U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDITH TAYLOR and U.S. POSTAL SERVICE,
POST OFFICE, Clifton Park, N.Y.

Docket No. 96-2077; Submitted on the Record;
Issued April 6, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained a recurrence of disability on March 9, 1995; and (2) whether the Office of Workers' Compensation Programs properly terminated her medical benefits.

On September 9, 1994 appellant, then a 35-year-old rural carrier associate, filed a claim, alleging that she injured her back, neck and shoulder when her employing establishment vehicle was hit from behind. After developing the factual evidence, the Office accepted the claim for cervical and dorsal sprains. Appellant received appropriate continuation of pay and compensation and returned to limited duty on February 21, 1995,[1] with restrictions based on a February 10, 1995 work capacity evaluation in which Dr. R. Maxwell Alley, her treating Board-certified orthopedic surgeon, advised that she could work four to six hours per day with physical restrictions including not lifting greater than ten pounds. She stopped work on March 9, 1995, and on March 13, 1995 filed a recurrence claim, indicating that the date of recurrence was February 21, 1995 and, in describing the circumstances of the recurrence of disability, stated that the pain had not stopped from the date of injury and that she had hoped working would make her feel better but that it made her worse. Appellant also requested a change in physicians because Dr. Alley "is not helping." By letter dated March 24, 1995, the Office informed appellant of the type evidence needed to support her claim.

[1] The limited-duty assignment, signed by appellant on February 21, 1995, indicated that she was to deliver express mail, answer the telephone, and verify undeliverable mail and case mail as tolerated. Lifting restrictions were placed at 10 pounds.

The employing establishment provided an April 17, 1995 statement that described appellant's limited-duty assignment as "indoor carrier duties" involving verifying unknown bulk business mail (UBBM) that was described as follows:

> "This task involves determining if the business mail is deliverable to the addressee. If deliverable, the envelope is returned to the appropriate carrier. If not, the envelope is discarded. This task can be performed in either a sitting or standing position, and only letter size envelopes are verified. She was also assigned clerical duties … to sit at a desk and answer telephone calls."

In a statement received by the Office on April 20, 1995, appellant indicated that she returned to limited duty on February 21, 1995 "with no lifting over 10 pounds and intermittent activities," stating:

> "I was put to work doing mark-ups for about three hours and UBBM for the rest of the day. The tubs of mail were between 30 [to] 40 pounds. I never did feel any better. The pain was still there from the day I started back to work. Working only made it much worse."

The relevant medical evidence includes a December 13, 1994 magnetic resonance imaging (MRI) of the thoracic spine that was reported as normal. In a February 24, 1995 treatment note, Dr. Alley advised that appellant had returned to limited duty and was "tolerating this." He noted findings of pain in the left paraspinal midscapular region and encouraged appellant to continue to work, noting that she wished to work an eight-hour limited-duty schedule. By report dated March 31, 1995, Dr. Peter Randall, a chiropractor, noted findings of neck, midback, midsternal and bilateral rib pain and left hand numbness due to the September 8, 1994 employment injury. He diagnosed marked cervical and thoracic strain/sprain, subluxation at C3-5, cervical hypolordosis, cervicalgia, thoracalgia, brachial neuralgia and myofasciitis and advised that appellant was totally disabled. In an attending physician's report dated April 6, 1995, Dr. Steven Balsamo, an osteopathic physician who is Board-certified in family practice, noted findings of pain and neuropathy, diagnosed cervical and thoracic strains, checked the "yes" box indicating that this was due to the September 8, 1994 employment injury and advised that appellant could not work. In a duty status report also dated April 6, 1995, Dr. Balsamo provided restrictions to appellant's activity and stated her prognosis was guarded. In reports dated April 7, 1995, Dr. Alley noted that appellant had to stop work because of pain. Examination revealed areas of tenderness along both medial scapulas. He diagnosed cervicothoracic strain, checked the "yes" box indicating that it was due to the September 8, 1994 work injury and advised that she could not work. In an April 20, 1995 report, Dr. Randall advised that some permanent residual was expected and that appellant's prognosis was guarded. Drs. Balsamo and Randall continued to submit reports in which they repeated their prior findings and conclusions.

By decision dated June 14, 1995, the Office denied appellant's recurrence claim on the grounds that the medical evidence did not demonstrate a causal relationship between the employment injury and the claimed condition. The Office also terminated her medical benefits.

On July 25, 1995 appellant, through counsel, requested reconsideration and submitted additional evidence. Relevant medical evidence included a March 27, 1995 x-ray that demonstrated aberrant osseous alignment at C3-5 and L2, and degenerative disc and joint disease in the cervical and thoracic spines. In a July 19, 1995 report, Dr. Balsamo advised that he had been treating appellant since March 10, 1995 for diagnoses of chronic sprain/strain of the cervical and thoracic area with resulting lumbar dysfunction. He noted that rheumatological evaluation was negative, opined that she had developed fibromyalgia and concluded:

> "It is my opinion that [appellant's] injuries are causally related to her accident on September 8, 1994. [She] is totally disabled and unable to work at this time."

