U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARMIDA ESTRADA and DEPARTMENT OF THE ARMY, WHITE SANDS MISSILE RANGE, White Sands, N.M.

Docket No. 98-2304; Submitted on the Record;
Issued March 29, 1999

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM, BRADLEY T. KNOTT

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on August 15, 1997.

The Board has duly reviewed the case on appeal and finds that appellant failed to establish that she had any disability after August 15, 1997 causally related to the December 19, 1996 employment injury.

The facts in this case indicate that on December 19, 1996 appellant, then a 58-year-old supply technician, sustained employment-related shoulder trauma, sprain of the left knee and cervical and lumbar radiculopathy. She returned to limited duty on August 4, 1997 and resigned for personal reasons on August 15, 1997.[1] Following further development by the Office of Workers' Compensation Programs, the Office found that a conflict in the medical evidence existed based on the reports of appellant's treating physician, Dr. J.A. Rodriguez, a general practitioner and Dr. Marco Ochoa, a Board-certified orthopedic surgeon who had provided a second opinion for the Office. By letter dated January 15, 1998, the Office referred appellant, along with the medical record, a set of questions and a statement of accepted facts, to Dr. Rene Arredondo, a Board-certified orthopedic surgeon, for an impartial medical evaluation. By decision finalized on July 13, 1998, the Office found that appellant had no employment-related disability.[2] The instant appeal follows.

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

[1] In a letter dated September 29, 1997, appellant explained that she resigned because computer work made her dizzy and that she did not like sitting in the back of the van pool. She also submitted an agreement between the employing establishment and appellant regarding her retirement.

[2] The Board notes that the cover page of the decision is not contained in the case record.

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]

Causal relationship is a medical issue,[4] 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.[5]

The relevant medical evidence in this case includes a July 24, 1997 report in which Dr. Martin Heitzman, who is Board-certified in neurology and psychiatry, diagnosed cervical sprain with associated neck pain and spinal stenosis, found no evidence of associated myelopathy, radiculopathy or neuropathy, cerebrovascular disease with associated dizziness, ruled out vestibulopathy, and depression with associated anxiety, ruled out somatoform or other related disorder. He advised that appellant did not demonstrate any abnormalities on her clinical examination but noted moderate spinal stenosis as demonstrated on a magnetic resonance imaging scan.

In a report faxed to the Office on July 31, 1997, Dr. Rodriguez advised that appellant could return to limited duty on July 17, 1997 with restrictions to her physical activity. In an October 9, 1997 report, Dr. Leonardo Svarzbein, a neurosurgeon, diagnosed clinical radiculopathy at C5-6 and C6-7 secondary to spinal stenosis and herniated disc and advised that appellant would benefit from surgery. In an undated report, stamped received by the Office on October 16, 1997, Dr. Rodriguez advised that appellant's dizzy spells and headaches were related to the December 19, 1996 employment injury. He advised that appellant had returned to work on a trial basis that did not work out with a return of hysteria, hyperventilation and pain in the lower back and neck areas. Dr. Rodriguez concluded:

> "I do not agree with Dr. Heitzman's report. The reason that [appellant] gave us about quitting her work again was also physical [due to] her inability to lift, push, pull, squat, extend, flex or rotate her back, sit or stand over half an hour, or walk over a city block."

[3] *Mary A. Howard*, 45 ECAB 646 (1994); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

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

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

By report dated November 24, 1997, Dr. Ochoa, who provided a second-opinion evaluation for the Office, noted appellant's medical history including the history of injury and her complaints of pain in the neck, left shoulder, lumbar area and left knee. He noted findings on examination, diagnosed spondylosis, supraspinatus syndrome, left shoulder, back and left knee sprain, and advised that appellant had reached maximum medical improvement, stating that she was entitled to a 20 percent total body impairment.[6] He concluded:

> "She will be able to return to a gainful activity after functional capacity evaluation is performed. After such test we will know the limitations for [her] and that will give the preclusions [she] should have at work. We should take into consideration also the poor motivation of the patient to return to work and the psychological problems [she] is suffering."

In a supplementary report dated January 12, 1998, Dr. Ochoa advised that appellant did not need surgery, noting that there was a functional overlay in her symptomatology.

Following referral by the Office for an impartial evaluation, in a February 9, 1998 report, Dr. Arredondo advised that it "appeared" that appellant could return to either her regular job or the modified, limited-duty job she was performing from July 31 to August 15, 1997. He commented that it was unlikely that appellant would obtain complete relief from her neck pain as it "appeared" that the pain had several sources including cervical spondylosis and spinal stenosis as well as a significant degree of tension, anxiety and depression.

Appellant underwent a functional capacity evaluation on April 3, 1998. The study, however, was not completed due to appellant's complaints of dizziness and pain. Overall effort was undetermined. By report dated May 8, 1998, Dr. Arredondo noted that appellant could not complete the functional capacity evaluation due to dizziness and commented that he "attempted" to complete a work capacity evaluation based on the functional capacity evaluation and his evaluation. He concluded:

> "I am sorry that I was not able to be more precise, but in such a patient that is either unwilling or unable to make full effort on the functional capacity evaluation, it is difficult to assess limitations in an accurate fashion."

In an attached work capacity evaluation, he provided limitations to appellant's activity, stating that he was unable to identify a reason that appellant could not work eight hours per day other than that she was reluctant to make maximum effort on her functional capacity evaluation.

Initially, the Board finds that the Office improperly found a conflict in the medical evidence as Dr. Ochoa did not indicate that appellant could return to work. Dr. Arredondo would thus act as an Office referral physician.[7] Nonetheless, the medical evidence in this case does not support that appellant sustained a recurrence of disability causally related to the accepted injuries. Neither Drs. Heitzman nor Svarzbein provided an opinion regarding the cause

[6] Dr. Ochoa's evaluation of the degree of appellant's impairment could provide the basis of a schedule award.

[7] *See James C. Ross*, 45 ECAB 424 (1994).

of appellant's condition. While Dr. Rodriguez stated that appellant could not work due to the activities of pushing, sitting, walking, etc., he noted that his opinion was based on appellant's statement. Dr. Arredondo noted restrictions to appellant's activity on a work capacity evaluation but stated that his findings were based on the functional capacity evaluation that was incomplete due to appellant's reluctance to make a maximum effort. The Board, therefore, finds both the functional capacity evaluation and work capacity evaluation completed by Dr. Arrendondo to be nonprobative. Thus, as appellant failed to submit rationalized medical evidence that identified specific employment factors that caused her to stop work on August 15, 1997, she failed to discharge her burden of proof to establish a recurrence of disability.

The decision of the Office of Workers' Compensation Programs dated July 24, 1998 is hereby affirmed.

Dated, Washington, D.C.
March 29, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member