

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LATREND A JOHNSON and U.S. POSTAL SERVICE,
POST OFFICE, Coppell, Tex.

*Docket No. 96-1518; Submitted on the Record;
Issued January 23, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained a recurrence of disability on April 11, 1995 causally related to her April 28, 1994 employment injury.

The Board has duly reviewed the case record and concludes that this case is not in posture for decision.

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.¹

Causal relationship is a medical issue,² 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.³ Moreover, neither the

¹ *Gus N. Rodes*, 46 ECAB ____ (Docket No. 93-950, issued February 14, 1995); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

² *Mary J. Briggs*, 37 ECAB 578 (1986).

³ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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.⁴

In the present case, on April 28, 1994 appellant, then a 30-year-old mailhandler, sustained an employment-related cervical sprain. She stopped work that day, received appropriate continuation of pay and compensation and returned to work on November 1, 1994 in a modified mailhandler position with restrictions provided by Dr. Damian D. Garcia, her treating Board-certified family practitioner, that she could lift 20 pounds to waist level, lift 15 pounds overhead, push and pull 30 pounds. By decision dated January 5, 1995, the Office of Workers' Compensation Programs found that appellant's modified position fairly and reasonably represented her wage-earning capacity.⁵ On April 20, 1995 appellant, filed a recurrence claim. She provided no details of the injury other than stating "because it is the same left shoulder and neck injury that I had hurt in April of [19]94." She stated that she had not been under medical treatment since her return to work. An employing establishment supervisor stated that on April 11, 1995 appellant told him that she might have reinjured her neck and shoulder from picking up loose letters and magazines. He stated, "I asked her how she had injured herself and [she] could not describe it." He indicated that she was pregnant and had no sick leave.

On May 3, 1995 the Office requested that appellant furnish information to support her claim, to include a medical report in which her physician described why her condition had worsened so that she could not perform her modified position. In a May 16, 1995 report, Dr. Garcia, stated:

"This is to confirm that [appellant] has been under my care from April 29, 1994 for an injury related to a fall onto her shoulder at work on April 25, 1994. She underwent work hardening and returned to work in fall of 1994. She returned to me on April 12, 1995 with worsening of her pain but no specific trauma.

"On exam[ination] she does have increased tightness and spasm consistent with cervical fibromyalgia."

By decision dated June 9, 1995, the Office denied the claim on the grounds that the medical evidence failed to demonstrate a causal relationship between the employment injury and the claimed condition. Appellant timely requested reconsideration and submitted physical therapy notes and a June 13, 1995 report in which Dr. Garcia stated that on April 12, 1995 appellant's condition had "materially worsened with her pain." He again noted that no specific trauma had occurred, but that she was advised not to return to work because of increasing pain and limited treatment options due to pregnancy and concluded that "her recurrent symptoms were incompatible with work." In a July 13, 1995 decision, the Office denied appellant's request, finding the evidence submitted in support of her request insufficient to warrant merit review.

⁴ *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

⁵ An Office worksheet indicates that appellant had no loss in wage-earning capacity.

On July 20, 1995 appellant, requested reconsideration and submitted a July 20, 1995 report in which Dr. Garcia stated that it was “outrageous and self serving” to interpret his prior reports to indicate that he had taken appellant off work due to pregnancy which was “incidental only” and related to treatment options not to disability. He stated that she was advised not to return to work due to pain. In a merit decision dated July 31, 1995, the Office again denied the claim, finding that, as Dr. Garcia failed to describe the objective findings that convinced him that appellant’s condition had worsened and failed explain why appellant could no longer perform her modified work duties, his opinion was insufficient to warrant modification of the prior decision.

Appellant timely requested reconsideration and submitted an August 20, 1995 report in which Dr. Garcia diagnosed cervical sprain/strain with local fibromyalgia and noted that appellant had recurrent pain, tenderness and spasm of the bilateral suboccipital, bilateral upper trapezius and thoracic paraspinals with decreased cervical range of motion. He stated that a light-duty mailhandler position “would include lifting/carrying no more than 20 pounds at a time with frequent lifting/carrying up to 10 pounds” and “would require use of arms and hands to grasp, hold and turn objects and turning, flexing, and extending the neck.” He concluded by stating, “through apparent repetitive strain [appellant] began to materially worsen and due to limitations of therapy brought on by pregnancy and financial reasons has not been able to recovery sufficiently to return to work again.”