An MRI of the cervical spine on July 5, 1995 demonstrated loss of the normal cervical lordosis and straightening of the cervical spine with mild posterocentral disc bulge at the C5-6 level. A July 5, 1995 MRI of the thoracic spine was unremarkable.

By decision dated August 16, 1995, the Office denied modification of the prior decision. In the attached memorandum, the Office noted that neither Dr. Balsamo's reports nor objective findings demonstrated a worsening of appellant's condition, and that Dr. Balsamo did not indicate why appellant was unable to perform her light-duty assignment.

On February 5, 1996 appellant, through counsel, requested reconsideration, contending that the fibromyalgia was a consequential injury of the September 8, 1994 employment injury, that her light-duty assignment required that she lift tubs of mail weighing 30 to 40 pounds, which was not within the limitations set forth by her physician, and that Office procedures required that the recurrence claim be accepted because it was filed within 90 days of her return to work.

Relevant medical evidence submitted subsequent to the August 16, 1995 Office decision includes a March 10, 1995 attending physician's report in which Dr. Balsamo noted that appellant was status post a motor vehicle accident six months previously. He diagnosed chronic pain/sprain and "?" neuropathy, and advised that appellant was totally disabled. In an August 17, 1995 report, he noted that she was entering a fibrositis treatment program.

Dr. Kenneth L. Shapiro, a Board-certified physiatrist, provided an October 24, 1995 report in which he reported a history of an employment-related motor vehicle accident in September 1994 and noted findings on examination of 50 percent lateral lean in the lower lumbar segments and 50 percent lateral lean to the left and right in the upper neck and back region. He diagnosed spinal mechanical dysfunction with deformities in both the scapulocostal and pelvic regions and recommended physical therapy and an active exercise program. In a December 11, 1995 report, Dr. Shapiro noted some improvement with strength and range of motion.

In an undated report that was faxed on November 16, 1995, Dr. Randall repeated his previous findings and conclusions and advised that appellant had developed chronic fibromyalgia and was totally disabled. He noted that, while appellant's condition was unchanged, his treatments provided her with temporary relief and anticipated a 25 percent improvement over time, opining that maximum medical improvement would occur on or about March 31, 1996. He stated that there was a direct causal relationship between her injury and

symptomatology and the September 8, 1994 employment injury, noting that there was no history of other accidents or traumas.

In a report dated December 13, 1995, Dr. Balsamo discussed his previous findings and conclusions and advised that, while he could not say that the employment injury caused her fibromyalgia, he felt that it definitely played a role. He noted that she was undergoing chiropractic and massage therapy and had completed a fibromyalgia program. Examination on December 12, 1995 revealed cervical, thoracic and lumbar spasm, which he felt would be chronic. Dr. Balsamo concluded:

> "I do feel [appellant's] condition is causally related to her motor vehicle accident, which occurred [in] September of 1994. I also feel that the fact that she had returned to … partial duty prior to seeing me, which was supposed to be lifting less than ten pounds and apparently doing work much stronger than this, contributed to the worsening of her condition…. Currently, [appellant] will remain permanently disabled with a diagnosis of cervical, thoracic and lumbar strain, fibromyalgia and depression, all secondary to a motor vehicle accident on the job on September 8, 1994 with aggravation from returning to work on a light duty position prior to seeing me on March 10, 1995."

In a merit decision dated May 9, 1996,[2] the Office denied the claim, finding the evidence submitted in support of the request for reconsideration insufficient to warrant modification. In the attached memorandum, the Office noted that appellant did not indicate that her light-duty position required that she lift tubs of mail in excess of her physician's weight restriction on the recurrence claim form and supporting statements; rather, she indicated that she stopped work due to pain, and a review of the medical reports contemporaneous to the recurrence claim did not discuss excessive lifting. The Office further noted that Office procedures did not require that appellant's recurrence claim be accepted because it was filed within 90 days of her return to work, and that the medical evidence did not demonstrate that appellant's fibromyalgia was employment related.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or 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 he or she cannot perform such light duty. As part of this burden, the employee must show either 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]

[2] The record also contains a May 10, 1996 decision in which the Office approved an attorney fee request. This decision has not been appealed to the Board.

