

Appellant sought treatment from Dr. Ravi Ramaswami, a Board-certified family practitioner, from August 21 to September 25, 2006 for neck and head discomfort caused by the work injury. An August 20, 2006 magnetic resonance imaging (MRI) scan of the cervical spine revealed cervical spondylosis and foraminal stenosis with no compression of the spinal cord.

On December 4, 2006 Dr. Elena L. Ivashina, a Board-certified neurologist, diagnosed cervicgia, post work-related injury and cervical spondylosis with lower foraminal stenosis. On January 8, 2007 she noted that appellant had a recent exacerbation of pain after prolonged and repetitive mail sorting and recommended acupuncture with physical therapy. In a January 11, 2007 work capacity report, Dr. Ivashina returned appellant to work at limited duty, six hours a day with restrictions. On January 16, 2007 the employing establishment offered appellant a modified distribution window clerk position for six hours a day based on her medical restrictions. Appellant accepted the position and returned to work that day. On March 2, 2007 she was released to full-time work with restrictions. Appellant was offered a modified distribution window clerk position eight hours a day subject to the restrictions that she accepted on March 10, 2007.

On April 30, 2007 appellant filed a notice of recurrence of disability commencing April 21, 2007 causally related to her accepted injury. She stopped work on April 27, 2007 and returned to her light-duty position on May 1, 2007.

On May 11, 2007 appellant claimed a recurrence of disability alleging neck pain and headaches as of May 7, 2007 due to her accepted injury. She stopped work on May 7, 2007 and returned to a light-duty position on May 12, 2007.

On May 27, 2007 appellant claimed a recurrence of disability commencing May 23, 2007 causally related to her accepted injury. She stopped work that day and returned to light duty on May 24, 2007.

On June 4, 2007 appellant claimed a recurrence of disability as of May 29, 2007. She stopped work and did not return. The employing establishment controverted appellant's claims, noting that she was off duty and that driving had aggravated her injury, although she had no driving restrictions.

With each notice of recurrence, the Office advised appellant of the type of evidence needed to establish her disability claim. It requested that she submit a physician's reasoned opinion addressing the relationship of her disability to her accepted conditions.

Appellant submitted duty status reports dated April 18 and 30, 2007 from Dr. Ivashina, who reiterated that she could perform her job with restrictions. In an April 30, 2007 prescription note Dr. Ivashina advised that appellant was treated for increasing neck pain and was excused from work that day. On May 2 and 15, 2007 she advised that since April 18, 2007 appellant was treated twice for complaint of increased neck pain after prolonged mail sorting. Dr. Ivashina recommended limiting her activities until her next evaluation due to cervicgia and cervical spondylosis. On May 9, 2007 Dr. Ramaswami advised appellant that she was unable to work on May 9 and 10, 2007 due to aggravation of her neck injury. In a May 11, 2007 work capacity report, he returned her to work restricted duty. In prescription notes dated May 23 and 26, 2007,

Dr. Ramaswami advised that appellant was unable to work on those days. In a May 29, 2007 prescription note, he advised that appellant was unable to work on May 29 and 30, 2007 due to neck and back pain from a work injury.

On May 30, 2007 appellant was treated by Dr. Jan O. Johansson, a Board-certified physiatrist, who diagnosed cervicgia, possible C5 radiculopathy and recommended a trial of acupuncture. She noted that appellant returned to work but her work duties involved more than two and a half hours of mail sorting that produced pain. Dr. Johansson returned appellant to work without restrictions. A June 1, 2007 cervical spine MRI scan showed cervical spondylosis and mild foraminal stenosis. Appellant submitted statements attributing her intermittent disability to a change in her accepted condition. She noted that her light-duty job did not change or become more demanding but her condition changed starting on April 21, 2007 after sorting mail.

The Office referred appellant to Dr. Patrick Hughes, a Board-certified orthopedic surgeon, for a second opinion regarding the nature and extent of her capacity to work due to her accepted condition. In a June 12, 2007 report, Dr. Hughes reviewed the history of injury and medical treatment. He stated that examination revealed normal strength bilaterally, reflexes were normal and symmetrical and sensation was normal. Dr. Hughes diagnosed a history of head injury and acute cervical strain and opined that appellant's complaints of pain suggested symptom magnification. He found that she fully recovered from the effects of the work injury and could return to her date-of-injury clerk job. Dr. Hughes opined that appellant reached maximum medical improvement and required no further medical treatment.

