

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

A.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Great Neck, NY, Employer**

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**Docket No. 06-1944
Issued: March 19, 2007**

Appearances:

Thomas S. Harkins, 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 August 21, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 13, 2006 which denied her recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability due to her accepted employment injury beginning September 24, 2002.

FACTUAL HISTORY

On June 28, 1999 appellant, then a 31-year-old letter carrier, filed a traumatic injury claim alleging that on that date she was opening a door for mail delivery and a window fell

striking her in the head. The Office accepted that she sustained a neck strain and a right shoulder strain. Appellant did not stop work.¹

A magnetic resonance imaging (MRI) scan of the right shoulder dated September 3, 1999 revealed no abnormalities. An MRI scan of the lumbar spine dated August 27, 2002 revealed multilevel degenerative disc disease. Appellant came under the treatment of Dr. Thomas M. Mauri, a Board-certified orthopedic surgeon. In reports dated March 20 to November 16, 2000, Dr. Mauri noted a history of injury and diagnosed right cervical radiculopathy, cervical strain/sprain and possible intrinsic injury to the right shoulder. He noted that appellant could work full time without restrictions. Dr. Mauri noted that an MRI scan of the lumbar spine on February 23, 2001 revealed herniated discs at L2-3, L3-4, L4-5 and L5-S1. He diagnosed chronic cervical and thoracic strain/sprain with herniated lumbar discs and bilateral knee internal derangement. In reports dated January 17 to July 24, 2002, Dr. Mauri noted appellant's continued complaints of neck and right shoulder pain due to cervical and lumbar herniated discs. On September 19, 2002 he stated that she could only work light duty and referred her to Dr. Jason S. Lipetz, a Board-certified physiatrist.

In a treatment note dated July 1, 2002, Dr. Lipetz noted that appellant had a work-related neck injury in 1999 and diagnosed mechanical lumbar discomfort of suspected discogenic origin and multilevel degenerative disc disease and a posterior tear at L4-5. On September 20, 2002 he noted that appellant presented with residual lumbar and buttock pain. Dr. Lipetz diagnosed significant improvement of left lower extremity L4 and contributing L5 radiculopathy, radiographic findings of foramina disc pathology to the left L4-5 and Grade 1 listhesis at L5-S1, recently diagnosed Parkinson's disease and mechanical lumbar discomfort with potentially contributing cervical stenosis. In a physical therapy referral dated September 23, 2002, Dr. Lipetz diagnosed discogenic lumbar back pain with multiple protrusions at L2-3 to L5-S1 with moderate stenosis. On September 23, 2002 he advised that appellant could not work and would be reevaluated in one month. Dr. Lipetz prepared a duty status report dated October 23, 2002 and advised that appellant was totally disabled. On October 24, 2002 he diagnosed persistent mechanical lumbar discomfort of suspected discogenic origin, radiographic findings significant for multilevel disc protrusion and a posterior annular tear at L4-5.

On September 26, 2002 appellant filed a Form CA-2a, notice of recurrence of disability. On September 23, 2002 she experienced neck and lumbar pain which she attributed to the June 28, 1999 neck and right shoulder strain. Appellant stopped work on September 24, 2002. The employing establishment noted that she worked limited duty after her original injury.

By letter dated October 22, 2002, the Office advised appellant of the evidence needed to establish her claim for a recurrence of disability. It requested that she submit a physician's reasoned opinion addressing the relationship of her claimed recurrent condition and original work injury. Appellant submitted physical therapy notes from October 10 to November 16, 2002.

¹ On August 18, 1995 appellant filed a traumatic injury claim for an injury to her low back. This claim was accepted for dislocation of the lumbar vertebra, File No. 02-0702707.

In a decision dated December 3, 2002, the Office denied appellant's claim on the grounds that the evidence did not establish a change in the nature and extent of her injury-related disability or a change in the nature of her light-duty job.

