

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DARLENE K. VON AHLEFELD and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Cincinnati, OH

*Docket No. 97-1301; Submitted on the Record;
Issued July 27, 1999*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that she sustained a recurrence of disability beginning June 26, 1995 causally related to her April 21, 1995 employment injury.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained a recurrence of disability beginning June 26, 1995 causally related to her April 21, 1995 employment injury.

On April 24, 1995 appellant, then a regular rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 21, 1995 she sustained a knot on her right collar bone and pain on her whole right side when she was involved in an automobile accident while driving an employing establishment vehicle. Appellant stopped work on April 21, 1995. Appellant was released to return to work on May 12, 1995.

By letter dated May 19, 1995, the Office of Workers' Compensation Programs accepted appellant's claim for contusion of the right hand, arm and shoulder. The Office also accepted appellant's claim for middle and lower back strain and right shoulder strain.

On July 11, 1995 appellant filed a claim (Form CA-2a) alleging that she sustained a recurrence of disability on June 26, 1995. Appellant stopped work on June 26, 1995. She returned to light-duty work on July 3, 1995.

By decision dated September 28, 1995, the Office found the evidence of record insufficient to establish that the alleged recurrence of disability commencing June 26, 1995 was caused by the April 21, 1995 employment injury.

By letter dated October 4, 1995, appellant, through her counsel, requested an oral hearing before an Office representative. By letter dated May 20, 1996, appellant, through her counsel,

requested a review of the written record by an Office representative because the Office had advised her that an oral hearing could not be scheduled until at least late summer.

By decision dated September 16, 1996, a hearing representative affirmed the Office's September 28, 1995 decision.

On October 10, 1996 appellant, through her counsel, requested reconsideration of the hearing representative's decision. In an October 14, 1996 letter, appellant again requested reconsideration of the hearing representative's decision.

By decision dated January 16, 1997, the Office denied appellant's request for modification based on a merit review of the claim.¹

An employee returning to light duty, or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability by the weight of substantial, reliable and probative evidence and to show that he or she cannot perform the light duty.² As part of her burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.³

In the present case, appellant sustained a contusion of the right hand, arm and shoulder, middle and lower back strain and right shoulder strain as a result of an April 21, 1995 injury. Subsequently, appellant returned to work in a light-duty capacity. The record does not establish, nor does appellant allege, that the claimed recurrence of total disability was caused by a change in the nature or extent of her light-duty job requirements.

There is no medical evidence of record establishing any change in the nature and extent of appellant's accepted employment-related injury as a cause of her claimed disability beginning June 26, 1995. The record reveals a June 28, 1995 prescription of Dr. John H. Feibel, a Board-certified psychiatrist and neurologist, indicating appellant's physical therapy, Dr. Feibel's August 23, 1995 prescription indicating appellant's medications, treatment and work restrictions and his September 18, 1995 prescription indicating appellant's medical treatment. Dr. Feibel's June 28 and August 4 and 23, 1995 duty status reports (Form CA-17) revealed appellant's physical restrictions. His August 4, 1995 Form CA-17, also indicated a referral of appellant to a work-hardening program. Dr. Feibel's prescriptions and Forms CA-17 failed to address whether appellant had any condition causally related to her April 21, 1995 employment injury.

In his June 28, 1995 medical treatment notes, Dr. Feibel indicated that appellant had some hip bursitis. Dr. Feibel's August 4, 1995 medical treatment notes revealed that it seemed that appellant had right shoulder bicipital tendinitis. His August 23, 1995 medical treatment

¹ The Board notes that subsequent to the Office's January 16, 1997 decision, the Office received additional medical evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision; *see* 20 C.F.R. § 501.2(c)(1).

² *Terry R. Hedman*, 38 ECA 222, 227 (1986).

³ *Id.*

notes, revealed that appellant had some repetitious type of injury in her right arm due to a repetitious job and that appellant had tenderness in the forearm and various places that were typical of what you see in people who have repetitious jobs. Dr. Feibel's September 29, 1995 treatment notes, provided that appellant had moderate bilateral carpal tunnel syndrome and that she needed surgery. Dr. Feibel's October 6, 1995 medical treatment notes, indicated appellant's complaints, his findings on physical examination and the need to obtain authorization for a magnetic resonance imaging (MRI) scan of the lumbar spine inasmuch as sciatic was suggested. In his October 24, 1995 medical treatment notes, Dr. Feibel stated that appellant had a disc protrusion or small herniation at L5-S1 central without nerve root compression. The Board notes that the Office did not accept appellant's claim for any of the above conditions. Further, Dr. Feibel's treatment notes failed to address whether these conditions were caused by her April 21, 1995 employment injury.

