabling cervical disc condition was causally related to the accepted employment injury.

[7] Where appellant claims that a condition not accepted or approved by the Office was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury. *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

As the evidence of record[8] fails to establish either a change in the nature and extent of the employment-related condition or a change in the nature and extent of the light-duty job requirements, the Office properly denied appellant's May 12, 2000 claimed recurrence of disability.[9]

CONCLUSION

The Board finds that appellant failed to establish that her claimed recurrence of disability on May 12, 2000 was causally related to her January 16, 1999 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the September 18, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 4, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[8] The record on appeal also includes additional medical evidence from Dr. Chenelle; however, this evidence was not before the Office at the time of its September 18, 2002 decision. Therefore, this evidence is not properly before the Board. 20 C.F.R. § 501.2.

[9] *Mary A. Howard, supra* note 3.