U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTY J. DAVIS and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Chicago, IL

Docket No. 99-1607; Submitted on the Record;
Issued June 23, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant sustained a recurrence of total disability commencing in January 1995 due to her November 16, 1989 employment injury; and (2) whether she was capable of working only seven hours a day commencing in August 1996.

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained a recurrence of total disability in January 1995 causally related to her November 16, 1989 employment-related right hand tenosynovitis.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that 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 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.[1] 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 Board further finds that appellant has failed to establish that she was capable of working only seven hours a day commencing in August 1996.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the

[1] *See Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Stuart K. Stanton*, 40 ECAB 859, 864 (1989).

accepted injury.[2] This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.[3] Where no such rationale is present, medical evidence is of diminished probative value.[4]

On November 16, 1989 appellant, then a 46-year-old benefit authorizer, filed a claim for a right hand and arm condition. Her claim was approved for right hand, wrist and arm tenosynovitis. Appellant stopped work on November 16, 1989 and returned to light-duty work on December 22, 1989. She sustained a recurrence of disability from November 23, 1993 to February 27, 1994. Appellant resumed light-duty work on February 28, 1994. On May 15, 1994 she was assigned to work a "full area"[5] due to downsizing. Appellant performed her job at a work station equipped with ergonomic furniture and her duties included two repetitive motion activities, keying information into a computer and writing, for no more than 1/2 hour at a time for no more than 2 hours a day at 50 percent of her normal pace with 10-minute rest periods each hour that she performed the repetitive motion tasks. She did not work from January 30, 1995 to February 25, 1996 and returned to work on February 26, 1996 working 7 hours a day but was again off work from May 1 to 21 and December 22 to 29, 1996 and January 31 to April 13, 1997.

On March 9, 1995 appellant filed a claim for compensation benefits commencing on February 17, 1995.[6] By decision dated September 29, 1997, the Office denied appellant's claim. By decision dated June 30, 1998, an Office hearing representative vacated the Office's September 29, 1997 decision and remanded the case for further development.[7] By decision dated February 19, 1999, the Office denied appellant's claim for a recurrence of total disability in January 1995 and her claim that she was able to work only seven hours a day commencing in August 1996.

In a form report dated March 22, 1995 and disability certificates dated March 2 and 15, 1995, Dr. Samuel J. Chmell, appellant's attending Board-certified orthopedic surgeon, diagnosed multiple tendinitis and repetitive motion disorder and indicated that she was disabled. He indicated, by checking the block marked "yes," that appellant's condition was causally related to

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[2] *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

[3] *Mary S. Brock*, 40 ECAB 461, 471 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[4] *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

[5] It appears from the record that in May 1994 appellant was performing her regular tasks but at a reduced (50 percent) pace and with breaks each hour and with repetitive motion activities limited to no more than two hours a day. It appears that the Office determined that the position was a light-duty position in that appellant did not perform her tasks at the same pace or in the same manner as she had performed the tasks prior to her employment injury on November 16, 1989.

[6] Appellant later advised the Office that she stopped work in January 1995, rather than February 1995.

[7] Earlier Office decisions denying appellant's claim, dated May 28 and December 11, 1996 were vacated by Office hearing representative decisions dated May 22, 1997 and October 16, 1996.

her November 16, 1989 employment injury. The Board has held that an opinion on causal relationship which consists only of checking "yes" to a form report question on whether the claimant's disability was related to the history given is of little probative value.[8] Without any explanation or rationale, such a report has little probative value and is insufficient to establish causal relationship.[9] Dr. Chmell did not explain how appellant had sustained a change in the nature or extent of her employment-related condition or a change in her light-duty position such that she was not capable of performing her position. Therefore, this evidence is not sufficient to establish that appellant sustained a recurrence of total disability in January 1995 causally related to her 1996 employment injury.

In a report dated April 5, 1995, Dr. Chmell, provided a history of appellant's condition and related that over the past several months appellant had experienced pain, spasms and tenderness in her right shoulder and neck. He stated that she required permanent work restrictions due to her November 16, 1989 employment injury. Dr. Chmell stated:

> "It is my opinion, based upon a reasonable degree of medical and orthopedic surgical certainty, that these manifestations, some subjective and some objective, are part of [appellant's] general overall problem that emanated from the accident that occurred on November 16, 1989, that is, repetitive motion trauma to both upper extremities related to her long-term work activities.... She has had repeated subjective complaints and objective findings of multiple tendinitis and myofascitis of her upper extremities due to repetitive motion trauma as I have described. This most recent problem encompassing her right shoulder and the base of the neck on the right side is just part of the same problem. This is an ongoing and chronic problem related to this 1989 occurrence.... I think it is definitely a permanent disability incident."