On June 11, 2007 the employing establishment advised appellant that she would be removed from her job effective July 14, 2007 due to her failure to perform the duties of her position.

On February 20, 2007 Dr. Ivashina noted that appellant had improvement of pain symptoms with acupuncture but was exacerbated after prolonged repetitive arm movement. She diagnosed cervicgia, cervical spondylosis with foraminal stenosis and opined that appellant's symptoms were most likely exacerbated after the work injury. Dr. Ivashina returned appellant to work with restrictions not to lift more than 15 pounds and no mail sorting. In a March 2, 2007 report, she treated appellant for neck pain and reiterated the diagnoses. On April 16, 2007 Dr. Ivashina noted that appellant experienced significant improvement after massage therapy and was doing better at mail sorting with breaks every 30 minutes. She returned appellant to work 8 hours a day with restrictions of sorting 30 minutes with a 10-minute break and no lifting mail from a cart. On April 30, 2007 Dr. Ivashina noted that appellant had neck and shoulder pain when performing repetitive arm movements. She diagnosed cervicgia and headaches most likely of cervicogenic origin. Dr. Ivashina returned appellant to work with limitations on sorting mail and lifting. On June 15, 2007 she treated appellant for neck pain and advised that appellant would be off work until June 16, 2007.

In prescription notes dated May 31 and June 5, 2007, Dr. Ramaswami noted that appellant was out of work due to her injury. On June 15, 2007 he noted that she had persistent neck pain and muscle spasm and was unable to work. In a June 18, 2007 prescription note, Dr. Ramaswami advised that appellant was unable to work for two weeks due to neck pain. In a

July 2, 2007 prescription note, he advised that she was unable to work for two weeks due to a neck injury and repeated this assessment on July 10, 2007. On July 31, 2007 Dr. Ramaswami noted appellant's complaints and diagnosed cervical spondylosis, disc disease, chronic muscle spasm and cervicalgia. He advised that she was disabled due to persistent pain aggravated by her work duties and opined that her work accident contributed to her neck dysfunction and disability.

Appellant filed claims for wage-loss compensation from June 9 to July 6, 2007. The employing establishment controverted the claims, asserting that her disability began after a predisciplinary interview prior to the June 11, 2007 notice of removal.

Appellant was treated by Dr. Johansson on July 3, 2007 for neck and arm pain and he diagnosed cervicalgia, pain into the arms and low back pain radiating into the legs.

On August 16, 2007 Dr. Alfred Frontera, a Board-certified neurologist, noted in a work capacity evaluation that appellant was unable to do repetitive work, including sorting mail. He returned her to work four hours a day with restrictions. On September 20, 2007 Dr. Frontera diagnosed cervical spondylosis and bilateral carpal tunnel syndrome. In an October 11, 2007 duty status report, he returned appellant to work full time with restrictions. On November 8, 2007 Dr. Frontera treated her and diagnosed cervical spondylosis aggravated by her June 2006 work injury.

The Office found a conflict in medical opinion between Dr. Ramaswami, appellant's physician, who stated that she was totally disabled and experiencing residuals of her work-related injury, and Dr. Hughes, an Office referral physician, who determined that her work-related injury had resolved and that she could return to work without restriction.

The Office referred appellant to Dr. Ira Neustadt, a Board-certified neurologist, selected as the impartial medical specialist. In an October 30, 2007 report, Dr. Neustadt reviewed the history of injury and medical treatment records. Appellant reported having tension headaches two to three times a week that were often associated with diffuse soreness in the posterior cervical spine, worse on the right. She described exacerbations of her condition on May 22, 2007 when she was sorting mail and on May 29, 2007 when she awoke with a major spasm in her neck, shoulder girdle and mid-low back with tingling paresthesias in the arms and legs. Dr. Neustadt advised that neurological examination was entirely normal and nonfocal. Musculoskeletal examination showed normal lordotic curve of the cervical and lumbosacral spine. There was no evidence of cervical, thoracic or lumbosacral spasm and neck range of motion was fairly full with some soreness but no radicular pain. There was mild vertex scalp tenderness consistent with tension headaches. Dr. Neustadt also noted subjective symptoms without objective correlation. He diagnosed a mild head trauma, neck and shoulder girdle trauma, by history. In the absence of objective findings, there was no objective evidence to support disability stemming from appellant's work accident. Appellant's symptoms were subjective and consisted of mild tenderness to palpation of the posterior cervical and upper trapezius area consistent with residual strain. Dr. Neustadt opined that the incidents she described on May 22 and 29, 2007 were not exacerbating events. He advised that, in the absence of objective findings, there was no reason that appellant could not return to full duty without restrictions.

