

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JENNIFER H. MOORE and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Montgomery, AL

*Docket No. 99-2395; Submitted on the Record;
Issued October 25, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on or after December 20, 1996 causally related to her September 19, 1996 employment injury.

On September 19, 1996 appellant, then a 39-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a strained right shoulder when she pulled up the linens on a patient's bed. Appellant's claim was accepted for cervical and thoracic strains. She stopped work on September 26, 1996 and resumed work on December 9, 1996. Appellant accepted an early retirement offer from the employing establishment effective December 20, 1996.

On July 5, 1997 appellant filed a recurrence of disability claim (Form CA-2a) alleging that on December 20, 1996 she sustained a recurrence of disability causally related to her September 19, 1996 employment injury. On the claim form, appellant stated that she stopped work on December 20, 1996 and that the "pain never stopped." Appellant also stated that she was released to light duty on December 2, 1996 and returned to work December 9, 1996. Appellant noted that she accepted an early retirement from the employing establishment because she could not perform her work and she hoped that after a period of rest she could secure other employment.

Appellant submitted progress notes from Dr. Kenneth K. Taylor, a Board-certified internist, dated September 26, October 3 and 24, 1996, in which he noted appellant's complaints and diagnosed cervical and thoracic strain. In Dr. Taylor's notes dated October 28, 1996, he noted magnetic resonance imaging (MRI) findings of mild degenerative changes and diagnosed cervical radiculopathy but no other abnormalities. In Dr. Taylor's notes dated July 1, 1997, Dr. Taylor diagnosed chronic neck pain. He noted mild diffuse right paracervical and trapezial tenderness. Dr. Taylor also noted that appellant complained of right-side neck, shoulder, and arm pain and that her symptoms were "unchanged from her initial injury" despite conservative

treatment. Appellant submitted an attending physician's report (Form CA-20) from Dr. Taylor dated July 2, 1997, in which he diagnosed cervical and thoracic strain and indicated by check mark that he believed appellant's condition was caused or aggravated by an employment activity. Dr. Taylor noted that appellant was totally disabled from September 26 to October 21, 1996 and that she was able to resume work on the latter date.

Appellant also submitted reports from Dr. Larry W. Epperson, a Board-certified neurologist, dated October 30 to November 25, 1996. In his October 30, 1996 report, Dr. Epperson stated that appellant reported that she sustained severe right arm pain and right hand numbness when she picked up a patient about one month prior to her office visit. He diagnosed probable cervical radiculitis, mild right carpal tunnel syndrome and right distal ulnar neuropathy. In Dr. Epperson's nerve conduction velocity and electromyogram (EMG) report dated October 30, 1996, he found evidence of mild right carpal tunnel syndrome and right wrist distal ulnar neuropathy. In a November 21, 1996 report, Dr. Epperson diagnosed persistent cervical neck pain and radicular arm pain with normal cervical spine MRI. He also diagnosed right carpal tunnel syndrome and distal ulnar neuropathy. Dr. Epperson's November 25, 1996 report stated appellant's medical history and diagnoses of cervical neck pain with right arm pain and numbness, hand numbness with tingling in the legs, and feet, mild right carpal tunnel syndrome and right distal ulnar neuropathy of the wrist.

Appellant further submitted a myelogram report from Dr. George Wakefield, a Board-certified radiologist, dated November 25, 1996. In his report, Dr. Wakefield diagnosed L4-5 mild degenerative spinal stenosis with suspected encroachment upon the right L5 nerve root sleeve within the lateral recess.

By letter dated August 11, 1997, the Office of Workers' Compensation Programs requested additional factual and medical evidence from appellant to support her claim.

In response, appellant submitted an undated narrative statement describing her light-duty assignment commencing December 9, 1996. She stated that her condition had not changed much after returning to work and she had difficulty performing everyday tasks such as housework. Appellant also asserted that her current condition "is the same condition [she] had since September 1996." Appellant described her symptoms and noted that she experienced daily arm and back pain. Appellant discussed her early retirement buyout.

By decision dated September 23, 1997, the Office denied appellant's recurrence of disability claim on the grounds that the evidence of record failed to establish that her alleged disability was causally related to her September 19, 1996 employment injury.

