

**United States Department of Labor
Employees' Compensation Appeals Board**

VERONICA L. BELL, Appellant

and

**GOVERNMENT PRINTING OFFICE,
Washington, DC, Employer**

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**Docket No. 05-615
Issued: September 7, 2005**

Appearances:
Veronica L. Bell, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

JURISDICTION

On January 18, 2005 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated December 17, 2004 which denied appellant's claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability beginning on October 29, 2003 causally related to her accepted January 22, 1999 employment injury.

FACTUAL HISTORY

On January 27, 1999 appellant, then a 42-year-old supply clerk, filed a traumatic injury claim (Form CA-1), alleging that on January 22, 1999 she was washing the lower portion of her desk when a dull pain went through the lower portion of her back. Appellant stopped work on

January 27, 1999 and returned on January 29, 1999.¹ On October 23, 2000 the Office accepted the claim for a back sprain. The Office also authorized physical therapy. The record also reflects that appellant stopped work on March 10, 1999 and returned to work on January 29, 2001 for four hours per day. The Office also accepted appellant's claims for a recurrence on February 14, 2001, January 23 and April 7, 2003.² Appellant was paid appropriate compensation through October 4, 2003.

In a May 7, 2003 report, Dr. Hampton J. Jackson, a Board-certified orthopedic surgeon, advised that appellant was seen for complaints of "neck and upper extremity pain and dysesthesias since she was injured in a car accident on September 24, 2002." He indicated that it was difficult to determine if appellant had a cervical disc or carpal tunnel syndrome and advised that his clinical examination revealed that appellant's radicular problem was probably a C7 and that appellant was probably harboring a scalenus anticus syndrome. He recommended continued conservative care.

By letter dated August 8, 2003, the Office referred appellant for a second opinion examination with Dr. Havinder Pabla, a Board-certified orthopedic surgeon.

On August 13, 2003 Dr. Daniel R. Ignacio, a Board-certified physiatrist, performed a nerve conduction study and electromyographic examination. In a separate report, also dated August 13, 2003, Dr. Ignacio diagnosed progressive lumbar disc syndrome, chronic lumbar radiculopathies, post-traumatic lumbar facet joint dysfunction and chronic pain syndrome, which was secondary to the diagnoses.

In a September 3, 2003 report, the second opinion physician, Dr. Pabla noted the history of injury and treatment. He conducted a physical examination and determined that there was no evidence of acute fracture dislocation or segmental lumbar spine instability. Dr. Pabla diagnosed a lumbar muscle strain and advised that it had completely resolved. He noted that appellant had excellent spinal range of motion and explained that the diagnostic tests showed that there was no evidence of herniated disc disease or lumbar radiculopathy. He advised that the current findings did not establish that appellant had active residuals due to her accepted employment injury and recommended returning to full-time regular duty without limitations or restrictions and advised that appellant concentrate on good posture and safe body movements, and a home exercise program of flexion and dorsal spine stretching with pelvic tilt. He also noted that appellant's complaints were primarily subjective without objective physical findings or neurological deficit in the lower extremity.

Appellant returned to work on September 9, 2003 with a restriction that required the use of an ergonomic chair.

¹ The record reflects that appellant was released to five hours a day on January 29, 1999. She was released to regular work on February 10, 1999.

² On April 12, 2001 appellant filed a recurrence of disability claim (Form CA-2a) on February 14, 2001. Appellant alleged that she stopped work on April 10, 2001.

In an October 23, 2003 report, Dr. Ignacio advised that appellant came in for treatment as she alleged that her back pain had worsened since returning to work. He indicated that examination of appellant's cervical and thoracic spine was normal and that appellant had moderate muscle spasm and tenderness in the lumbar spine and diagnosed lumbar disc syndrome and lumbar radiculopathy. Dr. Ignacio opined that appellant could return to work with light duties only.

In an October 30, 2003 duty status report, Dr. Ignacio advised that appellant was released to work on September 26, 2003 for four hours a day, provided she had an ergonomic chair and back support. In an October 30, 2003 disability certificate, he advised that appellant was totally disabled and unable to work from October 30 to November 7, 2003. In his November 20, 2003 reports, Dr. Ignacio diagnosed lumbar disc syndrome and radiculopathy and checked the box "yes" in response to whether he believed appellant's condition was caused or aggravated by her employment activity and advised that appellant was partially disabled from November 20 to December 21, 2003.