In a December 14, 2007 decision, the Office denied appellant's claims for recurrences of disability finding that the weight of the medical evidence was represented by Dr. Neustadt who found that she was not disabled. It also found that there was no change in the nature and extent of her light-duty position.

Appellant requested an oral hearing which was held on April 11, 2008. On January 10, 2008 Dr. Frontera saw her in follow-up for neck pain and numbness down the right arm. He diagnosed cervical spondylosis with neck pain related to her work injury, cervical muscle spaces with decreased range of motion and carpal tunnel syndrome. Dr. Frontera stated that the spondylosis was not caused by appellant's injury but it aggravated her underlying latent condition. On May 29, 2008 he noted that she returned to work full time with minimal pain. Dr. Frontera diagnosed status post injury to the cervical spine on June 15, 2006 with resulting muscle spasm to the neck, bilateral carpal tunnel syndrome and difficulty with memory.

In a July 2, 2008 decision, an Office hearing representative affirmed the December 14, 2007 decision.

LEGAL PRECEDENT

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 he 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.¹

The Office's implementing federal regulations define a recurrence of disability as the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without intervening injury or new exposure to the work environment.²

Causal relationship is a medical issue³ 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.⁴

¹ *Terry R. Hedman*, 38 ECAB 222 (1986).

² 20 C.F.R. § 10.5(x).

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁴ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS

The Office accepted appellant's claim for a cervical sprain and postconcussion syndrome. Appellant returned to a light-duty work full time. She filed claims for disability when she stopped work on April 27, May 7, 23 and 29, 2007, alleging neck and trapezius pain after performing limited duty which included sorting mail.

The Office determined that, a conflict in medical opinion arose between appellant's attending physician, Dr. Ramaswami, who found that she was disabled due to residuals of her accepted condition, and Dr. Hughes, an Office referral physician, who found that she was fully recovered from the work injury and could return to her date-of-injury job. It properly referred her to Dr. Neustadt to resolve the conflict.⁵

In an October 30, 2007 report, Dr. Neustadt reviewed the history of appellant's injury of striking her head against a rafter and the accepted diagnoses of cervical strain and postconcussive syndrome. He noted that there was no evidence that she lost consciousness and that a computerized axial tomography scan obtained of the head was interpreted as normal. Appellant also underwent additional diagnostic studies that established cervical spondylosis and stenosis without a disc herniation or spinal compression. Degenerative changes were also reported at the C4-5 level. Dr. Neustadt reviewed the treatment notes of record and addressed appellant's complaints of frequent headaches without nausea or visual problems. He noted that she claimed that her condition was exacerbated while sorting mail and her belief that she was unable to lift. Dr. Neustadt reported that appellant's neurological examination was normal and nonfocal. He reported normal lordotic curve of the cervical and lumbosacral spine with out evidence of any spasm. Range of motion evaluation was fairly full in the cervical spine without radicular symptoms reported. Dr. Neustadt found full range of motion to the shoulders with some reported tenderness in the upper shoulder girdle. Given the absence of objective findings on examination, he concluded that appellant was without any dysfunction from the accepted injury. Dr. Neustadt described her symptoms on examination as subjective and consistent only with mild tenderness to palpation of the cervical and upper trapezius region. He found no evidence to support that appellant's work in May 2007 had exacerbated her condition and advised that she could perform full duty without any medical restrictions.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁶

The Board finds that the opinion of Dr. Neustadt is sufficiently well rationalized and based upon a proper factual background and review of the medical evidence of record. It is entitled to special weight and establishes that appellant's work-related condition ceased and that she does not require ongoing work restrictions. Dr. Neustadt's report does not establish that her intermittent disability claimed commencing April 27, 2007 is causally related to the June 15, 2006 work injury. Based on his examination, he advised that the work appellant performed in

⁵ See 5 U.S.C. § 8123(a).

⁶ *Aubrey Belnavis*, 37 ECAB 206 (1985).

sorting mail was not sufficient to exacerbate her accepted medical conditions. Dr. Neustadt reported an accurate medical and employment history and found that appellant was not disabled due to the June 15, 2006 work injury. Accordingly, the Office properly accorded determinative weight to the impartial medical opinion.

