U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KEISHA C. FISHER and U.S. POSTAL SERVICE,
POST OFFICE, Los Angeles, Calif.

Docket No. 97-551; Submitted on the Record;
Issued January 13, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained a recurrence of disability on or after February 7, 1994 causally related to her February 2, 1994 employment injury; and (2) whether appellant incurred medical expenses reimbursable by the Office of Workers' Compensation Programs subsequent to February 7, 1994.

On February 2, 1994 appellant filed a claim for a traumatic injury occurring on that date when she was in a motor vehicle accident. The Office accepted appellant's claim for lumbosacral strain.

In an employing establishment form report dated February 2, 1994, the employing establishment authorized appellant's treatment by the Centinela Hospital Airport Medical Clinic. On form reports, a physician diagnosed lumbosacral strain, listed employment restrictions and related that appellant should perform restricted work until February 4, 1994, the date of her next visit.

On February 3, 1994 the employing establishment placed appellant in a limited-duty position until February 7, 1994.

In a report dated February 3, 1994, a physician with the Centinela Airport Medical Clinic diagnosed thoracolumbar strain/sprain and scoliosis and found that appellant should perform restricted work until her next scheduled visit of February 7, 1994.

In a report dated February 7, 1994, physician with the Centinela Airport Medical Clinic referred appellant to physical therapy and found that she should perform restricted work until her next scheduled visit on February 11, 1994.

By letter dated February 11, 1994, the Centinela Hospital Airport Medical Clinic informed the employing establishment that appellant had not returned for her scheduled appointment.

In an authorization for examination and/or treatment (Form CA-16) dated February 24, 1994 and based on a February 2, 1994 examination, a physician with Centinela Hospital Airport Medical Clinic diagnosed back pain and lumbosacral strain and related that appellant could perform light work as of the date of injury with no repetitive bending or climbing.

Dr. Geoffrey M. Miller, a Board-certified orthopedic surgeon, conducted a fitness-for-duty examination on behalf of the employing establishment on March 23, 1994. In a report dated April 6, 1994, Dr. Miller noted that appellant currently worked limited duty, discussed her complaints of continued pain and diagnosed chronic lumbosacral strain secondary to the motor vehicle accident. He further noted that x-rays of appellant's lumbar spine revealed idiopathic scoliosis preexisting the motor vehicle accident. Dr. Miller found that appellant could perform her usual employment duties, that she required no further medical treatment, and further opined that her subjective complaints should cease by May 2, 1994.

In a discharge report dated May 31, 1994, Dr. Edwin Gromis, an orthopedic surgeon, related that his associate, Dr. Bruce Bell, a chiropractor, initially treated appellant on February 9, 1994 for injuries she sustained in a February 2, 1994 motor vehicle accident. Dr. Bell related that, in the initial examination, he diagnosed a musculoligamentous strain of the lumbosacral spine and noted that an x-ray revealed scoliosis of the thoracolumbar spine. Dr. Gromis noted that Dr. Bell had examined appellant on February 9, 1994 and found that she was totally disabled for two weeks. Dr. Gromis stated that he examined appellant on March 1 and 15, April 19 and May 3, 1994 and found that she could perform limited-duty employment. He found that based on his May 31, 1994 evaluation, appellant's "symptoms from the vehicular accident of February 2, 1994 had resolved" and discharged her from treatment.

In a supplemental medical report dated December 26, 1995, Dr. Gromis related that appellant returned on that date with complaints of intermittent back pain. He listed findings of tenderness on evaluation at L3 to S2, recommended a magnetic resonance imaging (MRI) scan and opined that appellant might need extensive further medical care, including possibly surgery.

On March 26, 1996 appellant filed a notice of recurrence of disability due to her accepted employment injury. Appellant related that following her injury she worked restricted duties but her lower back did not effectively improve and she required treatment from Dr. Gromis through the present time. On the reverse side of the claim form, appellant's supervisor indicated that following the injury the employing establishment placed appellant on limited duty.

By letter dated April 16, 1996, the Office informed appellant of the definition of a recurrence of disability and included a list of information required to establish her claim.

Appellant submitted treatment notes dated March 1, April 19 and May 10, 1994 from Dr. Gromis, in which he related that he had treated appellant since February 9, 1994 due to a motor vehicle accident, diagnosed a strain of the lumbosacral spine and found that she could work with restrictions. Appellant also submitted a bill from Dr. Gromis' clinic.

By decision dated May 29, 1996, the Office denied appellant's claim on the grounds that the evidence did not establish that she sustained a recurrence of disability after March 31, 1994 due to her February 2, 1994 employment injury. In the accompanying memorandum to the Director, the Office further found that Dr. Gromis was not authorized to treat appellant as she did not request, in writing, authorization to change physicians.

In a letter dated June 20, 1996, appellant, through her attorney, requested a review of the written record by an Office hearing representative.

