

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CATHERINE WELGOSS and DEPARTMENT OF DEFENSE,
DEFENSE PERSONNEL SUPPORT CENTER, Philadelphia, PA

*Docket No. 97-2480; Submitted on the Record;
Issued October 14, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a recurrence of disability on October 7, 1996 causally related to her accepted employment injuries; and (2) whether she met her burden to establish that she sustained a recurrence of disability on November 21, 1997 causally related to her accepted employment injuries.¹

On January 4, 1994 appellant, then a 33-year-old inventory manager, filed a notice of traumatic injury alleging that on January 3, 1994 she fell on ice and injured her back and shoulder in the course of her federal employment. She stopped working on the date of injury. On March 28, 1994 the Office of Workers' Compensation Programs accepted the claim for a right shoulder strain and a lumbosacral strain/sprain and appellant began receiving compensation for total temporary disability. Appellant returned to limited duty on November 1, 1995, working four hours per day.

On November 5, 1996 appellant filed a notice of recurrence of disability alleging that she suffered a recurrence on October 7, 1996. She stopped working on that same date. Appellant stated that she returned to work without having the condition cured and that sitting caused her condition to recur.

On November 12 and 14, 1996, Dr. Robert J. Schwartzman, a Board-certified internist, psychiatrist and neurologist, diagnosed a brachial plexus traction injury and L5 radiculopathy. Dr. Schwartzmann indicated that appellant was totally disabled from October 7, 1996.

On November 26, 1996 Dr. Joseph P. Badolato, a Board-certified family practitioner, completed an attending physician's supplemental report. Dr. Badolato diagnosed lumbosacral strain with radiculopathy and right brachial plexus injury.

¹ On June 24, 1997 appellant appealed the January 27, 1997 decision of the Office. Appellant filed her appeal of the Office's April 15, 1998 decision on June 15, 1998. Each of these decisions of the Office address different periods of claimed recurrences.

On December 6, 1996 the Office requested additional information including a physician's well-reasoned opinion addressing the relationship between appellant present condition and disability and her accepted injury.

On December 10, 1996 Dr. Schwartzman reviewed appellant's history and diagnosed a brachial plexus traction injury, involving upper trunk, lower trunk and medical cord. He also diagnosed probable cervical plexus, C2-3 posterior root traction injury, triggering migraine headaches and dizziness. Dr. Schwartzman stated that appellant was temporarily disabled due to her diagnosis and that she cannot do any repetitive movement, lifting, stretching or bending. He also stated that appellant could not sit or stand for too long.

On December 19, 1996 appellant wrote that she suffered severe low back pain on the right side and severe pain in the right shoulder, under the right arm and into the right side of her chest. She stated that her low back pain radiated from her hip to her toes and that she experienced headaches and dizziness. Appellant stated that these conditions related to her original injury because that injury never resolved.

By decision dated January 27, 1997, the Office denied appellant's claim for a recurrence of disability on the grounds that the evidence failed to demonstrate a causal relationship between the work injury and the current condition. In an accompanying memorandum, the Office noted that Dr. Schwartzman failed to explain how his new diagnosis of C2-3 posterior root traction injury, which trigger migraine headaches related to appellant's original injury and that he failed to explain how appellant was now totally disabled while her work restrictions remained unchanged.

On November 11, 1997 Dr. Schwartzman indicated that he had treated appellant since March 1995. He recorded the history of the original injury and diagnosed brachial plexus traction injury with L5-S1 radiculopathy. Dr. Schwartzman stated that appellant was totally disabled and that she could not do any repetitious movements, lift, stretch, walk, stand or sit for prolonged periods.

Appellant subsequently filed a notice of recurrence of disability alleging that on November 21, 1997 she suffered a recurrence. She indicated that her original injury never healed.

On January 21, 1998 the Office advised appellant that she needed to submit additional evidence including a rationalized medical opinion addressing the relationship between her present condition and/or disability and her original injury.