Appellant submitted treatment records from Dr. Ivashina, who did not support a spontaneous recurrence of disability due to the accepted cervical sprain and postconcussive syndrome. She noted that appellant attributed her disability and need for treatment to exacerbations caused by new employment exposures in her work duties sorting mail. Dr. Ivashina did not adequately describe how appellant's disability for the dates claimed pertained to a material change in the nature of appellant's physical condition arising from the employment injury.⁷ The April 18 and 30, 2007 duty status reports noted that appellant was able to perform her usual job with restrictions. On April 30, 2007 Dr. Ivashina treated appellant for neck and shoulder pain and diagnosed cervicgia and headaches most likely of cervicogenic origin. Appellant reported that sorting mail and performing other repetitive movements with her arms resulted in neck and shoulder pain which caused her to leave work. Dr. Ivashina did not explain whether the work appellant was performing was outside her physical limitations or address how her disability related to the conditions accepted in this case as arising from the June 15, 2006 injury. She failed to explain how appellant's job duties would cause an exacerbation of appellant's accepted cervical sprain or postconcussion syndrome. This is important as the diagnostic studies establish that appellant has degenerative cervical disease.

The reports from Dr. Ramaswami, who was on one side of the conflict that was resolved by Dr. Neustadt, do not address any additional medical findings or provide further explanation of how appellant's disability was due to a spontaneous change in her accepted medical conditions. The Board has generally held that additional reports from a physician who was on one side of a medical conflict are insufficient, without additional rationale or medical findings, to overcome the weight accorded the impartial medical examiner or to create a new conflict.⁸ Dr. Ramaswami's reports are similar to those previous considered as giving rise to the conflict in opinion. He did not provide additional rationalized opinion explaining the reasons how appellant's recurrent condition and disability was due to the accepted work injury.⁹ The reports of Dr. Ramaswami noted her status and treatment. He did not note a particular change in the nature of appellant's physical condition arising from her employment injury which prevented her from performing her light-duty position. For these reasons, Dr. Ramaswami's reports are of diminished probative value.

Dr. Johansson diagnosed cervicgia, possible C5 radiculopathy and opined that appellant's mail sorting led to a relapses of pain. As noted, this does not implicate a spontaneous change in the nature of the conditions accepted by the Office. It did not accept the conditions diagnosed as related to the June 15, 2006 work injury. Dr. Johansson did not provide sufficient

⁷ 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).

⁸ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008).

⁹ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

medical opinion explaining the reasons how appellant's condition or disability for the dates claimed was due to the accepted work injury.¹⁰ Dr. Frontera noted that appellant continued to have neck pain and was unable to do repetitive work including sorting mail. He diagnosed cervical spondylosis and bilateral carpal tunnel syndrome. However, Dr. Frontera failed to address the specific dates of intermittent disability claimed or a particular change in the nature of appellant's accepted conditions.¹¹ Therefore, these reports are insufficient to meet appellant's burden of proof.

The Board notes that the evidence does not substantiate a change in the nature and extent of appellant's light-duty requirements or that she was required to perform duties which exceeded her medical restrictions. Appellant has not met her burden of proof to establish that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.

On appeal, appellant asserts that, although she filed notices of recurrence of disability, the Office failed to develop her claim as a new occupational disease. This aspect of her claim is not before the Board in the present appeal. The Office adjudicated appellant's claim for recurrences of intermittent disability, the issue on appeal. With regard to conditions not accepted by the Office as being employment related, she has the burden to provide rationalized medical evidence sufficient to establish causal relation.¹² The Board's finding in this case does not preclude her from pursuing that aspect of her claim before the Office.

CONCLUSION

The Board finds that appellant did not establish that she sustained recurrences of intermittent disability causally related to her accepted condition.

¹⁰ See *T.M.*, 60 ECAB ___ (Docket No. 08-975, issued February 6, 2009) (the claimant bears the burden of proof to establish that conditions not accepted by the Office are due to an employment injury through the submission of rationalized medical evidence).

¹¹ See *supra* note 7.

¹² *Alice J. Tysinger*, 51 ECAB 638 (2000).

ORDER

IT IS HEREBY ORDERED THAT the July 2, 2008 decision of the Office of Worker' Compensation Programs is affirmed.

Issued: August 5, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board