On July 29, 2003 appellant requested reconsideration. Her attorney submitted a November 11, 2003 brief asserting that the evidence supported a recurrence of disability as of September 23, 2002. In a November 15, 2002 work capacity evaluation, Dr. Mauri noted that appellant had recurring neck and back pain and opined that she was totally disabled. On December 4, 2003 he reported last seeing her on September 19, 2002. Dr. Mauri noted appellant's work injury of June 1999 and indicated that she had an exacerbation of her work injury and recurrences of pain in January and September 2002. He diagnosed chronic injuries of the cervical and lumbar spine, lumbar disc herniation, cervical strain/sprain and cervical radicular syndrome. In reports dated November 25 to December 27, 2002, Dr. Lipetz noted appellant's complaints of lumbar pain. He diagnosed mechanical lumbar discomfort, radiographic findings of multilevel disc protrusions, posterior annular tear at L4-5 and first trimester of pregnancy. Dr. Lipetz noted that appellant worked light duty from January to September 2002 and stopped work on September 24, 2002. In reports dated January 27 to June 20, 2003, he noted appellant's continued complaints of lumbar discomfort and advised that she was totally disabled.

In a decision dated February 20, 2004, the Office denied modification of the December 3, 2002 decision.

Appellant requested reconsideration asserting that she submitted sufficient evidence to establish her recurrence of disability claim. She submitted a May 26, 2000 MRI scan of the cervical spine that revealed mild diffuse posterior bulging of the disc annulus C3-4 and minimal posterior bulging at C5-6 and C6-7, with no herniated disc or spinal stenosis. A February 23, 2001 lumbar spine MRI scan revealed a moderate-sized central herniated disc at L2-3, mild to moderate central broad-based disc herniation at L3-4, small central herniated disc at L4-5. In a March 31, 2004 report, Dr. Mauri advised that appellant became totally disabled on September 24, 2002 and was not able to tolerate her work duties without medical treatment. On June 3, 2004 he indicated that her disability on September 24, 2002 was directly related to the work injury sustained on June 28, 1999 and that she remained totally disabled. Dr. Mauri's report of September 13, 2004 opined that appellant had an exacerbation of her work injury in January and September 2002 and was totally disabled.

In a decision dated January 19, 2005, the Office denied modification of the February 20, 2004 decision. In a letter dated January 25, 2005, the Office advised appellant that on January 18, 2005 it received additional medical evidence from Dr. Mauri dated December 13, 2004; however, this evidence was not in the file at the time of the Office decision and, therefore, not considered in the January 19, 2005 decision.

On March 28, 2005 appellant filed an appeal to the Board.² In a May 12, 2006 order, the Board remanded the case so that the Office could consider all of the evidence it had received before issuing its January 19, 2005 decision.

On December 13, 2004 Dr. Mauri noted a marked increase of pain in the lower back, right arm and shoulder secondary to work-related herniated discs in the cervical and lumbar spine.

In reports dated April 6, 2005 to April 10, 2006, Dr. Mauri noted appellant's complaints of right leg and back pain. He advised that appellant remained totally disabled.

In a decision dated June 13, 2006, the Office denied modification of the January 19, 2005 Office 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 of record establishes that she can perform the 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 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 requirements.³

Causal relationship is a medical issue,⁴ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes 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. The opinion of the physician 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.

² Docket No. 05-1036 (issued May 12, 2006).

³ *Terry R. Hedman*, 38 ECAB 222 (1986). See 20 C.F.R. § 10.5(x) (the Office's definition of recurrence of disability).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

ANALYSIS

Appellant sustained injury on June 28, 1999 accepted for a cervical and right shoulder strain. She worked at regular duty, being placed on light duty on September 19, 2002. Appellant filed a claim for a recurrence of disability beginning September 23, 2002. However, she has not submitted sufficient evidence to 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 requirements.

