United States Department of Labor
Employees' Compensation Appeals Board

CHRISTINA MEAUX (aka MYRICK), Appellant	)	
and	)	**Docket No. 05-1835**
	)	**Issued: March 16, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Lake Charles, LA, Employer	)	

Appearances:
Kevin L. Camel, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 6, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' hearing representative's merit decision dated May 23, 2005, which denied her claim for a recurrence of disability commencing March 29, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant sustained a recurrence of disability commencing March 29, 2004 causally related to her accepted October 10, 2003 employment-related lumbar strain injury.

FACTUAL HISTORY

On October 10, 2003 appellant, then a 38-year-old city letter carrier, fell backwards after being attacked by a dog and landed on her right hip and back. She experienced right-sided pain down her right leg. Contemporaneous medical evidence recommended rest and being off work.[1]

[1] X-rays of the lumbar spine and right hip were obtained and were reported as normal studies.

On October 15, 2003 the employing establishment offered appellant a modified light-duty position which she accepted. Appellant returned to modified limited duty with lifting limited to 10 to 20 pounds, 8 hours sitting -- with 30 minutes continuous, 4 hours intermittent, standing for 1 hour continuous, 8 hours of standing intermittently, no climbing or kneeling, 2 hours bending, 15 minutes continuous, no pushing or pulling 8 hours grasping, fine manipulation, casing mail for 3 hours, reaching above the shoulder and driving. The Office accepted appellant's claim for lumbar strain on December 17, 2003.

A magnetic resonance imaging (MRI) scan was performed on November 21, 2003. On December 30, 2003 Dr. James D. Perry, a Board-certified orthopedic surgeon, noted that the MRI scan revealed mild stenosis at L4-5, not felt to be significant and bilateral facet arthrosis at L5-S1, which he identified as the source of appellant's symptoms.

On January 5, 2004 appellant underwent a lumbar epidural steroid injection. She also underwent regularly scheduled physical therapy during this time.

In a February 10, 2004 report, Dr. Perry indicated that appellant believed that she could not perform her job. He limited her lifting, bending and twisting, because of her complaints of pain. Dr. Perry found nothing to cause pain, except mild degeneration of her back and lumbar strain. He opined that appellant's symptomatology was more emotionally driven than caused by actual physical conditions. Dr. Perry noted that appellant's neurologic examination was normal, her motor examination was normal, her sensory examination was normal, her deep tendon reflexes were symmetrical, that she had no pathological reflexes, her muscle tone was normal and that her mood and affect were normal. He diagnosed resolving lower back pain. On February 24, 2004 he found her neurological examination normal but with a continued complaint of back pain. On March 3, 2004 Dr. Perry ordered a lumbar myelogram, which was read that date as revealing a small ventral extradural defect at L4-5. He diagnosed radiculopathy. Also on March 3, 2004 appellant underwent a postmyelogram computerized tomography scan of the lumbar spine ordered by Dr. Perry, which was read as revealing mild annulus bulging at L4-5 and L5-S1, but otherwise negative.

Appellant continued working within her restrictions until March 29, 2004 when she alleged a recurrence of disability. She noted that her physician found a disc bulge at L4-5 and diagnosed radiculopathy in addition to low back pain. Appellant stopped work on March 30, 2004 and filed a claim for recurrence on March 31, 2004, commencing March 29, 2004.

Appellant claimed that she was on limited duty following the accepted injury but continued to work with pain. She noted being treated by an orthopedic physician and that her pain remained after physical therapy. Appellant claimed that a spinal epidural injection demonstrated a bulging disc at L4-5 and that she was diagnosed with radiculopathy and low back pain. She attributed her symptoms to the October 10, 2003 injury.

On April 28, 2004 the Office requested further medical opinion evidence and additional factual evidence to support her claim. In response, appellant submitted a March 29, 2004 letter from Dr. Dean Moore, a general surgeon, who noted that the March 3, 2004 computerized axial tomography (CAT) scan did not report a mild canal stenosis at L4-5, but indicated that he believed that it was there. He remarked that the March 3, 2004 CAT scan was similar to a

November 21, 2003 MRI scan. Dr. Moore noted that appellant had some findings on examination that suggested nerve root involvement at the L5 and S1 levels. He advised that appellant should not return to work until her back problem was fixed, as even sitting caused her back pain. In a report dated March 29, 2004, Dr. Moore noted as history that appellant stated that she was well until October 10, 2003, when she fell at work, injured her lower back and experienced low back pain since that time. Dr. Moore discussed appellant's symptoms, noting that she had low back pain on both sides but worse on the right side. The right-sided back pain radiated into her right leg and was associated with numbness and tingling, with occasional tingling in the left leg. He noted that bending, twisting, riding in a car and sitting or standing for any period caused appellant to have severe low back pain, which was only temporarily relieved by lying down. Dr. Moore noted that physical therapy gave appellant only temporary relief and that Dr. Perry had ordered tests, including an MRI scan, which were reported as showing some central canal stenosis at the L4-5 level and a mild disc bulging at L5-S1. He noted that the myelogram showed a ventral defect at L4-5 and that the CAT scan demonstrated a mild spinal stenosis at the L4-5 level, just as the MRI scan had. Dr. Moore noted that, following testing, appellant had been released to return to work but had been working in pain. He also noted that there was "no previous history of any low back injury or low back pain that required her to miss any work." He diagnosed lumbar spinal stenosis at L4-5.