Dr. Badolato submitted attending physician's reports diagnosing a lumbar spine strain with radiculopathy on October 6, December 11, 1997, January 15, February 9 and March 13, 1998.

By letter dated January 28, 1998, appellant indicated that she was totally disabled as a result of her original injury from 1994. On February 18, 1998 she again indicated that she was totally disabled.

On February 25, 1998 Dr. Schwartzman indicated that appellant could work zero hours per day.

On March 31, 1998 the employing establishment wrote indicating that appellant attended a college course during her alleged period of disability, in which she claimed she could not sit or walk for prolonged periods. It noted that appellant had to travel to attend the course and that the course included trips to museums.

By decision dated April 15, 1998, the Office denied appellant's claim for a recurrence of disability on November 21, 1997. The Office noted that the record was devoid of medical opinion evidence explaining why appellant was no longer capable of performing her limited-duty position.

The Board finds that appellant has not sustained her burden of proof of establishing that she sustained a recurrence of total disability on October 7, 1996 causally related to an employment injury or any other factor of employment.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 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.² In the instant case, appellant has failed to establish either a change in the nature or extent of her light-duty requirements or a change in her accepted injury-related condition.

The record shows that appellant began performing a permanent light-duty position on November 1, 1995. On November 5, 1996 appellant filed a claim alleging that she was totally disabled from October 7, 1996. She attributed her claimed disability to her January 3, 1994 employment-related injury. There is no evidence of record establishing any change in the nature or extent of appellant's permanent light-duty position, which began in 1995, as a cause of appellant's claimed disability beginning on October 7, 1996. The medical evidence is also insufficient to establish that appellant was disabled from his light-duty position due to a change in the nature and extent of her accepted injuries. In support of her claim for a recurrence on October 7, 1996 appellant submitted reports from Dr. Schwartzman, a Board-certified internist, psychiatrist and neurologist, dated November 12, 14 and December 10, 1996. Although Dr. Schwartzman indicated that appellant was totally disabled from her limited-duty position, he failed to provide any medical rationale explaining how appellant's problems and claimed total disability were related to her accepted injuries. Therefore, this evidence is of limited probative value and is insufficient to establish appellant's claim.³ The remaining evidence that appellant submitted in support of this claim consisted of a November 26, 1996 report, from Dr. Badolato, appellant's treating physician and a Board-certified family practitioner, who failed to address whether appellant suffered a recurrence of disability on October 7, 1996. Appellant, therefore, failed to establish that she suffered a recurrence of disability on October 7, 1996.

² See *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Stuart K. Stanton*, 40 ECAB 859, 864 (1989); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

³ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it is unsupported by medical rationale).

The Board also finds that appellant failed to establish a recurrence of disability on November 21, 1997 causally related to her accepted employment injuries or any other factors of her employment.

The record is also devoid of any evidence establishing any change in the nature or extent of appellant's permanent light-duty position as a cause of appellant's claimed disability on November 21, 1997. Moreover, the medical reports submitted by appellant to support a recurrence of disability on November 21, 1997 are insufficient to establish that appellant was disabled due to a change in the nature or extent of her accepted injuries. In this regard, appellant submitted reports from Dr. Schwartzman dated November 11, 1997 and February 25, 1998, in which he indicated that appellant was totally disabled. Because Dr. Schwartzman failed to explain how appellant's total disability related to her accepted injuries, these reports are insufficient to establish appellant's claim.⁴ In addition, the reports appellant submitted from Dr. Badolato failed to address whether appellant's condition was related to her original injury. Appellant, therefore, failed to meet her burden of establishing a recurrence of disability causally related to her accepted employment beginning November 21, 1997.

The decisions of the Office of Workers' Compensation Programs dated April 15, 1998 and January 27, 1997 are affirmed.

Dated, Washington, D.C.
October 14, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁴ *Id.*