

On May 11, 1989 appellant, then a 44-year-old flat sorter machine operator, filed an occupational disease claim alleging that the constant pain in her left shoulder, arm and hand was caused by factors of her federal employment. By letter dated October 10, 1989, the Office accepted appellant's claim for bulging cervical discs at C3-4 and C4-5 with left cervical radicular

syndrome, left carpal tunnel syndrome and lumbosacral strain. On November 17, 1990 appellant returned to limited-duty work, 30 hours a week.

On March 17, 2004 appellant filed claims for wage-loss compensation for the period February 4 through March 9, 2004. She submitted leave records which indicated that she was on leave without pay for medical reasons during the period February 6 through April 20, 2004. Appellant also submitted a February 24, 2004 attending physician's report of Dr. Jacob E. Tauber, her attending Board-certified orthopedic surgeon. In this report, Dr. Tauber diagnosed cervical stenosis with herniated discs at C3-4 and C4-5, chronic lumbosacral sprain, carpal tunnel syndrome, lateral femoral defect and left knee derangement. He indicated with an affirmative mark that the diagnosed conditions were caused by the accepted employment injury. Dr. Tauber further indicated that appellant was totally disabled from February 3 through March 30, 2004. In a March 9, 2004 report, Dr. Tauber noted appellant's complaint of increased back pain with radiation. On physical examination, he reported positive straight leg raise testing. He ordered a magnetic resonance imaging (MRI) scan of appellant's lumbar spine and stated that she required a walker. Dr. Tauber concluded that appellant was temporarily totally disabled.

A March 22, 2004 MRI scan report regarding appellant's lumbar spine contained the typed name of Dr. Alex D. Freitas, a Board-certified radiologist. The report found L4-5 broad-based posterior disc protrusion that resulted in mild to moderate acquired central canal stenosis and bilateral moderate to severe neural foraminal narrowing.

In reports dated September 24 and December 17, 2003, Dr. Nabil S. Dahi, a Board-certified anesthesiologist, noted appellant's symptoms of neck pain which radiated down to her upper extremities with headaches. He reported his findings on physical examination and found that appellant's neck pain, cervical radicular syndrome and myofascial pain syndrome with headaches seemed to be under better control at that time.

Dr. Tauber's April 13, 2004 report noted appellant's continuing back pain and MRI scan results. Dr. Tauber again reported positive straight leg raise testing on physical examination and found that appellant was temporarily totally disabled. On April 13, 2004 Dr. Tauber prescribed a heat massage. His March 9, 2004 prescription is illegible. In an April 13, 2004 disability certificate, Dr. Tauber indicated that appellant was disabled from April 13 through May 12, 2004.

By letter dated May 20, 2004, the Office advised appellant about the type of factual and medical evidence she needed to submit to establish her recurrence of disability claim. She submitted Dr. Tauber's May 11, 2004 disability certificate, which found that she was disabled from May 11 through June 16, 2004. Appellant also submitted an April 2, 1999 report of Dr. Javier Torres, a Board-certified physiatrist, in which he provided the results of a nerve conduction study of appellant's upper extremities. Dr. Torres found electrophysiological evidence of left moderate carpal tunnel syndrome.

Dr. Tauber's May 11 and June 15, 2004 reports found positive straight leg raise testing and that appellant was temporarily totally disabled. In a June 1, 2004 attending physician's report, Dr. Tauber diagnosed appellant as having cervical stenosis with herniated discs at C3-4 and C4-5 and a chronic lumbosacral sprain. He indicated with an affirmative mark that the

diagnosed conditions were caused by the accepted employment injury. Dr. Tauber stated that appellant was totally disabled from February 3 through September 30, 2004.

Dr. Dahi's June 9, 2004 report found that appellant continued to have neck pain with cervical radicular syndrome and myofascial pain syndrome. He noted that the pain was under fair to good control at that time.

In a June 15, 2004 disability certificate, Dr. Tauber found that appellant was disabled from June 15 through July 21, 2004. In a July 20, 2004 report, he found that she suffered from severe sciatica and continuing neck pain. He stated that an MRI scan demonstrated substantial spinal stenosis. Dr. Tauber opined that based on appellant's current lumbar condition, she was not able to return to her current work. He further opined that even with surgery which appellant did not wish to undergo, he was skeptical that she would be able to carry out her current employment duties. Dr. Tauber recommended that appellant retire on disability. His August 24, 2004 report noted that appellant was a surgical candidate and found that she remained temporarily totally disabled. On the same date, Dr. Tauber prescribed therapy.

