

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

J.O., Appellant)	
)	
and)	Docket No. 10-509
)	Issued: October 22, 2010
U.S. POSTAL SERVICE, POST OFFICE,)	
Little Rock, AR, Employer)	
)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Alan J. Shapiro, Esq., for the appellant</i>	
<i>Office of Solicitor, for the Director</i>	

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 14, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated November 3, 2009 which denied modification of a decision denying 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 the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability commencing August 2, 2005 causally related to her accepted back condition.

FACTUAL HISTORY

On August 12, 2004 appellant, then a 43-year-old city letter carrier, was injured in a motor vehicle accident while driving a mail truck. The Office accepted her claim for cervical and lumbar strain and sprain. Appellant did not stop work but returned to a light-duty position.

Appellant came under the treatment of Dr. Mark A. Bonner, a family practitioner, from August 17, 2004 to April 6, 2005, for back and neck pain due to the motor vehicle accident. On August 17, 2004 Dr. Bonner returned appellant to work two hours a day with restrictions. On September 23, 2004 he advised that she could work four hours a day with restrictions and on October 7, 2004 he increased her work schedule to six hours a day. On October 21, 2004 Dr. Bonner returned appellant to work full time with restrictions.

In an April 6, 2005 report, Dr. Bonner advised that appellant's conditions were resolved and that she could work with restrictions on lifting no more than 15 pounds continuously. Appellant was treated by Dr. Carl M. Kendrick, a Board-certified orthopedic surgeon, from January 5 to February 21, 2005, for back pain and numbness in both legs. She reported the history of the August 2004 motor vehicle accident. Dr. Kendrick noted that x-rays were essentially normal and that appellant's symptoms were residual from her accepted strains. On February 21, 2005 he released her from his care with no permanent disability related to her injury.

On August 9, 2005 appellant was treated by Dr. Bonner for back pain which occurred after walking her route from August 1 to 9, 2005. She reported back pain that began on August 2, 2005. Dr. Bonner noted that she had been working subject to a lifting restriction of 15 pounds continuously. He diagnosed bilateral arm and leg numbness and weakness with back pain. In an August 9, 2005 duty status report, Dr. Bonner diagnosed mid-neck pain with bilateral arm and leg weakness and returned appellant to work full time with restrictions.

On September 2, 2005 appellant filed a Form CA-2a recurrence of disability claim, commencing as of August 2, 2005 after carrying mail for several hours a day over multiple days. The employing establishment advised that appellant was assigned duties within her restrictions. In a supplemental statement, appellant noted that she sought treatment from Dr. Bonner for pain and numbness in her upper and lower extremities and that she never experienced such symptoms prior to the August 12, 2004 vehicle accident.

By letter dated October 27, 2005, the Office advised appellant of the factual and medical evidence needed to establish her claim. It requested that she submit a physician's reasoned opinion addressing the relationship of her claimed recurrent condition and her employment factors.

In an October 18, 2005 report, Dr. Tonya L. Phillips, a Board-certified neurologist, treated appellant in consultation for numbness in the neck, arms and legs. She reported being involved in a motor vehicle accident at work where she was struck on the passenger side of her mail truck. Appellant reported experiencing numbness in her arms and legs after returning to work and carrying and delivering her regular mail route. On physical examination, Dr. Phillips noted normal muscle tone in the upper and lower extremities with normal reflexes, sensation and coordination. She diagnosed diffuse paresthesias intermittently of the upper and lower extremities which may be secondary to muscle spasm, cervical stenosis, peripheral nervous systems or carpal tunnel syndrome. An October 25, 2005 magnetic resonance imaging (MRI) scan of the cervical spine revealed a slight midline bulge at C5-6, but was otherwise normal. An October 25, 2005 nerve conduction study revealed no abnormalities.

In a January 25, 2006 decision, the Office denied appellant's claim for a recurrence of disability beginning August 2, 2005.

On January 1, 2007 appellant requested reconsideration. In a November 28, 2006 report, Dr. Cyril A. Raben, a Board-certified orthopedic surgeon, treated her for low back and neck pain. He noted an essentially normal examination and diagnosed degenerative disc disease of the cervical and lumbar spine and disc herniation of the cervical and lumbar spine. In a November 28, 2006 duty status report, Dr. Raben diagnosed strain/sprain of the cervical and lumbar region and opined that appellant could return to work full time with restrictions. On November 7, 2005 appellant was treated by Dr. Bonner for intermittent low to mid-back pain that started one year prior. Dr. Bonner noted thoracic spine pain was caused by trauma from a work injury and was further exacerbated by walking and lifting. He diagnosed a back sprain with pain in the limbs, arms and legs but advised that appellant could work full time with restrictions. In reports dated February 8, 2006 to January 29, 2007, Dr. Bonner treated appellant for persistent mid back pain and a cervical strain. He diagnosed lumbar and cervical disc displacement and carpal tunnel syndrome and recommended she continue to work full time with restrictions. In duty status reports dated November 29, 2006 to March 1, 2007, Dr. Bonner diagnosed cervical and lumbar sprain, bilateral arm and leg weakness and carpal tunnel syndrome. He returned appellant to work full time with restrictions. In duty status reports dated April 5 to May 31, 2007, Dr. Bonner reduced appellant's work hours to six per day.

