

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

The Office accepted that on December 5, 2002 appellant, then a 47-year-old full-time mail processor, sustained a lumbosacral strain while swiping the lower level of a machine and filling in trays at work. She returned to work as a modified full-time mail processor/clerk and received compensation for intermittent periods of temporary disability from December 20, 2002 through September 1, 2009.

On September 28, 2009 appellant filed a claim for wage-loss compensation for the period September 1 through 27, 2009. In a September 17, 2009 report, Dr. Axel Vargas, a Board-certified anesthesiologist, obtained a history of her December 5, 2002 employment injury, medical treatment and social and family background. He reported essentially normal findings on physical and neurological examination of her lumbosacral spine and lower extremities. Dr. Vargas diagnosed multilevel lumbosacral spondylosis, chronic lower back pain syndrome and discogenic left-sided L4-L5 radiculopathy. He recommended a magnetic resonance imaging (MRI) scan to confirm the diagnoses.

In disability certificates dated September 22 through October 22, 2009, Dr. Jacob Salomon, an attending surgeon, advised that appellant had lumbar disc spasms and radiculopathy. Appellant was unable to work from September 22 through November 10, 2009.

By letter dated October 29, 2009, the Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Hythem P. Shadid, a Board-certified orthopedic surgeon, for a second opinion medical examination. In a November 16, 2009 report, Dr. Shadid obtained a history of her December 5, 2002 employment injury and medical treatment. On physical examination, he reported essentially normal findings, noting some low back pain on the left side, but no radiating pain down the leg on straight leg raise testing in supine and sitting positions. Appellant complained about some pain around the lateral aspect of her hip that went down towards the lateral aspect of her ankle while standing. She had slightly depressed reflexes of both patellar tendons at 1+ that were symmetrical. Similar findings were noted at the Achilles tendon. Dr. Shadid diagnosed chronic low back pain with left-sided lumbar radiculopathy. He advised that appellant suffered from chronic mechanical low back pain with extensive degenerative changes that were age-related based on the physical examination findings and review of MRI scan results.

Dr. Shadid opined that none of appellant's existing conditions were medically connected to the December 5, 2002 employment injury. Appellant had fully recovered from the employment injury, noting that she returned to work without restrictions in the same month of the accepted injury. Dr. Shadid further stated that the accepted condition was a self-limited injury that resolved in six weeks by definition. He advised that appellant's current complaints were inconsistent with his objective findings. While appellant complained about pain radiating down her left leg, Dr. Shadid was unable to reproduce this symptom on examination. Dr. Shadid stated that electromyogram (EMG) findings of lumbar radiculopathy at L5 and S1 were attributable to her preexisting degenerative spine condition. Appellant reached maximum medical improvement on January 17, 2003 regarding the December 5, 2002 injury. Dr. Shadid found that she had no continuing residuals related to the accepted condition. No further medical treatment or work hardening program was necessary. Appellant could return to her regular work

duties with no restrictions. Dr. Shadid stated that her current restriction of sitting was more likely aggravating her condition. Appellant would benefit from walking rather than sitting. Dr. Shadid concluded that all of her current symptoms were related to her degenerative spine condition and not to her employment activities.

In a December 8, 2009 decision, the Office denied appellant's recurrence of disability claim for the period September 1 through 27, 2009. It found that the weight of the medical evidence was represented by the opinion of Dr. Shadid who found that her lumbosacral strain had resolved in 2003 with no disability or residuals due to her accepted injury.

On February 25, 2009 appellant requested reconsideration. In a January 25, 2010 report, Dr. Salomon advised that she had chronic lumbar disc disease. He noted that a January 7, 2010 EMG study showed some worsening of appellant's left peroneal nerve condition with no response to stimulation of the superficial peroneal nerve which could be suggestive of lumbar radiculopathy at L4-L5. Dr. Salomon further noted that she had a good response of the peroneal nerve on prior EMGs and concluded that there was a worsening of her neurological condition secondary to her lumbar disc disease. He stated that the worsening of appellant's back condition was related both "to stress on the disc caused by workplace natural progression of her arthritis of the spine." Dr. Salomon advised that her refusal to undergo epidural injections or to be evaluated by a neurosurgeon caused her to be prone to experience numerous recurrences, particularly by twisting and bending at work which he had restricted. He concluded that appellant will experience frequent exacerbations which may occur one to two times per month resulting in two to three days of disability per episode.

In a March 15, 2010 decision, the Office denied modification of the December 8, 2009 decision. The medical evidence submitted failed to establish that appellant sustained a recurrence of disability from September 1 through 27, 2009 causally related to her December 5, 2002 employment injury.

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.² This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.³

When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record

² 20 C.F.R. § 10.5(x).