However, as Dr. Chmell did not provide sufficient medical rationale explaining how there had been a change in the nature or extent of appellant's 1989 employment injury or a change in her light-duty job such that she was no longer able to perform her light-duty job, this report does not support her claim for an employment-related recurrence of total disability in January 1995.

In a report dated July 26, 1995, Dr. Audley E. Loughran, a Board-certified orthopedic surgeon and Office referral physician, provided a history of appellant's condition and findings on examination and opined that the examination was normal and he saw no reason why appellant could not return to her normal occupation or why she had not worked in the recent past. As Dr. Loughran did not opine that appellant was disabled, his report does not support appellant's claim for a work-related recurrence of total disability in January 1995.

In a report dated October 12, 1995, Dr. Chmell stated that appellant's physical examination was unchanged. He stated his opinion that appellant was disabled for any activity

[8] *Donald W. Long*, 41 ECAB 142, 146 (1989).

[9] *Id.*

requiring repetitive use of the upper extremities. However, the record shows that appellant's job since May 1994 had included repetitive motion activities limited to two hours a day with frequent breaks at 50 percent of normal pace. Dr. Chmell provided no medical rationale explaining how appellant's job had changed or how her accepted employment injury had changed such that she was totally disabled. Therefore, this report does not support appellant's claim for an employment-related recurrence of disability in January 1995.

By letter dated December 8, 1998, the Office referred appellant, together with a statement of accepted facts and the case record to Dr. Charles Carroll, a Board-certified orthopedic surgeon of professorial rank and an impartial medical specialist, for an examination and evaluation in order to resolve the conflict in medical opinion evidence between Drs. Chmell and Loughran.[10]

Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.[11]

In a report dated January 20, 1999, Dr. Carroll provided a history of appellant's condition, a review of the medical evidence and detailed findings on examination. He also described appellant's job duties and physical requirements for the light-duty position she commenced on May 15, 1994. Dr. Carroll stated:

> "I do not find that [appellant] was totally disabled from a period of time from January of 1995 to April of 1996. Dr. Loughran gave a very specific examination during that time. It did not document objective findings.... In the records that I reviewed, I see no indications that [appellant] should be totally disabled from the period of time of January of 1995 to April of 1996. She could have returned to work during that time with care taken to stretch her extremities each hour or two. [Appellant] should have varied her activities, but I see no indication in the records provided that she should be disabled completely during that time.
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> "I did not see any indication from these records to justify why [appellant] had to work 7 hours a day beginning in August 1996. It would be my opinion that she could have returned to work during that time with again the restrictions to vary her activities. The records do not clearly document why 7 hours a day was necessary.... Based on the documentation that I had, I see no reason that [appellant] had to be limited as to hours or job duties during that time. If she was able to work at an ergonomic station with the capability of stretching every hour or two and varying her activities, it would be my opinion she could have worked during that period of time at a normal type of job."

[10] Section 8123(a) of the Federal Employees' Compensation Act provides, in pertinent part, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. § 8123(a).

[11] *Juanita H. Christoph*, 40 ECAB 354, 360 (1988); *Nathaniel Milton*, 37 ECAB 712, 723-24 (1986).

The Board finds that Dr. Carroll's thorough and well-rationalized report is entitled to special weight and establishes that appellant was not totally disabled commencing in January 1995.

Regarding the issue of whether appellant was partially disabled commencing in August 1996, in a report dated September 11, 1996, Dr. Chmell indicated that appellant had multiple tendinitis which was permanent and could work for only seven hours per day as of August 1, 1996. However, he failed to explain why appellant was not able to work eight hours a day, rather than seven. Because Dr. Chmell failed to provide sufficient medical rationale explaining why appellant could work for only seven hours a day and how this partial disability was causally related to her November 16, 1989 employment injury, this report does not support appellant's claim for a recurrence of disability in August 1996.

As noted above, in his independent evaluation dated January 20, 1999, Dr. Carroll provided a history of appellant's condition, a review of the medical evidence, detailed findings on examination and a description of appellant's light-duty position commencing in May 1994. He stated that there was no medical evidence in the case file to explain why appellant could work only seven hours a day commencing in August 1996. Dr. Carroll stated, "If [appellant] was able to work at an ergonomic station with the capability of stretching each hour or two and varying her activities, it would be my opinion she could have worked during that period [of] time at a normal type of job." The Board finds that the impartial medical specialist report of Dr. Carroll is entitled to special weight and his report establishes that appellant was capable of working eight hours a day in August 1996.

The decisions of the Office of Workers' Compensation Programs dated February 19, 1999 and July 8 and June 30, 1998 are affirmed.

Dated, Washington, D.C.
June 23, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott

Alternate Member