By decision dated September 24, 2004, the Office found that appellant did not establish that she sustained a recurrence of disability beginning February 4, 2004 causally related to the accepted employment injury. The Office found the medical evidence submitted by appellant insufficient to establish her burden of proof.¹

LEGAL PRECEDENT

A "recurrence of disability" means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment.²

When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that she can perform the limited-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 to show that she cannot perform such limited-duty work. 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 limited-duty job requirements.³

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the

¹ Following the issuance of the Office's September 24, 2004 decision, the Office received additional medical evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

² 20 C.F.R. § 10.5(x) (2002).

³ *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.⁴

ANALYSIS

In this case, appellant has neither shown a change in the nature and extent of her employment-related conditions or a change in the nature and extent of the limited-duty requirements. The record shows that following the employment-related bulging cervical discs at C3-4 and C4-5 with left cervical radicular syndrome, left carpal tunnel syndrome and lumbosacral strain sustained by appellant, she returned to work in a limited-duty capacity. The record does not establish nor does appellant allege that the claimed recurrence of total disability was caused by a change in the nature or extent of her limited-duty job requirements. Rather, she has alleged that her accepted conditions have materially changed or worsened since she returned to work and rendered her totally disabled.

Appellant submitted Dr. Tauber's February 24 and June 1, 2004 reports, which indicated with an affirmative mark that her cervical stenosis with herniated discs at C3-4 and C4-5, chronic lumbosacral sprain, carpal tunnel syndrome, lateral femoral defect and left knee derangement were caused by the accepted employment injury. Dr. Tauber found that appellant was totally disabled from February 3 through September 30, 2004. Dr. Tauber's reports do not provide any medical rationale explaining how or why the diagnosed conditions were caused by the accepted employment injury and, therefore, the Board finds that his reports are insufficient to establish appellant's claim. This type of report, without more by way of medical rationale explaining how the incident caused the injury is insufficient to establish causal relationship and is of diminished probative value.⁵ Further, Dr. Tauber's reports do not address whether appellant's disability was caused by the accepted employment injury.

The Board finds that Dr. Tauber's reports, which found that appellant suffered from chronic back and neck pain and severe sciatica and that she was temporarily totally disabled, are insufficient to establish appellant's claim because they failed to address whether her disability was causally related to the accepted employment injury. In addition, the Board notes that a diagnosis of pain, without more in the way of medical rationale, does not constitute the basis for the payment of compensation.⁶ Moreover, the Office has not accepted appellant's claim for sciatica.

Dr. Tauber's prescriptions failed to address whether appellant had any continuing residuals or disability causally related to the accepted employment injury. The Board finds Dr. Tauber's prescriptions insufficient to establish appellant's claim.

Dr. Tauber's disability certificates found that appellant was disabled from April 13 through July 21, 2004. The Board, however, finds that Dr. Tauber's disability certificates are

⁴ *James H. Botts*, 50 ECAB 265 (1999).

⁵ *See Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

⁶ *Robert Broome*, 55 ECAB ____ (Docket No. 04-93, issued February 23, 2004).

insufficient to establish appellant's claim because they lack a complete history of injury, fail to provide a diagnosis or to discuss how the diagnosed condition was caused by the accepted employment-related injury.⁷

The MRI scan report which contained the typed name of Dr. Freitas found L4-5 broad based posterior disc protrusion that resulted in mild to moderate acquired central canal stenosis and bilateral moderate to severe neural foraminal narrowing. The Board finds that the MRI scan report is of no probative value because it is not clear that it is from a physician.⁸ As the report lacks proper identification, the Board finds that it does not constitute probative medical evidence sufficient to establish appellant's burden of proof.

Dr. Dahi's reports diagnosed neck pain, cervical radicular syndrome and myofascial pain syndrome with headaches. Dr. Dahi failed to address whether the diagnosed conditions were caused by appellant's accepted employment-related injury. Therefore, the Board finds that Dr. Dahi's reports are insufficient to establish appellant's claim.

Dr. Torres's nerve conduction study report found electrophysiological evidence of left moderate carpal tunnel syndrome. The Board finds that this report is insufficient to establish that appellant sustained a recurrence of disability beginning February 4, 2004 as it did not relate the diagnosed condition to the accepted employment injury and explain why there is a nexus.

As appellant has failed to submit rationalized medical evidence establishing that she sustained a recurrence of total disability beginning February 4, 2004 causally related to the accepted employment-related injury, the Board finds that she has not met her burden of proof in this case.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a recurrence of total disability beginning February 4, 2004 causally related to her accepted employment injury.

⁷ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

⁸ *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572 (1988) (reports not signed by a physician lack probative value).

ORDER

IT IS HEREBY ORDERED THAT the September 24, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 24, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board