³ *Id.*

establishes that she can perform the limited-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 limited-duty work. 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 limited-duty job requirements.⁴

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.⁵

ANALYSIS

The Office accepted that appellant sustained a lumbosacral strain on December 5, 2002. Following injury, appellant returned to limited light-duty work. She claimed a recurrence of total disability from September 1 through 27, 2009 causally related to her accepted employment injury. Appellant must demonstrate either that her condition has changed such that she could not perform the activities required by her modified job or that the requirements of the limited light-duty jobs changed. The Board finds that the record contains no evidence that the limited light-duty job requirements were changed or withdrawn or that appellant's employment-related condition has changed such that it precluded her from performing limited light-duty work.

In support of her claim, appellant submitted Dr. Vargas' September 17, 2009 report which listed essentially normal findings on physical and neurological examination. Dr. Vargas found that she had multilevel lumbosacral spondylosis, chronic lower back pain syndrome and discogenic left-sided L4-L5 radiculopathy, but recommended an MRI scan to confirm his diagnoses. He failed to confirm the diagnoses by testing or address how appellant's condition was due to the accepted injury and resulted in total disability during the claimed period. The Board finds that Dr. Vargas' report is insufficient to establish that her disability for work from September 1 through 27, 2009 was causally related to the December 5, 2002 employment injury.

Dr. Salomon's disability certificates found that appellant had lumbar disc spasms and radiculopathy and was totally disabled for work from September 22 through November 10, 2009. He did not address whether her disability was causally related to the December 5, 2002 employment injury. The Board finds that Dr. Salomon's reports are insufficient to establish that appellant's disability for work from September 1 through 27, 2009 was causally related to the accepted employment injury.

The Office subsequently referred appellant for a second opinion examination with Dr. Shadid, who opined that appellant's accepted condition of lumbosacral strain resolved and that she reached maximum medical improvement on January 17, 2003, could return to her regular work duties without restrictions and did not require any further medical treatment or enrollment in a work hardening program. Dr. Shadid reported essentially normal findings on

⁴ *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁵ *James H. Botts*, 50 ECAB 265 (1999).

physical examination with some low back pain on the left side, but no radiating pain down the leg on straight leg raise testing in supine and sitting positions. He advised that appellant had complaints of some pain around the lateral aspect of her hip that went down towards the lateral aspect of her ankle while standing. Dr. Shadid diagnosed chronic low back pain with left-sided lumbar radiculopathy and advised that the diagnosed condition was age-related based on his physical examination findings and review of MRI scan results. He stated that appellant's existing conditions were attributable to her degenerative spine condition rather than her accepted condition, which resolves within six weeks by definition. Dr. Shadid advised that her current complaints of pain radiating down to her left leg were inconsistent with his objective findings as they could not be reproduced on his examination. He stated that the EMG findings of lumbar radiculopathy at L5 and S1 were attributable to appellant's preexisting degenerative spine condition.

The Board finds that the Office properly relied on Dr. Shadid's referral opinion to deny compensation based on a recurrence of appellant's work-related lumbosacral strain. The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁶ Dr. Shadid fully discussed the history of injury and related his comprehensive examination findings in support of his opinion that appellant had no residuals or disability causally related to her accepted lumbosacral strain.

Following the December 8, 2009 decision, appellant submitted a January 25, 2010 report from Dr. Salomon who found that her chronic lumbar disc disease had worsened based on the results of a January 7, 2010 EMG study. He opined that she would continue to experience frequent exacerbations which may occur one to two times per month resulting in two to three days of disability per episode based on her refusal to undergo steroid injections or evaluation by a neurologist and twisting and bending at work. Dr. Salomon failed to identify a specific date for a recurrence of disability or 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 from September 1 through 27, 2009. The Board notes that the Office has not accepted appellant's claim for lumbar disc disease. For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove such relationship.⁷ Dr. Salomon's medical report does not adequately explain how appellant's condition was caused or related to the December 5, 2002 injury. Moreover, his general caution against her return to work is prophylactic in nature. The Board has held that fear of future injury is not compensable under the Act.⁸ The Board finds that Dr. Salomon's report is insufficient to overcome the weight accorded to Dr. Shadid's referral opinion. The Board finds, therefore, that the Office properly denied appellant's request to modify the December 8, 2009 decision denying compensation for an alleged recurrence of disability from September 1 through 27, 2009.

⁶ See *Ann C. Leanza*, 48 ECAB 115 (1996).

⁷ *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁸ *I.J.*, 59 ECAB 408 (2008).

Appellant's contention on appeal that Dr. Shadid's medical opinion is not sufficient to establish that she did not sustain a recurrence of disability from September 1 through 27, 2009 causally related to her December 5, 2002 employment injury has not been established. Dr. Shadid whose rationalized opinion is entitled to determinative weight found no objective evidence to support a finding that appellant had any continuing residuals of her employment-related lumbar condition rendering her incapable of working. He also found that she did not require further medical treatment as her employment-related condition had reached maximum medical improvement. The Board finds that appellant's argument on appeal is insufficient to establish that she sustained a recurrence of disability during the claimed period causally related to her accepted injury.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a recurrence of total disability from September 1 through 27, 2009 causally related to her December 5, 2002 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2010 and December 8, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 21, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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