The record further reveals appointment slips indicating that appellant had an appointment with Dr. Feibel on September 18, 1995 at 10:00 a.m. and on September 29, 1995. These appointment slips, however, failed to provide a diagnosis or a causal relationship between the diagnosed condition and the April 21, 1995 employment injury.⁴

Dr. Feibel's October 2, 1995 medical report revealed that appellant had moderate bilateral carpal tunnel syndrome and that she needed surgery. Dr. Feibel's report, failed to address whether appellant's condition was caused by the April 21, 1995 employment injury.

In an undated disability certificate, Dr. Feibel indicated that appellant had been under his care since May 26, 1995 for lumbago and that she could return to light-duty work on July 3, 1995. Dr. Feibel's disability certificate is insufficient to establish appellant's burden because it failed to discuss whether or how the diagnosed condition was caused by appellant's April 21, 1995 employment-related injury.⁵

The record revealed an August 8, 1995 physical therapy prescription of Dr. Jonathan W. Bell, a Board-certified orthopedic surgeon, providing that appellant had right shoulder impingement. In his August 15, 1995 medical report, Dr. Bell noted that he was treating appellant for her right shoulder symptoms. Dr. Bell also noted a history of the April 21, 1995 employment injury, appellant's complaints and his findings on physical examination. Dr. Bell opined that appellant had subcromial bursitis/tendinitis. Dr. Bell's prescription and medical report failed to address whether appellant's conditions were caused by her April 21, 1995 employment injury.

Dr. Bell's August 30, 1995 treatment notes, revealed that there was a need to follow up appellant's condition with an MRI scan to rule out a rotator cuff tear and appellant's work restrictions. In his September 6, 1995 medical report, Dr. Bell ruled out a rotator cuff tear. Dr. Bell's treatment notes and report failed to provide that appellant had any condition caused by the April 21, 1995 employment injury.

⁴ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

⁵ *Id.*

In his September 11, 1995 medical treatment notes, Dr. Bell indicated that the MRI results demonstrated no evidence of rotator cuff tear or even tendinitis. Dr. Bell further indicated that appellant had a lateral cyst in the area of the tuberosity and stated that he believed that her symptoms were coming from her neck. Dr. Bell's treatment notes failed to discuss whether appellant's current condition was causally related to the April 21, 1995 employment injury.

The record also revealed the September 6, 1995 MRI report of Dr. Rodger Brown, a Board-certified radiologist, regarding appellant's right shoulder. His report revealed no evidence of rotator cuff tear or tendinitis, minimal acromioclavicular joint arthropathy and a small degenerative cyst in the superior lateral aspect of the right humeral head. An October 18, 1995 MRI report concerning appellant's lumbar spine of Dr. Brad Woodall, a radiologist, indicated that appellant had central disc protrusion or herniation at L5-S1. Dr. Woodall's November 6, 1995 MRI report of appellant's cervical spine indicated that appellant had minimal discogneic spur and bulge slightly greater at C5-6 and to a lesser degree T2-3 and that there was no disc herniation, significant canal or foraminal stenosis. Dr. Brown's and Dr. Woodall's MRI reports failed to indicate that appellant's conditions were causally related to the April 21, 1995 employment injury.

Additionally, the record reveals the September 13, 1996 supplemental attending physician's report (Form CA-20a) of a physician whose signature is illegible providing the date of appellant's employment injury and a diagnosis of lumbago. The physician indicated that appellant's condition was caused by the injury for which compensation was claimed by placing a checkmark in the box marked "yes." The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history is of diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁶ Inasmuch as the physician failed to provide any medical rationale support of the opinion regarding a causal relationship between appellant's condition and April 21, 1995 employment injury, the physician's report is insufficient to establish appellant's burden.

The medical treatment notes of Dr. A. Lee Greiner, a Board-certified neurosurgeon, covering the period September 29 through December 18, 1995 indicated that appellant had right shoulder bicipitis tendinitis, right carpal tunnel syndrome and low back pain. In a November 2, 1995 disability certificate, Dr. Greiner stated that appellant was under his care for carpal tunnel syndrome, that surgery will be scheduled and that appellant would be off from work for approximately one month. Dr. Greiner's November 3, 1995 medical report revealed a history of appellant's employment injury and his finding that appellant had carpal tunnel syndrome based on objective examination. His November 22, 1995 report described appellant's right carpal tunnel decompression release and a postoperative diagnosis of right carpal tunnel syndrome. Dr. Greiner's treatment notes, disability certificate and medical reports failed to address whether appellant's conditions were caused by the April 21, 1995 employment injury.

