U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CANDANCE R. SMALLS and DEPARTMENT OF DEFENSE, FORT KNOX COMMISSARY, Fort Knox, Ky.

Docket No. 98-875; Submitted on the Record;
Issued October 15, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS, BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish that she sustained a recurrence of disability on or after June 24, 1997 causally related to her October 27, 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 on or after June 24, 1997 causally related to her October 27, 1995 employment injury.

On October 27, 1995 appellant, then a 33-year-old cashier, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a back injury while mopping the cage area. Appellant stopped work on October 27, 1995 and returned to light-duty work on November 7, 1995.[1]

By letter dated January 19, 1996, the Office of Workers' Compensation Programs accepted appellant's claim for subluxation of the thoracic spine.

On July 15, 1997 appellant filed a claim (Form CA-2a) alleging that she sustained a recurrence of disability on June 24, 1997. Appellant stated that she experienced lower back pain when performing her register transactions from a low chair.[2]

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[1] The record reveals that appellant was totally disabled during the period November 18, 1995 through January 18, 1996. Appellant performed light-duty work during the period January 18 through February 15, 1996 with physical restrictions. Appellant stopped work on February 15, 1996 and returned to light-duty work on April 3, 1996. Appellant resigned from the employing establishment on May 22, 1996 due to her family's transfer to Tacoma, Washington.

[2] At the time appellant filed her recurrence claim, she had returned to work for the employing establishment as a sales store checker at Fort McCord Air Force Base in Tacoma, Washington.

By letter dated September 23, 1997, the Office referred appellant along with a statement of accepted facts, medical records and a list of specific questions to Dr. Richard G. McCollum, a Board-certified orthopedic surgeon, for a second opinion examination. By letter of the same date, the Office advised Dr. McCollum of the referral.

By decision dated November 12, 1997, the Office found the evidence of record insufficient to establish that appellant had sustained a recurrence of disability on or after June 24, 1997 causally related to her October 27, 1995 employment injury. In a January 5, 1998 letter, appellant requested reconsideration of the Office's decision.

By decision dated January 22, 1998, the Office denied appellant's request for modification based on a merit review of the claim.

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.[3] 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.[4]

In the present case, appellant sustained a subluxation of the thoracic spine as a result of an October 27, 1995 employment 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 on or after June 24, 1997.

Appellant has not submitted sufficient medical evidence to establish that she sustained a recurrence of disability on or after June 24, 1997 causally related to her October 27, 1995 employment injury. A May 23, 1996 disability certificate from Dr. Villanueva indicated a diagnosis of cervical radiculopathy, that appellant should have a myelogram performed and that appellant remain off work until completion of the test and her next office visit. Dr. Villanueva'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 October 27, 1995 employment-related injury.[5]

Disability slips covering the period April 10 through August 1, 1997 failed to address whether appellant's current back condition was caused by her October 27, 1995 employment injury. Therefore, they are insufficient to establish appellant's burden.

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

[4] *Id.*

[5] *Daniel Deparini*, 44 ECAB 657, 659 (1993).

Disability slips dated July 8 to 9, 1997 from physician's assistants whose signatures are illegible are insufficient to establish appellant's burden. A physician's assistant, is not a "physician" as defined by the Federal Employees' Compensation Act and an evaluation opinion rendered by such does not constitute competent medical evidence unless the report was countersigned by a physician.[6] Similarly, a July 16, 1997 disability certificate of Barbara A. Boardman, a nurse, revealing that appellant could return to work on July 24, 1997 with physical restrictions, an August 1, 1997 disability certificate of May Lee Profy, a family nurse practitioner, and Ms. Profy's August 21, 1997 attending physician's report (Form CA-20) revealing that appellant's condition was caused or aggravated by her October 27, 1995 employment injury do not constitute competent medical evidence. A nurse and nurse practitioner are not physicians as defined by the Act.[7] Therefore, Ms. Boardman and Ms. Profy are not competent to give a medical opinion. Further, the July 18, 1997 disability certificate of Major Cathy A. Beck, a physical therapist, has 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.[8]

In a September 15, 1997 duty status report (Form CA-17), Dr. Donald L. Maddox provided appellant's employment injury and physical restrictions, and a diagnosis of poorly and localized low back pain. In response to the question, whether the diagnosis was due to the injury, Dr. Maddox indicated that it was "possible." The Board has held that while the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,[9] neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[10] Inasmuch as Dr. Maddox's opinion is speculative as to the relationship between appellant's current back condition and her October 27, 1995 employment injury and he failed to provide any medical rationale supportive of his opinion, it is of limited probative value.[11]

Dr. McCollum's second opinion medical report dated October 21, 1997 provided a history of appellant's October 27, 1995 employment injury, a review of medical records and his findings on physical examination. Dr. McCollum diagnosed cervical, dorsal and lumbar sprain

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[6] *Wiley L. Wall*, 35 ECAB 413 (1983); G*uadalupe Julia Sandoval*, 30 ECAB 1491 (1979).

[7] *See Bertha L. Arnold*, 38 ECAB 282 (1986); 5 U.S.C. § 8101(2).

[8] 5 U.S.C. § 8101(2); *see also Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jane A. White*, 34 ECAB 515 (1983).

[9] *See Kenneth J. Deerman*, 34 ECAB 641 (1983).

[10] *Phillip J. Deroo*, 39 ECAB 1294 (1988); *Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

[11] *See Jennifer Beville*, 33 ECAB 1970 (1982); *Leonard J. O'Keefe*, 14 ECAB 42 (1962).

due to the October 27, 1995 injury. Although he opined that appellant's back conditions were caused by the October 27, 1995 employment injury, Dr. McCollum opined that appellant was not totally disabled from work due to her back conditions. Specifically, he opined that appellant's current examination demonstrated no significant positive objective findings to justify any further diagnostic or therapeutic measures. Dr. McCollum further opined that appellant's condition was fixed and stable. He also opined that there was no evidence of any impairment and that appellant could work in an occupation of her choice without restrictions. Dr. McCollum concluded that there were some nonphysiologic responses on examination and embellishment was clearly present.

Because appellant failed to submit rationalized medical evidence establishing that her claimed recurrence of disability on or after June 24, 1997 was causally related to the accepted October 27, 1995 employment injury, the Board finds that she has failed to discharge her burden of proof. Therefore, the Office properly denied appellant's claim for compensation.

The January 22, 1998 and November 12, 1997 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
October 15, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member