In support of her claim, appellant submitted reports from Dr. Mauri dated September 19 and November 15, 2002. Dr. Mauri noted appellant's treatment for neck and arm pain and advised that she experienced recurring neck and back pain and was totally disabled from work. However, Dr. Mauri's September 19, 2002 report noted that appellant could continue working light duty and his November 15, 2002 report did not address how appellant's claimed recurrent disability was due to the June 28, 1999 work injury.⁵

In a December 4, 2003 report, Dr. Mauri noted appellant's work-related injury of June 1999 and indicated that she had an exacerbation of her condition and recurrences of pain in January and September 2002. However, he failed to explain the change in the nature of appellant's physical condition arising from the employment injury which prevented her from performing her light-duty position. Additionally, the Board notes that there is no evidence of bridging symptoms during Dr. Mauri's treatment interval between September 2002 and December 2003.⁶ Dr. Mauri did not adequately address how or why the lumbar disc herniation and cervical radicular syndrome were related to the accepted soft tissue strains. The Office never accepted that appellant sustained lumbar disc herniation and cervical radicular syndrome as a result of her June 28, 1999 work injury.⁷ The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value. Dr. Mauri's June 3, 2004 report, indicating that appellant's total disability as of September 24, 2002, was directly related to the June 28, 1999 work injury is conclusory as he did not provide a rationalized opinion explaining why appellant's recurrent condition and disability was due to the June 28, 1999 work injury. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.⁸

In a September 13, 2004 report, Dr. Mauri found that appellant had an exacerbation of her work injury of June 28, 1999 in January and September 2002. As noted, he failed to provide

⁵ See *Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971) (where the Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence).

⁶ For the importance of bridging evidence in establishing a claim of continuing disability; see *Robert H. St. Onge*, 43 ECAB 1169, 1175 (1992).

⁷ Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury. *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁸ See *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

a rational medical opinion explaining why appellant's recurrent condition was due to the June 28, 1999 work injury.⁹ Other reports from Dr. Mauri did not explain his basis for concluding that appellant's claimed recurrence of disability beginning September 24, 2002 was causally related to the June 28, 1999 employment injury.

Appellant also submitted several reports from Dr. Lipetz. In a September 20, 2002 report, Dr. Lipetz noted findings, diagnoses and a treatment plan. However, he did not indicate total disability or increased symptomatology due to the accepted employment injury. In a note dated September 23, 2002, Dr. Lipetz advised that appellant was unable to work, but did not attribute the disability to the June 28, 1999 work injury. On October 24, 2002 he diagnosed various conditions such as multilevel disc protrusion and a posterior annular tear at L4-5 and advised that appellant was totally disabled from work. However, Dr. Lipetz did not explain how the soft tissue injuries sustained in 1999 would cause or contribute to the diagnosed conditions which prevented appellant from performing her light-duty position.¹⁰ He does not address how the lumbar disc herniation and cervical radicular syndrome were due to the June 28, 1999 work injury. Other reports from Dr. Lipetz dated November 25, 2002 to June 20, 2003, noted appellant's complaints and diagnoses. He failed to note a specific date of a recurrence of disability or explain a particular change in the nature of appellant's physical condition arising from the employment injury which prevented her from performing her light-duty position.

The Board finds that appellant has submitted insufficient evidence to show a change in the nature and extent of her physical condition, arising from the employment injury which prevented her from performing her light-duty position.

The Board notes that there is no evidence showing that appellant experienced a change in the nature and extent of the light-duty requirements or was required to perform duties which exceeded her medical restrictions. The light-duty position performed by appellant was in conformance with the medical restrictions set forth by her treating physician and remained available until she stopped work. The record is devoid of evidence which would indicate that there was a change in the nature and extent of the light-duty requirements or that she was required to perform duties which exceeded her medical restrictions.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability on September 24, 2002 causally related to her accepted neck and right shoulder strain.

⁹ *Id.*

¹⁰ See Katherine A. Williamson, *supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the June 13, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 19, 2007
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