By decision dated November 22, 1995 and finalized November 27, 1995, the Office denied appellant’s request, finding Dr. Garcia’s August 20, 1995 report repetitious and insufficient to warrant merit review. On March 27, 1996 appellant requested reconsideration and submitted reports from Dr. Garcia and Dr. Barbara L. Slee, a Board-certified family practitioner.

In a March 14, 1996 report, Dr. Slee stated that appellant gave a history of employment injury in April 1994 and, following exacerbation of pain in her neck and left shoulder, she was unable to work beginning in April 1995. Dr. Slee diagnosed myofascial syndrome of the neck and shoulder and indicated that appellant had not returned to work. Examination on January 8, 1996 revealed tenderness to palpation of the paracervical muscles, particularly on the left, and tenderness with trigger points in the trapezius muscle on the left with full range of motion of the neck and shoulders with normal strength and reflexes. She was seen again on February 9, and 20 1996. Dr. Slee stated, “I reviewed with [appellant] the chronic ongoing nature of myofascial syndrome but reassured her it does not lead to disability” and advised her to return to work with continued medical and exercises to control her symptoms. In a March 18, 1996 report, Dr. Garcia stated that appellant was released to return to work on January 2, 1996 with restrictions.

By decision dated April 16, 1996, the Office denied the claim on the grounds that the evidence submitted in support of the application was insufficient to warrant modification of the prior decision. In the attached memorandum, the Office noted that myofascial syndrome was not an accepted condition and noted that Dr. Garcia did not explain with adequate rationale the changes in appellant’s condition and how it had worsened to the extent that she could not perform her modified position.

In the present case, the Office accepted that appellant sustained a cervical sprain. At the time of the claimed recurrence, she was working in a modified mailhandler position. There is no evidence in the record to indicate that her modified position had changed. Appellant, however, submitted reports from her treating Board-certified family practitioner, Dr. Damian D. Garcia, who indicated that her chronic neck pain was due to the April 28, 1994 employment injury and, in an August 20, 1995 report stated that on April 14, 1995 she exhibited decreased cervical range of motion and provided a description of the physical restrictions of appellant's modified mailhandler position. While Dr. Garcia's reports lack detailed medical rationale sufficient to discharge appellant's burden of proof to establish by the weight of reliable, substantial and probative evidence that she sustained a recurrence of disability on April 11, 1995 causally related to the April 28, 1994 employment injury, the Board finds that this does not mean that they may be completely disregarded by the Office. It merely means that their probative value is diminished.⁶ Under such circumstances, the reports, especially that of August 20, 1995, are sufficient to require further development of the record, especially given the absence of any opposing medical evidence.⁷ Office procedures indicate that the Office must advise a claimant of the defects in his or her claim,⁸ and, if the medical evidence establishes disability, the Office should further develop the claim.⁹ It is well established that proceedings under the Federal Employees' Compensation Act¹⁰ are not adversarial in nature,¹¹ and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹² Only in rare instances where the evidence indicates that no additional information could possibly overcome one or more defects in the claim is it proper for the Office to deny a case without further development.¹³ The Board finds that Dr. Garcia's reports, taken as a whole, are sufficiently supportive of appellant's claim to warrant further development of the evidence.¹⁴ After such further development as is deemed necessary, the Office shall issue a *de novo* decision.

⁶ See *Delores C. Ellyet*, 41 ECAB 992 (1990).

⁷ *John J. Carlone*, 41 ECAB 354 (1989).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Occupational Illness*, Chapter 2.806.4 (October 1995).

⁹ *Id.*

¹⁰ 5 U.S.C. § 8101 *et seq.*

¹¹ See, e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

¹² See *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3 (April 1993).

¹⁴ See *John J. Carlone*, *supra* note 7.

The decisions of the Office of Workers' Compensation Programs dated April 16, 1996, November 27, July 31, July 13 and June 9, 1995 are hereby set aside and the case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, D.C.
January 23, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member