⁶ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

Dr. Greiner's November 27, 1995 disability certificate revealed that appellant was disabled for work and that she would return to work approximately on January 15, 1996. His undated disability certificate indicated that appellant would return to work approximately on February 1, 1996. In a January 25, 1996 disability certificate, Dr. Greiner stated that appellant remained disabled from work and that her estimated return was March 15, 1996. Dr. Greiner's disability certificates failed to provide a diagnosis and to explain how or why the diagnosed condition was caused by the employment injury.⁷

In a December 6, 1995 Form CA-20a, Dr. Greiner indicated the date of the employment injury and that appellant had carpal tunnel syndrome. In his February 28, 1996 Form CA-20a, Dr. Greiner provided the date of the employment injury and referred to his treatment notes of the same date which revealed that appellant required left carpal tunnel release. In both Forms CA-20a, Dr. Greiner indicated that appellant's condition was caused by the injury for which compensation was claimed by placing a checkmark in the box marked "yes." Inasmuch as Dr. Greiner failed to provide any medical rationale for his opinion, his medical reports are insufficient to establish appellant's burden.⁸

In a February 22, 1996 disability certificate, Dr. Greiner stated that appellant was under his care for carpal tunnel release and that she would not be able to return to work until approximately April 4, 1996. Dr. Greiner's March 6, 1996 Form CA-17 provided that appellant had carpal tunnel syndrome and a herniated disc. Dr. Greiner failed to provide whether appellant's conditions were caused by the April 21, 1995 employment injury.

In an August 6, 1996 deposition, Dr. Greiner provided a history of the April 21, 1995 employment injury and his findings on physical and objective examination. Dr. Greiner provided a diagnosis of bilateral carpal tunnel syndrome, a protrusion-type disc herniation and appellant's medical treatment. Dr. Greiner opined that appellant's conditions were caused by the April 21, 1995 employment injury based on the history given by appellant. Dr. Greiner failed to provide any medical rationale explaining how or why appellant's condition, which was not accepted by the Office, was caused by the April 21, 1995 employment injury.

A Form CA-17 dated October 13, 1996 from a physician whose signature is illegible, indicated appellant's physical restrictions and illegible numbers representing appellant's diagnoses. This report is insufficient to establish appellant's burden because it does not provide a specific diagnosis and does not address whether appellant's conditions were caused by the April 21, 1995 employment injury.

An October 26, 1995 disability certificate of Dr. M.L. Shore, a chiropractor, revealed that appellant was totally disabled due to a herniated disc. Pursuant to section 8101(2) of the Federal Employees' Compensation Act,⁹ "[t]he term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the

⁷ *Daniel Deparini, supra* note 4.

⁸ *Lucrecia M. Nielson, supra* note 6.

⁹ 5 U.S.C. §§ 8101-8193.

spine to correct a subluxation of the spine as demonstrated by x-ray to exist and subject to regulation by the Secretary.”¹⁰ If a chiropractor’s reports are not based on a diagnosis of subluxation as demonstrated by x-ray to exist, they do not constitute competent medical evidence to support a claim for compensation.¹¹ Inasmuch as Dr. Shore’s treatment notes do not provide a diagnosis of subluxation of the spine as demonstrated by x-ray, appellant’s chiropractor does not qualify as a physician under section 8101(2) of the Act.¹² Therefore, Dr. Shore’s treatment notes do not constitute competent medical evidence to support a claim for compensation.¹³

The treatment notes of Jami Deitzer, a physical therapist, covering the period December 11, 1995 through February 22, 1996 are of no probative value inasmuch as a physical therapist is not a physician under the Act and therefore is not competent to give a medical opinion.¹⁴

Inasmuch as appellant has failed to establish a change in the nature or extent of her light duty requirements or a change in the nature or extent of her employment injury, which caused her claimed recurrence of total disability beginning June 26, 1995, the Board finds that she has failed to discharge her burden of proof.

The January 16, 1997 and October 10, 1996 decisions of the Office of Workers’ Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
July 27, 1999

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ *Robert J. McLennan*, 41 ECAB 599 (1990); *Robert F. Hamilton*, 41 ECAB 431 (1990); *see also* 5 U.S.C. § 8101(2); 20 C.F.R. § 10.400(a).

¹¹ *Loras C. Dignann*, 34 ECAB 1049 (1983).

¹² *Milton E. Bentley*, 32 ECAB 1805 (1981).

¹³ *Theresa K. McKenna*, 30 ECAB 702 (1979).

¹⁴ *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jane A. White*, 34 ECAB 515 (1983); *see also* 5 U.S.C. § 8101(2).