U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GRACE BATTS-JOHNSON and DEPARTMENT OF THE ARMY, HQ US ARMY QUARTERMASTER CENTER & FORT LEE, Fort Lee, Va.

Docket No. 96-1359; Submitted on the Record;
Issued September 11, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON, WILLIE T.C. THOMAS

The issue is whether appellant met her burden of proof in establishing that she sustained a recurrence of disability due to her November 30, 1989 accepted employment injury.

On November 30, 1989 appellant, then a 29-year-old voucher examiner, injured her neck and back when she slipped and fell in the course of her employment duties. She stopped work on that day and returned to limited-duty work as a modified military pay technician on May 11, 1992. The Office of Workers' Compensation Programs accepted the claim for cervical and lumbosacral strains and later expanded the acceptance to include episode depression.

On May 5, 1995 appellant filed a notice of recurrence of disability. Appellant stated on her claim form that she first received medical treatment following the recurrence on March 31, 1995 and that she subsequently stopped work on April 14, 1995.

In a September 21, 1995 decision, the Office denied appellant's claim, finding that the medical evidence was insufficient to establish that the recurrence of disability beginning on April 14, 1995 was causally related to the accepted employment injury.

On October 19, 1995 appellant requested reconsideration of he Office's September 21, 1995 decision and submitted additional medical evidence in support of her claim.

In a merit decision dated January 25, 1996, the Office determined that the evidence submitted in support of appellant's request for reconsideration was insufficient to warrant modification of the prior decision.

The Board has duly reviewed the case record in the present appeal and finds that the Office properly determined that appellant did not meet her burden of proof in establishing that she sustained a recurrence of disability due to her November 30, 1989 employment injury beginning April 14, 1995.

The Office's procedure manual defines a recurrence of disability as "a spontaneous material change, demonstrated by objective findings, in the medical condition which resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness."[1]

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 establishes that the employee 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 to show that he or 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 job requirements.[2]

Appellant has not shown a change in the nature and extent of her injury-related condition nor has she shown a change in the nature and extent of the light-duty job requirements. Appellant has submitted medical reports from her treating physicians, Drs. Poovillam S. Subramaniam, Barbara Niklaus-Scheuren and Edward R. Isaacs. However, these reports are insufficient to establish that appellant sustained a recurrence of disability beginning April 14, 1995 that was due to her November 30, 1989 employment injury. In a May 3, 1995 report, Dr. Niklaus-Scheuren, a chiropractor, noted that appellant had first presented for treatment on March 31, 1995, complaining of neck, shoulder and back pain. Following her physical examination of appellant, the physician concluded that appellant showed signs of fibromyalgia/fibrositis syndrome, a condition which is "often" induced by a traumatic event and was "most likely" related to appellant's November 30, 1989 employment injury. This report is insufficient to establish appellant's claim because Dr. Niklaus-Scheuren only provided speculative [3] and unrationalized [4] support for causal relationship. In a narrative report dated September 18, 1995, Dr. Subramaniam, a Board-certified psychiatrist and neurologist, diagnosed "possible" myofascial pain syndrome, cervical and lumbosacral spondylosis causing or contributing to the myofascial pain syndrome and peripheral neuropathy. The physician added that the degree of appellant's spondylosis was normal for her age and that her peripheral neuropathy was due to her diabetes mellitus. In a letter dated September 21, 1995, Dr. Subramaniam clarified his earlier findings regarding appellant's condition, stating:

> "As I discussed in my medical report, her present symptoms are mostly related to degenerative arthritis of the cervical and lumbosacral spine and peripheral neuropathy due to diabetes mellitus. At this point, I am not quite sure whether

[1] Federal (FECA) Procedure, Part 2 -- Claims, *Recurrences,* Chapter 2.1500.3(b)(1)(a).

[2] *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[3] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value).

[4] *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).

her myofascial pain syndrome is related to her original injury as she was essentially asymptomatic requiring no treatment for the past several years."

Dr. Subramaniam indicated in his reports that appellant's diagnosed peripheral neuropathy and cervical and lumbosacral spondylosis were unrelated to her November 30, 1989 employment injury, but rather were related to the normal aging process and to her diabetes mellitus. In addition, in his follow-up letter he explicitly stated that he was "not quite sure" whether appellant's "possible" myofascial pain was related to her accepted employment injury. Therefore, his reports are insufficient to establish the requisite causal relationship between appellant's' current condition and her accepted November 30, 1989 employment injury.[5] Finally, the record contains the October 5, 1995 report of Dr. Isaacs, a Board-certified psychiatrist and neurologist, who had treated appellant since April 10, 1990. Dr. Isaacs diagnosed myofascial pain syndrome as a direct consequence of appellant's November 30, 1989, accepted injury, which he determined had never resolved. Dr. Isaacs further indicated that he based his conclusion as to the causal relationship between appellant's original injury and her current condition in large part on the "continuity of pain and discomfort" described by appellant. A review of the record reveals, however, that prior to his October 5, 1995 examination, Dr. Isaacs had not seen appellant since May 14, 1992, three days after her return to work following her original injury. This lack of bridging symptoms reduces the probative value of Dr. Isaacs report.[6] On June 1 and August 28, 1995 the Office advised appellant of the type of medical evidence needed to establish her claim for a recurrence of disability but appellant has not submitted sufficient medical evidence to establish a change in the nature and extent of her injury-related condition. Furthermore, appellant has not alleged, and the evidence does not show, that there has been a change in the nature and extent of her light-duty job requirements.

For these reasons, appellant has not met her burden of proof in establishing that she sustained a recurrence of disability beginning on April 14, 1995.[7]

[5] *Supra* note 3.

[6] For discussions of the importance of bridging symptoms, *see Robert H. St. Onge*, 43 ECAB 1169 (1992); *Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Leslie S. Pope*, 37 ECAB 798 (1986); *Richard McBride*, 37 ECAB 748 (1986).

[7] The Board notes that subsequent to the January 21, 1996 decision of the Office, the Office determined that the medical evidence of record, while insufficient to establish a claim for recurrence of disability, was sufficient to establish that appellant sustained a new injury on March 31, 1995, the day she participated in the office move and first felt the return of incapacitating pain. On April 5, 1996 the Office accepted appellant's claim for an aggravation of her preexisting cervical and lumbosacral strains. At the time of appellant's appeal, however, the Office was in the process of developing the medical evidence with respect to this new injury, and had not yet issued a final decision.

The January 25, 1996 and September 21, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
September 11, 1998

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member