[3] *Gus N. Rodes*, 46 ECAB 518 (1995); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is a causal relationship between his or her claimed condition and employment.[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] Moreover, neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[7]

Initially, the Board notes that, contrary to appellant's contention, Office procedures do not require that a recurrence be accepted if filed within 90 days of an employee's return to work. In such a case as this, the focus is on disability rather than the causal relationship, and an employee must submit a narrative statement from the attending physician which describes the duties which the employee cannot perform and the demonstrated objective medical findings that form the basis for renewed disability for work.[8]

Appellant is also contending that when she returned to limited duty on February 21, 1995, the position required that she lift tubs of mail substantially heavier than the restrictions placed on her by Dr. Alley, her treating physician at that time. There is, however, nothing in the record to support this contention which was made eleven months after her recurrence claim was filed. The limited-duty job description signed by appellant on February 21, 1995 indicates that lifting will be restricted to ten pounds. She did not allege that the limited-duty requirements had changed when she filed her recurrence claim. The statement she submitted a month later merely indicated that she had to process undeliverable mail that was in tubs weighing 30 to 40 pounds, not that she had to lift the tubs. The employing establishment submitted an April 17, 1995 statement, indicating that her limited duty required that she handle letter-size mail only and perform clerical duties. Appellant, therefore, failed to substantiate a change in the nature of her limited-duty position.[9]

Furthermore, appellant failed to establish a change in the nature of her injury-related condition. While she submitted a substantial amount of medical evidence in support of her

[4] *Donald W. Long*, 41 ECAB 142 (1989).

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

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

[7] *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (182).

[8] The Federal (FECA) Procedural Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1506(a), (b) (January 1995).

[9] *Terry A. Hedman*, *supra* note 3.

claim, none of the evidence established that she sustained a recurrence of disability due to the September 8, 1994 employment injury or that she was unable to perform the tasks required in her light-duty position. Dr. Shapiro's reports do not contain an opinion on the cause of appellant's condition and are, therefore, of limited probative value.[10] While Dr. Randall advised that there was a direct causal relationship between appellant's condition and the September 8, 1994 employment injury because there was no history of other accidents or traumas, the fact that a condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between a claimed condition and employment factors. Drs. Alley, Balsamo and Randall provided form reports in which they checked the "yes" box on Office form reports. However, when a physician's opinion on causal relationship consists only of checking "yes" to a form question, such opinion has little probative value and is insufficient to establish causal relationship.[11] Furthermore, Dr. Balsamo's December 13, 1995 report is of diminished probative value as he described a history of injury that included excessive lifting and couched his opinion in somewhat equivocal terms.[12] None of the physicians described the specific employment factors which exacerbated appellant's condition so that she could not perform her limited-duty position. Finally, the Board notes that the Office has not accepted that appellant's fibromyalgia is employment related. To show that this is a consequence of the accepted cervical and dorsal strains,[13] appellant must submit rationalized medical evidence.[14] As discussed above, the medical evidence in this case is of diminished probative value. Appellant has therefore not submitted rationalized medical evidence explaining how and why her condition on and after February 21, 1995 was related to or a consequence of the September 8, 1994 employment injury and has thus not met her burden of proof in establishing that she sustained a recurrence of total disability beginning March 9, 1995.

The Board further finds that the Office has not met its burden of proof in terminating medical benefits for appellant's work-related condition.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.[15]

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[10] *See Linda I. Sprague*, 48 ECAB ____ (Docket No. 94-2503, issued March 7, 1997).

[11] *See Ruth S. Johnson*, 46 ECAB 237 (1994).

[12] *See Patricia M. Mitchell*, 48 ECAB ____ (Docket No. 95-834, issued February 27, 1997).

[13] It is an accepted principle of workers' compensation law, and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct. The subsequent injury "is compensable if it is the direct and natural result of a compensable injury." *See Marline K. Cannon*, 46 ECAB 581 (1995).

[14] *See Sandra Dixon-Mills*, 44 ECAB 882 (1993).

[15] *Pedro Beltran*, 44 ECAB 222 (1992); *Mary E. Jones*, 40 ECAB 1125 (1989).

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[16]

On November 19, 1994 the Office determined that appellant had sustained employment-related cervical and dorsal sprains on September 8, 1994 and, in a June 14, 1995 decision, terminated appellant's authorization for medical treatment. The Office, however, did not establish that appellant no longer had residuals of the employment-related condition. While she returned to limited duty on February 21, 1995, she was still under the care of Dr. Alley who, in reports dated February 24 and April 7, 1995 noted findings on examination, as did Drs. Balsamo and Randall. Therefore, the medical evidence did not establish that all residuals of the September 8, 1994 work injury had resolved by June 14, 1995, the date the Office terminated appellant's medical benefits. The Office, therefore, did not meet its burden of proof in terminating appellant's medical benefits for residuals of her work-related injury.

The decisions of the Office of Workers' Compensation Programs dated May 9, 1996 and August 16, 1995 are affirmed insofar as they determined that appellant had not established a recurrence of disability on February 21, 1995. Insofar as the decisions terminated appellant's authorization for medical benefits under the Federal Employees' Compensation Act, they are reversed.

Dated, Washington, D.C.
April 6, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[16] *Frederick Justiniano*, 45 ECAB 491 (1994); *see Marlene G. Owens*, 39 ECAB 1320 (1988); *Calvin S. Mays*, 39 ECAB 993 (1988).