In a July 19, 2007 decision, the Office denied modification of the January 25, 2006 decision.¹

On August 16, 2007 appellant requested reconsideration. She submitted an October 20, 2006 thoracic spine MRI scan that revealed desiccation of the mid-thoracic intervertebral discs from T6-11 compatible with age-related degeneration, scattered Schmorl's nodes, no disc protrusion, canal stenosis or cord compression. An October 20, 2006 lumbar spine MRI scan revealed mild desiccation at the L1-2 and L5-S1 intervertebral disc spaces, mild annular disc bulging at L5-S1 and mild degenerative facet arthropathy at each level. Appellant was treated by Dr. Rabin from October 9 to December 26, 2006. He diagnosed cervical spine disc herniation, cervicalgia, lumbar disc degeneration and displacement, thoracic and lumbar spine pain and wrist carpal tunnel syndrome. Dr. Rabin opined that the annular tear, disc derangement and appellant's need for medical treatment were a direct result of the work-related injury. Appellant was also seen by Dr. Bonner through August 16, 2007 for mid-back pain and cervical strain. He diagnosed lumbar back and neck sprain, chronic and headache/cephalgia. In duty status reports dated July 26 to September 24, 2007, Dr. Bonner reiterated that she could work six hours a day with restrictions.

In an October 24, 2007 decision, the Office denied modification of the January 25, 2006 decision.

¹ The Office's decision noted that appellant filed an occupational disease claim but that this claim was denied on November 29, 2006. This claim, File No. xxxxxx415, has been combined with the claim before the Board. In an October 14, 2009 decision, the Office denied modification of its November 29, 2006 decision. Appellant did not appeal from the October 14, 2009 decision.

Appellant submitted an August 14, 2007 report from Dr. Rabin who treated her for cervical and lumbar spine pain. D. Rabin diagnosed cervical, thoracic and lumbar spine herniation and returned appellant to work full time with restrictions.

Appellant submitted an EMG dated October 25, 2005 which revealed no abnormalities. She submitted duty status reports from Dr. Bonner dated August 16, 2007 to February 18, 2008, who recommended that she continue to work full time with restrictions. In reports dated August 28, 2007 to January 8, 2008, Dr. Bonner diagnosed cervical and lumbar strain and carpal tunnel syndrome and advised appellant could work subject to restrictions.

Appellant submitted duty status reports from Dr. Bonner dated August 16, 2007 to April 17, 2008, who advised that appellant could work full time subject to restrictions. Other reports dated March 18 to April 17, 2008, noted no change in appellant's condition and diagnosed chronic neck and back sprain.

On October 10, 2008 appellant requested reconsideration of the October 24, 2007 decision. She submitted a May 6, 2008 MRI scan of the lumbar spine which revealed stable desiccation at L5-S1 with mild annular disc bulging and a tiny midline annular tear, no focal disc protrusion and no lateral stenosis. In reports dated June 12, 2008 to March 18, 2009, Dr. Bonner noted no change in appellant's condition and diagnosed chronic neck and back sprain. In duty status reports dated April 12 to September 25, 2008, he advised that she could work full time subject to restrictions. On August 18, 2008 appellant was treated by Dr. Rabin who diagnosed subannular herniation with disc derangement in the lumbar and cervical spine. Dr. Rabin noted that appellant was asymptomatic prior to her injury and opined that the work accident was the acute and proximate cause of injury. He indicated that appellant's muscular sprains had resolved.

In a decision dated November 3, 2009, the Office denied modification of its prior decisions finding that appellant did not establish a recurrence of disability commencing August 2, 2005.

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.²

The Office's regulations define the term recurrence of disability as follows: "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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made

² Terry R. Hedman, 38 ECAB 222 (1986).

specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations."³

Office regulations define a recurrence of medical condition as the documented need for further medical treatment after release from treatment of the accepted condition when there is no work stoppage. Continued treatment for the original condition is not considered a renewed need for medical care, nor is an examination without treatment.⁴

Causal relationship is a medical issue,⁵ 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.⁶

ANALYSIS

The Office accepted appellant's claim for cervical and lumbar sprain and strain. On April 6, 2005 Dr. Bonner opined that appellant's conditions had resolved and advised that she could work full time with restrictions. Appellant claimed a recurrence of disability as of August 2, 2005 but worked in a full-time light-duty job. She has not submitted sufficient evidence to support 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.

