

On December 16, 2002 appellant filed a Form CA-2a claim for benefits, alleging that she sustained a recurrence of disability on October 24, 2002 which was causally related to her July 13, 2002 employment injury. Appellant submitted an October 24, 2002 report from Dr. William M. Notis, Board-certified in internal medicine; an October 25, 2002 report from Dr. William W. O'Connor, a Board-certified orthopedic surgeon and the attending physician; November 18, 2002, February 3 and April 21, 2003 reports from Dr. Michael H. Tirella, a chiropractor; a January 8, 2003 report from Dr. Thomas M. McCormack, a Board-certified neurosurgeon; and January 23 and April 3, 2003 reports from Dr. James E. Striker, a Board-certified orthopedic surgeon.

In his October 24, 2002 report, Dr. Notis stated that appellant had diverticulosis, irritable bowel syndrome and had sustained a recent back injury with a disc problem secondary to an on-the-job injury. He advised that appellant had an exacerbation of irritable bowel syndrome after returning to work, after sustaining a back injury. Dr. O'Connor stated in his October 25, 2002 report that appellant had requested a change of treatment plan from physical therapy to chiropractic manipulation to treat her thoracolumbar strain, but did not indicate whether appellant had sustained a recurrence of her work-related disability. In Dr. Tirella's November 18, 2002 report, he stated that he had been treating appellant for injuries sustained in a work-related accident involving her thoracic spine. He advised that appellant was totally disabled and unable to work due to low back pain. In his February 3, 2003 report, Dr. Tirella stated that he began treating appellant on July 17, 2002 with a chief complaint of lower thoracic/upper lumbar region pain. He noted that she had presented on November 15, 2002 with an acute exacerbation of her previous injuries, and that due to the persistent low back pain she began to develop an altered gait, which put stress on her knee. As a result of this stress, Dr. Tirella opined that appellant's knee gave out, causing her to fall onto her coccyx, which resulted in reinjury to her thoracic and lumbar spine. In his April 21, 2003 report, Dr. Tirella advised that appellant continued to receive chiropractic treatment to her thoracolumbar spine related to her July 13, 2002 employment injury. He stated:

“It is my opinion, that the injuries [appellant] has sustained to her thoracolumbar spine are directly related to her on-the-job accident of July 13, 2002. Her prognosis is fair to good and we are optimistic that she will continue to improve under chiropractic treatment. I hope that this helps to clarify the medical necessity for the chiropractic treatment she receives for the T12 subluxation she has, which is demonstrated by x-ray.”

In his January 8, 2003 report, Dr. McCormack related complaints of mid-back discomfort which apparently stemmed from her July 2002 work injury. He stated that the results of a magnetic resonance imaging (MRI) scan indicated degenerative disc disease at L1-2 and L4-5, with a mild bulge of the disc at L4-5 but no thecal sac or nerve root compression. Dr. McCormack concluded that it was a little unclear exactly what appellant had been through, that her course of therapy had been interrupted on several occasions by various other injuries. He did not feel that surgical intervention was a viable option, as midline low back pain was generally not ameliorated by surgery with a high degree of success.

Dr. Striker stated in his January 23, 2003 report that appellant had a problems with her back which were caused by her left knee, in addition to irritable bowel syndrome and

diverticulitis. In his April 3, 2003 report, Dr. Striker recommended that appellant undergo arthroscopic surgery on her left knee.

Dr. O'Connor submitted a report dated December 6, 2002 in which he related that appellant told him she had stopped working at the employing establishment because of gastroesophageal reflux, which she felt was secondary to stress. He noted degenerative changes in her left knee but opined that she was capable of working and had a mild, partial disability.

By decision dated September 25, 2003, the Office denied appellant compensation for a recurrence of her accepted thoracic subluxation. The Office found that appellant failed to submit medical evidence sufficient to establish that the claimed condition or disability as of October 24, 2002 was caused or aggravated by the July 13, 2002 employment injury.

By order dated February 27, 2004,¹ the Board remanded the case for reconstruction of the case record, which did not contain the Office's September 25, 2003 decision. The Board instructed the Office to include the September 25, 2003 decision and issue an appropriate decision to protect appellant's appeal rights. On remand, after reconstructing the case record, the Office, on May 17, 2004, reissued the September 25, 2003 decision.

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 establishes that light duty can be performed, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability. As part of this burden, the employee must show either 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.²

ANALYSIS

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 October 24, 2002 to her employment injury. For this reason, she 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.

Appellant submitted reports from Drs. Notis, O'Connor, Tirella, McCormack, and Striker. These reports provided a history of injury, a diagnosis of her current conditions and indicated generally that appellant complained of disabling pain as of October 24, 2002. None of these reports, however, contained a probative, rationalized medical opinion sufficient to establish that appellant's disability as of October 24, 2002 was causally related to her accepted July 13 2002 employment injury. Dr. O'Connor, the attending physician, related in his December 6,

¹ Docket No. 04-156 (issued February 27, 2004).

² *Terry Hedman*, 38 ECAB 222 (1986).

2002 report that appellant had stopped working at the employing establishment because of gastroesophageal reflux, secondary to stress, and had degenerative changes in her left knee. He opined, however, that she was capable of working and only had a mild, partial disability. Dr. Notis and Dr. Striker also noted that appellant experienced left knee, back, and stress-related stomach and bowel problems after returning to work; however, the Office never accepted a condition for the left knee, low back, irritable bowel syndrome or diverticulitis.

Dr. Tirella noted complaints of lower thoracic/upper lumbar region pain due to prior injuries, which, as of his November 15, 2002 examination, had been exacerbated, and believed that appellant was totally disabled and unable to work due to low back pain. He opined that appellant's recent injury had been caused by persistent low back pain which resulted in an altered gait, putting stress on her knee; the knee eventually gave out, causing her to fall onto her coccyx resulting in the reinjury to her thoracic and lumbar spine. Dr. Tirella advised in his April 21, 2003 report that appellant's thoracolumbar injuries were directly related to her July 13, 2002 employment injury. He did not, however, provide a rationalized, probative medical opinion indicating that appellant's current condition as of October 24, 2002 was causally related to the July 13, 2002 employment injury.

The reports from Drs. Notis, O'Connor, McCormack, Striker and Tirella do not constitute sufficient medical evidence demonstrating a causal connection between appellant's employment injury and her alleged recurrence of disability. Causal relationship must be established by rationalized medical opinion evidence. The reports submitted by appellant failed to provide an explanation in support of her claim that she was totally disabled as of October 24, 2002. Thus, these reports did not establish a worsening of appellant's condition, and therefore do not constitute a probative, rationalized evidence demonstrating that a change occurred in the nature and extent of the injury-related condition.³

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 on October 21, 2002 on light duty. Although appellant stopped working on October 24, 2002, she has submitted no additional factual evidence to support a claim that a change occurred in the nature and extent of her 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 on October 24, 2002 as a result of her employment, appellant failed to meet her burden of proof. Thus, the Office properly found in its May 17, 2004 decision that appellant was not entitled to compensation based on a recurrence of her employment-related disability.

As there is no medical evidence addressing and explaining why the claimed condition and disability as of October 24, 2002 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 May 17, 2004 Office decision denying compensation based on a recurrence of her work-related disability.

³ *William C. Thomas*, 45 ECAB 591 (1994).

CONCLUSION

The Board finds that appellant has not met her burden to establish that she was entitled to compensation for a recurrence of disability as of October 24 2002 causally related to her accepted thoracic subluxation.

ORDER

IT IS HEREBY ORDERED THAT the May 17, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 4, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member