Dr. Moore ordered electromyographic (EMG) studies for appellant. On April 24, 2004 he noted testing was positive, indicating a mild L5-S1 radiculopathy on the right side. Dr. Moore noted that appellant's CAT scan did not look as impressive as he thought it would and that her MRI scan still showed mild spinal stenosis at L4-5. He commented that he would like to see a lumbar discogram. Dr. Moore cleared appellant to return to limited-duty work in an office capacity answering telephones and being able to get up or sit down whenever she felt the need because of her pain.

In a decision dated June 29, 2004, the Office denied appellant's recurrence of disability claim, finding that the medical evidence submitted was insufficient to establish that her disability commencing March 29, 2004 was causally related to the accepted injury.

On June 29, 2004 appellant requested an oral hearing. On September 29, 2004 Dr. Moore noted that appellant claimed that her pain was largely in the right sacroiliac (SI) joint and right hip joint, with tenderness upon examination. After a discogram was negative for a herniated disc, Dr. Moore referred appellant to Dr. R. Dale Bernauer, a Board-certified orthopedic surgeon. He examined appellant on November 8, 2004, noted full range of hip motion and requested a pelvic MRI scan. He believed that she had sacroiliac dysfunction.

The hearing was held on February 16, 2005 and appellant was represented by counsel. Appellant stated that she experienced pain in her right hip since the October 10, 2003 injury. She claimed that the pain was on her right side and wrapped around her hip and the top of her leg. She submitted a note from Dr. Bernauer, who stated: "please see my previous dictation on [appellant]. [Her] pelvic problem, which looks to be an SI joint dysfunction, is related to her original accident."

By decision dated May 23, 2005, the Office hearing representative affirmed the June 29, 2004 decision, finding that the medical evidence was insufficient to support that appellant

sustained a recurrence of disability in March 2004. The hearing representative found that the medical reports did not provide a rationalized medical opinion on why she became disabled from her light-duty position and the nature of her back condition.

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 the employee can perform a 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 to 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 job requirements.[2]

ANALYSIS

Appellant has not submitted sufficient rationalized medical evidence to establish a change in the nature or extent of her injury-related medical condition or a change in her physical ability to carry out her limited duties. She also has failed to relate her diagnosed conditions of March 29, 2004 to the accepted lumbar strain.

Appellant sustained injury on October 10, 2003, accepted by the Office as a lumbar strain. She returned to modified duty as of October 15, 2003. Appellant stopped work on March 30, 2004 claiming a recurrence of disability as of March 29, 2004.

The February 10, 2004 report of Dr. Perry noted appellant's complaints of pain, which he attributed to mild degeneration of her back and lumbar strain. He noted normal neurologic examinations, normal motor examinations, normal sensory examinations, normal deep tendon reflexes, normal muscle tone, normal mood and affect and no pathological reflexes and diagnosed "lower back pain, resolving." This report does not address appellant's claimed disability commencing March 29, 2004. For this reason, it is not relevant to the issue on appeal.

As of March 29, 2004 Dr. Moore diagnosed lumbar spinal stenosis at L4-5. However, the physician did not address how appellant's accepted injury would cause or aggravate this condition. Dr. Moore's reports are further diminished in probative value as he failed to address the claimed disability commencing March 29, 2004 or explain how her condition on or after that date was related to appellant's accepted condition of lumbar strain. Therefore, these reports are insufficient to support a recurrence claim.

On April 24, 2004 Dr. Moore noted that the EMG studies were positive, indicating a mild L5-S1 radiculopathy on the right side. He did not explain how the spinal stenosis at L4-5 and the bulging disc at L5-S1 was caused by the accepted October 10, 2003 lumbar strain or to explain how this resulted in disability commencing March 29, 2004. This evidence is insufficient to establish a recurrence of total disability on March 29, 2004.

[2] *Laurie S. Swanson*, 53 ECAB 517 (2002); *Terry Hedman*, 38 ECAB 222 (1986). In this case, no change in appellant's modified-duty working conditions was alleged.

Dr. Bernauer diagnosed sacroiliac dysfunction but he did not explain this diagnosis or how it was related to the accepted injury. Dr. Bernauer later merely stated, without rationale, that appellant's sacroiliac dysfunction is related to her original injury. He failed to explain how sacroiliac dysfunction would result from lumbar strain or why the fall she sustained would be competent to cause this condition or contribute to disability as of March 29, 2004.

None of appellant's treating physicians agreed on a particular diagnosis or explained how her October 10, 2003 fall at work caused or contributed to her central canal stenosis, bulging discs at L4-5 or L5-S1, radiculopathy or sacroiliac joint dysfunction. The physicians did not address how her disability as of March 29, 2004 was caused by the accepted injury. There is insufficient medical evidence of record to establish a change in the nature and extent of appellant's partially disabled condition commencing March 29, 2004 causally related to her October 10, 2003 lumbar strain injury.

CONCLUSION

The Board finds that appellant has failed to establish her March 29, 2004 recurrence of disability claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs' dated May 23, 2005 is affirmed.

Issued: March 16, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board