Appellant submitted an August 9, 2005 report from Dr. Bonner who treated her for back pain that occurred after walking her mail route from August 1 to 9, 2005. She reported the back pain began on August 2, 2005. Dr. Bonner diagnosed bilateral arm and leg numbness and weakness with back pain and indicated that appellant had been working subject to a lifting restriction of up to 15 pounds continuously. In an August 9, 2005 duty status report, he diagnosed mid-neck pain with bilateral arm and leg weakness and returned appellant to work full time with restrictions. However, Dr. Bonner's most contemporaneous reports do not provide a firm medical diagnoses or a rationalized opinion explaining how appellant's back condition and need for treatment were due to the accepted motor vehicle accident.⁷ He failed to explain how appellant experienced a spontaneous change in her accepted cervical or lumbar strains arising from the employment injury. Dr. Bonner did not specifically explain how any mid-neck pain or

³ 20 C.F.R. § 10.5(x); *J.F.*, 58 ECAB 124 (2006); *Elaine Sneed*, 56 ECAB 373, 379 (2005); 20 C.F.R. § 10.5(x).

⁴ *Id.* at § 10.5(y); *J.F. id.*

⁵ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁶ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ 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).

bilateral arm and leg weakness were due to the motor vehicle accident or disabled appellant from her light duty for specific periods. Rather, she noted a history of new occupational exposure as appellant had attributed her back pain to walking her postal route as of August 1, 2005. The Board has found that unrationalized medical opinions on causal relationship are of diminished probative value.⁸

In a November 7, 2005 report, Dr. Bonner noted appellant's intermittent low to mid-back pain of a year's duration and stated that her thoracic pain was caused by trauma from the job injury and exacerbated by walking and lifting. In reports dated February 8, 2006 to February 18, 2008, he treated appellant for mid-back pain and a cervical strain caused by her work-related accident. Similarly, in reports dated June 12, 2008 to March 18, 2009, Dr. Bonner noted no change in appellant's condition and diagnosed chronic neck and back sprain. He advised that she could continue work full time subject to restrictions. However, Dr. Bonner failed to provide medical rationale explaining how appellant's symptoms and diagnosed conditions were causally related to the accepted injury. He did not address how any change in the nature of appellant's physical condition related to the accepted back sprains or how she was prevented from performing her light-duty position.⁹

Appellant submitted an October 18, 2005 report from Dr. Phillips who treated her for numbness in the arms and legs and neck and back pain. She provided a history of being struck on the passengers' side of her mail truck and, upon returning to work, experienced numbness in her arms and legs after carrying her regular mail route. Dr. Phillips diagnosed diffuse paresthesias intermittently of the upper and lower extremities which may be secondary to muscle spasm, cervical stenosis, peripheral nervous systems or carpal tunnel syndrome. However, she failed to provide a firm medical diagnosis or address how appellant's condition commencing August 2, 2005 or need for medical treatment was due to the accepted back sprains.

Appellant submitted reports from Dr. Rabin dated October 9, 2006 to August 14, 2007 who noted a history of injury on August 12, 2004 and subsequent medical treatment for low back pain. Dr. Rabin diagnosed cervical spine disc herniation, cervicalgia, lumbar disc degeneration and displacement, thoracic and lumbar spine pain and wrist carpal tunnel syndrome. He opined that the diagnosed annular tear and disc derangement was a direct result of the on-the-job accident. Dr. Rabin opined that appellant could return to work full time with restrictions. On August 18, 2008 he diagnosed subannular herniation with disc derangement in the lumbar and cervical spine. Dr. Rabin noted that appellant was asymptomatic prior to her injury and concluded the accident was the acute and proximate cause of injury. He indicated that the muscular sprains resolved. However, Dr. Rabin did not provide a fully-rationalized opinion explaining why her need for medical treatment as of August 2, 2005 related to the accepted work injury.¹⁰ He failed to explain how appellant had a spontaneous change in her medical condition due to her accepted injury without an intervening exposure to work factors. Additionally, Dr. Rabin failed to note any specific date of recurrences or address a particular change in the

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

⁹ It does not appear that appellant claimed any wage loss until November 7, 2007.

¹⁰ See *George Randolph Taylor*, *supra* note 7.

nature of her accepted physical conditions, arising from the employment injury that prevented her from performing her light-duty position.

The Board finds that appellant did not establish 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. The record does not establish that appellant's work exceeded her light-duty 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability on or after August 2, 2005 causally related to her accepted condition.

ORDER

IT IS HEREBY ORDERED THAT the November 3, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 22, 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