By decision dated August 15, 1996 and finalized August 16, 1996, the hearing representative affirmed the Office' May 29, 1996 decision with modifications. The hearing representative found that appellant did not establish that she required medical treatment or sustained any partial or total disability after February 7, 1994 due to her February 2, 1994 employment injury. He found that Dr. Gromis was authorized to treat appellant as he was the first physician which she chose to see but that Dr. Gromis' reports were not sufficiently rationalized to establish that he was treating her for effects of her employment injury.

In a letter dated September 24, 1996, appellant, through her representative, requested reconsideration of her claim. In support of her request, appellant submitted a report dated July 16, 1996 from Dr. Gromis, who indicated that the injuries described in his December 26, 1995 report arose from appellant's February 2, 1994 motor vehicle accident and that she may require future medical treatment.

By decision dated October 10, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision. In the accompanying memorandum to the Director, the Office found that Dr. Gromis was not authorized to treat appellant since appellant returned to the Centinela Airport Medical Clinic after being initially referred there by the employing establishment, thus choosing the facility for treatment. The Office further found that Dr. Gromis' reports were insufficiently rationalized to support ongoing residuals of her February 2, 1994 employment injury.

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability on or after February 7, 1994 causally related to her February 2, 1994 employment injury.

Where 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.[1]

In the present case, appellant sustained lumbosacral strain due to an injury on February 2, 1994 and began working in a limited-duty capacity. There is no evidence in the record establishing any change in the nature and extent of appellant's light-duty position as a cause of her claimed disability after February 7, 1994. Appellant further has not submitted a rationalized medical report establishing that she was unable to perform the duties of her employment on or after February 7, 1994 due to her February 2, 1994 employment injury.

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

In a report dated February 7, 1994, a physician referred appellant to physical therapy and found that she should perform restricted work until her next scheduled visit on February 11, 1994. In a report dated March 23, 1994, Dr. Miller, a Board-certified orthopedic surgeon, diagnosed chronic lumbosacral strain and found that appellant could perform her regular employment.

In a report dated May 31, 1994, Dr. Gromis, an orthopedic surgeon, related that a chiropractor had examined appellant on February 9, 1994 and found that she was totally disabled for two weeks. Dr. Gromis opined that as of the present date appellant's symptoms due to her motor vehicle accident had resolved and discharged her from care. He, however, does not provide a clear diagnosis of appellant's condition, provide any notable description of the February 4, 1994 employment injury or relate any specific condition or disability to the employment injury. Thus, his opinion is insufficient to meet appellant's burden of proof.

In a report dated July 16, 1996, Dr. Gromis indicated that the injuries described in his December 26, 1995 report arose from appellant's February 2, 1994 motor vehicle accident. However, a medical opinion consisting solely of a conclusory statement regarding disability, without supporting rationale, is of little probative value.[2] Further, Dr. Gromis did not discuss whether appellant was disabled from employment or list any objective findings. Accordingly, appellant has not met her burden of proof to establish a recurrence of total disability beginning February 7, 1994 due to her employment-related condition.

The Board further finds that the Office properly denied reimbursement for medical expenses for unauthorized medical treatment after February 7, 1994.

The payment of medical expenses incident to securing medical care is provided for under section 8103 of the Act.[3] The pertinent part provides that an employee "may initially select a physician to provide medical services, appliances and supplies, in accordance with such regulations and instruction as the Secretary considers necessary…." Further, section 10.401(b) of the Office's federal regulations provides that an employee only has an initial choice of physicians. A change of physicians will be permitted only upon approval of the Office after the employee submits an explanation of his or her desire to change.[4]

The record reflects that the employing establishment authorized treatment for appellant following her February 2, 1994 motor vehicle accident from a physician with the Centinela Hospital Airport Medical Center. Appellant returned to the Centinela Medical Center for follow-up treatment on February 3 and 7, 1994. Since appellant voluntarily returned to a physician at the Centinela Medical Center for treatment, appellant chose that physician as her initial choice of physician pursuant to 5 U.S.C. § 8103.[5]

The Board notes, however, that section 8103 of the Act does not restrict the Office's power to approve appropriate, necessary medical treatment obtained after the initial choice of

[2] *Geraldine H. Johnson*, 44 ECAB 745 (1993).

[3] 5 U.S.C. § 8103.

[4] *See Elizabeth J. Davis-Wright*, 39 ECAB 1232 (1988).

[5] *Id.*

treating physician and without prior authorization from the Office. The Office has broad discretionary authority in the administration of the Act and must in fact exercise such discretion to achieve the objectives of section 8103.[6]

In the instant case, the Office hearing representative properly found that the May 31, 1994 report of Dr. Gromis was insufficiently rationalized to establish that he provided treatment necessary to appellant due to her employment injury. Dr. Gromis July 16, 1996 report also fails to provide a detailed medical explanation discussing why appellant continued to require treatment due to her accepted employment injury. Therefore, the Office properly denied reimbursement for appellant's unauthorized medical expenses incurred after February 7, 1994.

The decisions of the Office of Workers' Compensation Programs dated October 10, August 15 and May 20, 1996 are hereby affirmed.

Dated, Washington, D.C.
January 13, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[6] *Marjorie S. Greer*, 39 ECAB 1099 (1988).