

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY MUNGOVAN and DEPARTMENT OF VETERANS AFFAIRS,
EN ROGERS MEMORIAL VETERAN HOSPITAL, Bedford, MA

*Docket No. 00-384; Submitted on the Record;
Issued November 22, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has established that she sustained a recurrence of total disability from October 22, 1998 to January 4, 1999, causally related to her June 27, 1997 employment injury.

The Office of Workers' Compensation Programs accepted that appellant, then a 46-year-old licensed nurse practitioner, sustained acute lumbar strain on June 27, 1997, while ambulating a patient at work. Appellant stopped work on June 30, 1997 and returned to limited duty for six hours per day, twice a week on August 14, 1997. On October 7, 1997 appellant began working six hours per day, four days per week, with lifting and bending restrictions.¹ The Office authorized payment of all appropriate compensation benefits.

On February 23, 1999 appellant filed a recurrence of disability claim alleging that her original injury caused her additional disability beginning October 22, 1998. Appellant alleged that, as of October 22, 1998, her work schedule was reduced to three days per week, six hours per day until January 4, 1999, when she returned to her normal limited-duty schedule. Appellant alleged that her disability from work was due to low back pain and muscle spasms related to the original injury.

In support of appellant's claim, the Office received a medical report dated October 22, 1998 from Dr. David C. Morley, Jr., an attending physician, in which he reported that appellant was recovering from severe pneumonia, which required hospitalization and that appellant had also had a flare up of back pain. He stated that examination revealed a moderate degree of

¹ On November 14, 1997 appellant was involved in a motor vehicle accident unrelated to work and sustained an injury to her knee, which left her temporarily totally disabled. Appellant returned to limited duty on November 24, 1997 and worked six hours per day, four days per week.

muscle spasm and no focal neurological changes in the lower extremities. Dr. Morley restricted appellant to three days of work per week for six hours per day, without lifting and bending.²

The Office also received a CA-20 form report dated November 5, 1998 from Dr. Morley, in which he diagnosed muscle spasm of the back and LS strain superimposed on spinal stenosis. He indicated by checking a box on the form report “yes” that he believed appellant’s condition was causally related to the employment injury. Dr. Morley further indicated by checking a box on the form report “no” that appellant was not disabled for “usual work” as she “works with limitations.”

On March 29, 1999 the Office requested additional factual and medical evidence to make a determination on appellant’s recurrence of disability claim. Appellant was afforded 30 days to submit evidence, however, no additional evidence was submitted.

The Office subsequently referred this case to Dr. Denis Byrne, a Board-certified orthopedic surgeon, for a second opinion. In a May 18, 1999 report, Dr. Byrne reviewed appellant’s history of injury and medical records. He noted that Dr. Morley had treated appellant for her work injury and that a magnetic resonance imaging (MRI) scan was performed on July 21, 1997, which showed diffuse spinal stenosis with evidence of localized disc herniation. On examination Dr. Byrne diagnosed low back strain with underlying spinal stenosis. He opined that the spinal stenosis was preexisting and was not caused by the work-related injury. Dr. Byrne further opined that appellant had recovered from the back strain, however, her spinal stenosis continued to give her difficulty. He concluded based upon a reasonable degree of medical certainty that appellant had recovered from the back strain of June 28, 1997, but continued to have symptomatology related to spinal stenosis.

By decision dated June 17, 1999, the Office denied appellant’s recurrence of disability claim on the basis that the evidence failed to establish that the claimed recurrence of disability was causally related to her accepted employment injury.

In a letter received by the Office on July 7, 1999, appellant requested reconsideration. Appellant argued that she had not experienced back problems prior to her position with the employing establishment and that the spinal stenosis and disc herniation diagnosed by Dr. Byrne was, therefore, related to her accepted employment injury.

By decision dated September 9, 1999, the Office denied modification of the June 17, 1999 decision after a merit review. The Office found that the evidence submitted was insufficient to warrant modification of the June 17, 1999 decision.

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 disability from October 22, 1998 to January 4, 1999, causally related to her June 27, 1997 employment injury.

² The record contains a job offer signed by appellant on December 28, 1998, indicating that she accepted a limited-duty position with the employing establishment for 18 hours per week, based on Dr. Morley’s work restrictions.

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 a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.³ The burden of showing a change in the nature and extent of the injury-related condition 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 reasoning.⁴ Causal relationship is a medical issue and can be established only by medical evidence.⁵

In the instant case, appellant furnished the October 22, 1998 report of Dr. Morley, who stated that appellant had been recovering from severe pneumonia and had a flare up of back pain. He indicated in the report that he restricted appellant's work to three days per week. Dr. Morley, however, did not provide any explanation as to how appellant's claimed recurrence of disability beginning October 22, 1998 was causally related to her June 27, 1997 work-related lumbar strain. He stated that appellant had a flare up of back pain but did not explain whether appellant was disabled from work as a result of back pain related to the employment injury or due to another condition, or her recent bout of pneumonia. Dr. Morley also did not explain how appellant's claimed recurrence of disability was caused by a change in the nature or extent of her light-duty physical requirements. Therefore, Dr. Morley's report dated October 22, 1998, is not sufficient to establish that appellant sustained a recurrence of disability from October 22, 1998 to January 4, 1999, causally related to her June 27, 1997 employment injury.

Appellant also furnished a CA-20 form report dated November 5, 1998 from Dr. Morley, in which he diagnosed muscle spasm of the back and LS strain superimposed on spinal stenosis and indicated by check mark that Dr. Morley believed appellant's condition was causally related to the employment injury. However, 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.⁶ Without any explanation or rationale, such a report is insufficient to establish causal relationship.⁷ Furthermore, he did not opine that appellant was disabled due to a change in the nature or extent of her accepted employment injury or a change in the nature or extent of her light-duty requirements. Dr. Morley even indicated that appellant was not disabled for work as she "works with limitations." Therefore, Dr. Morley's form report dated November 5, 1998 is not sufficient to establish that

³ *Mary A. Wright*, 48 ECAB 240 (1996); *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁴ *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983).

⁵ *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

⁶ *Donald W. Long*, 41 ECAB 142, 146 (1989).

⁷ *Id.*

appellant sustained a recurrence of disability from October 22, 1998 to January 4, 1999, causally related to her June 27, 1997 employment injury.

As appellant has failed to show either a change in the nature and extent of her injury-related condition or a change in the nature and extent of her light-duty requirements, she has failed to meet her burden of proof and the Office properly denied her claim for a recurrence of total disability.

The decisions of the Office of Workers' Compensation Programs dated September 9 and June 17, 1999 are hereby affirmed.

Dated, Washington, DC
November 22, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member