In a December 1, 2003 report, Dr. Ignacio diagnosed lumbar disc syndrome and advised that appellant was totally disabled and unable to work from October 30 to November 7, 2003 and was in need of ergonomic equipment. He again checked the box "yes" in response to whether he believed appellant's condition was caused or aggravated by an employment activity. In his December 3, 2003 report, Dr. Ignacio advised that appellant could remain on light duty for four hours a day.

Appellant filed a notice of recurrence of disability (Form CA-2a) on December 5, 2003 alleging that she had difficulty with walking and constantly sitting. She alleged that the recurrence began on October 29, 2003 and that it arose from the original accepted injury which had worsened. She indicated that she stopped work on October 30, 2003 and returned on November 10, 2003 for four hours a day.

In a December 15, 2003 report, Dr. Ignacio advised that appellant should be placed on light duty from October 30, 2003 to February 28, 2004. He placed restrictions on appellant of no lifting over five pounds, no reaching, no pulling or pushing. In reports dated December 18, 2003, Dr. Ignacio again checked the box "yes" in response to whether he believed appellant's condition was caused or aggravated by an employment activity and advised that appellant was able to work four hours a day.

By letter dated December 19, 2003, the employing establishment indicated that appellant returned to her date-of-injury position as a supply clerk on September 30, 2003. The employing establishment indicated that this position would be abolished as of December 27, 2003 and that appellant would be placed in a comparable security clerk position. The employing establishment indicated that appellant had been accommodated with an ergonomic chair since April 17, 2003. The employing establishment controverted appellant's claim for a recurrence of disability.

Dr. Ignacio continued to treat appellant and submit reports. He also indicated that appellant could work for four hours a day. In a February 12, 2004 report, Dr. Ignacio advised that appellant's lumbar disc syndrome, lumbar radiculopathy, acute musculoligamentous strain of the cervical spine and post-traumatic headaches were all related to the injuries appellant

sustained on January 22, 1999 and opined that appellant could return to light duty. He continued to treat appellant and submit reports which indicated that appellant could return to light duty and reached maximum medical improvement on March 12, 2004.

Appellant filed several CA-7 forms for periods of disability from October 30, 2003 to July 25, 2004.

On July 26 and September 21, 2004 the Office notified appellant of the factual and medical evidence needed to substantiate her claim for a recurrence of disability.³

In a July 15, 2004 attending physician's report, Dr. Ignacio diagnosed lumbar disc syndrome and bilateral lumbar neuritis. He checked the box "yes" in response to whether he believed appellant's condition was caused or aggravated by an employment-related condition and advised that appellant was totally disabled from May 26 to July 25, 2004. In response to whether appellant could do work, he indicated "limited duty only."

In a report dated October 14, 2004, Dr. Ignacio diagnosed chronic progressive lumbar disc syndrome, chronic lumbar radiculopathy and chronic pain syndrome and advised that appellant's symptoms had worsened and indicated that she was off work from May 26 to July 19, 2004 due to a recurrence of her symptoms. He advised that appellant's medical conditions were related to the injury of January 22, 1999 and caused her to experience episodes of temporary increased pain for which she took off work from May 26 to July 19, 2004 and received medical treatment.

In a decision dated December 17, 2004, the Office denied the claim finding that the evidence of record did not establish that appellant was unable to perform her restricted-duty work because of a material worsening in her accepted condition.

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 has resulted from a

³ The record also indicates that the Office developed appellant's claim with respect to whether she had continuing residuals of the employment-related condition. The Office determined that a conflict existed between appellant's physician, Dr. Ignacio, who continued to indicate that appellant suffered residuals of her work-related injury and the second opinion physician, Dr. Pabla, who opined that appellant could return to her preinjury position as a supply clerk without any restrictions also developed appellant's claim with respect to whether she return to her date-of-injury position as a supply clerk. By letter dated September 27, 2004, the Office requested that Dr. Roger L. Raiford, a Board-certified orthopedic surgeon and impartial medical examiner, provide an independent medical examination. In an October 21, 2004 report, Dr. Roger L. Raiford noted the history of injury and treatment and opined that appellant did not continue to have residuals of her employment injury. He also noted that her preexisting low back injury was not work related and that degenerative changes at L5-S1 were due to normal wear and tear. Dr. Raiford opined that, although appellant now worked as a security aid, she could return to her normal duties as a supply clerk. He further related that if appellant could not perform her regular duties it was not due to the January 22, 1999 employment injury. Dr. Raiford did not offer an opinion on the period of claimed recurrent disability at issue on the present appeal and the Office has not cited this report as a basis for its December 12, 2004 decision.

previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁴

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantive evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the light-duty job requirements.⁵

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence.⁶ This consists of a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.⁷ The physician's opinion 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.⁸

ANALYSIS

Appellant's claim was accepted for a back sprain. She subsequently alleged a recurrence of disability beginning on October 29, 2003. On July 26 and September 21, 2004 the Office advised appellant of the type of medical and factual evidence needed to establish her claim for a recurrence of disability. However, appellant did not submit any medical reports which contained a rationalized opinion from a physician who, on the basis of a complete and accurate factual and medical history, concluded that she had a recurrence of disability causally related to the employment injury and supported that conclusion with sound medical reasoning. The Board also notes that there is no evidence showing a change in the nature and extent of the light-duty job requirements.⁹

The medical reports with respect to the period beginning October 29, 2003 include reports from Dr. Ignacio. Some of these reports indicated that appellant's disability or conditions were employment related. However, Dr. Ignacio's reports are insufficient to establish

⁴ 20 C.F.R. § 10.5(x).

⁵ *Richard E. Konnen*, 47 ECAB 388 (1996); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁶ *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

⁷ *Duane B. Harris*, 49 ECAB 170, 173 (1997).

⁸ *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

⁹ The record reflects that, although appellant's supply clerk position was abolished and she was placed in a security clerk position; the employing establishment indicated that she was accommodated with her ergonomic chair. Furthermore, appellant did not submit any evidence to suggest that her light-duty position had changed such that it no longer met her physician's restrictions.

appellant's claim for a recurrence of disability beginning October 29, 2003. In particular, Dr. Ignacio did not provide sufficient medical rationale to explain how appellant's disability beginning October 29, 2003 represented a recurrence of her January 22, 1999 injury which was accepted for a back strain. Instead, he provided conclusory statements without noting any of the medical reasoning on which his conclusions regarding causal relationship were based. For example, in several reports, Dr. Ignacio supported causal relationship by checking a box "yes" on a form report. However, the checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.¹⁰ Also, Dr. Ignacio diagnosed and attributed to appellant's employment conditions such as lumbar disc syndrome and lumbar radiculopathy which were not accepted by the Office as being employment related. For conditions not accepted by the Office as being employment related, it is appellant's burden to provide rationalized medical evidence sufficient to establish causal relationship.¹¹ Dr. Ignacio did not provide any rationale regarding how these nonaccepted conditions were causally related to the accepted injury. Instead, he provided conclusory statements supporting causal relationship. For example, in his February 12, 2004 report, he opined that several conditions not accepted by the Office were due to the employment injury. However, he provided no reasoning to support his conclusions nor did he explain why any such conditions would be employment related and not the product of any preexisting conditions.

Reports from other physicians do not establish appellant's claim as they do not address the relevant period or do not address the cause of any disability beginning October 29, 2003.

In the instant case, none of the medical reports submitted by appellant contained a rationalized opinion to explain why appellant could no longer perform the duties of her light-duty position beginning October 29, 2003 and why any such disability or continuing condition would be due to the accepted condition. As appellant has not submitted any medical evidence establishing that she sustained a recurrence of disability due to her accepted employment injury, she has not met her burden of proof.

CONCLUSION

The Board finds that appellant failed to establish that she sustained a recurrence of disability beginning on October 29, 2003 that was causally related to her January 22, 1999 employment injury.

¹⁰ *Calvin E. King*, 51 ECAB 394 (2000); *Linda Thompson*, 51 ECAB 694 (2000).

¹¹ *See Jaja K. Asaramo*, 55 ECAB ____ (Docket No. 03-1327, issued January 5, 2004).

ORDER

IT IS HEREBY ORDERD THAT the decision of the Office of Workers' Compensation Programs dated December 17, 2004 is affirmed.

Issued: September 7, 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