By letter dated July 31, 1998, appellant, through her attorney, requested reconsideration of the Office's September 23, 1997 decision denying her claim. Appellant submitted a progress note from Dr. Taylor dated October 28, 1997, in which he diagnosed chronic right side neck pain of unknown etiology. Appellant also submitted reports from Dr. Epperson dated December 6, 1996, June 12 and 16, 1997. In his report dated December 6, 1996, he noted that appellant's myelogram and computerized axial tomography scan showed spinal stenosis at L4-5 with disc protrusion and suspected nerve root encroachment on the right L5 nerve root. Dr. Epperson also noted appellant's medical history and September 19, 1996 employment injury. He diagnosed

cervical neck pain with undetermined etiology. In Dr. Epperson's report dated June 12, 1997, he noted that appellant stated she could not work. Dr. Epperson diagnosed subjective complaints of neck pain and right radicular arm pain with a history of carpal tunnel syndrome and ulnar neuropathy at the distal wrist. In his report dated June 16, 1997, Dr. Epperson stated:

"I recommended that [appellant] return to work with light duty but evidently she did not return to work. She would like some type of disability but I have told her that I see no neurologic reason why she can not return to work. The patient has a long list of activities she can not perform. This includes difficulty stirring food, inability to lie on the right side, constant pain, muscle spasms, difficulty using computer, back pain, pain elicited when lifting more than 10 pounds, brace on hand for carpal tunnel syndrome causes more pain, driving causes excruciating pain, etc., etc., etc. I have explained to her that patients have to have objective findings to obtain disability.

Dr. Epperson diagnosed neck pain, right arm radicular pain, rule out orthopedic problem such as rotator cuff and possible fibromyalgia. Appellant further submitted reports from Dr. David P. Herrick, a Board-certified anesthesiologist and pain management specialist, dated June 11 to July 10, 1998. In his reports, Dr. Herrick discussed appellant's cervical epidural steroid injection procedures and diagnosed cervical radiculitis. A June 25, 1998 cervical epidurogram reported by him showed contrast from C5 to C7 with bilateral spread.

By merit decision dated March 8, 1999, the Office denied modification of its September 23, 1997 decision. The Office found that appellant was not disabled on or after December 20, 1996. The Office also found that the evidence of record showed that appellant voluntarily resigned from the employing establishment and that had she remained at work, her light-duty position would have continued within her physicians' restrictions.

On appeal appellant asserts that she has permanent nerve damage and, therefore, she cannot work.

The Board finds that appellant did not sustain a recurrence of disability on or after December 20, 1996 causally related to her September 19, 1996 employment injury.

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.¹

In this case, appellant has not shown a change in the nature and extent of her modified-duty job requirements, nor has she submitted sufficient medical evidence to show a change in the

¹ *Glenn Robertson*, 48 ECAB 344, 352 (1997); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

nature and extent of her injury-related condition. To support her claim, appellant submitted reports and notes from Drs. Taylor, Epperson, Wakefield and Herrick.² Dr. Taylor diagnosed cervical neck pain, arm pain, right carpal tunnel syndrome, distal ulnar neuropathy, and cervical and thoracic strains, but he did not rationally relate these conditions to appellant's September 19, 1996 employment injury.³ Moreover, in his notes dated July 1 and October 28, 1997, Dr. Taylor stated that appellant's symptoms were "unchanged from her initial injury" and that appellant's chronic right-sided neck pain was of unknown etiology. Similarly, Dr. Epperson diagnosed mild right carpal tunnel syndrome, right wrist ulnar neuropathy, probable cervical radiculitis, numbness and cervical neck pain but he did not relate appellant's conditions to her employment injury. In his June 16, 1997 report, Dr. Epperson stated that he recommended that appellant return to work and found that appellant lacked an objective neurologic diagnosis. Drs. Wakefield and Herrick also failed to relate appellant's conditions to her September 19, 1996 employment injury. Appellant's narrative statements lack probative value because disability is a medical issue and appellant, a layperson is not competent to render a medical opinion.⁴ As appellant did not submit sufficient evidence showing a recurrence of disability due to a change in her injury-related condition or light-duty job requirements, she failed to satisfy her burden of proof.

² The record also contains a report from Dr. G. Mallone Chandler, a chiropractor, noting appellant's symptoms. The report, however, does not constitute medical evidence because under section 8101(2) of the Federal Employees' Compensation Act, chiropractors are only considered physicians and their reports considered medical evidence, to the extent that they treat spinal subluxations demonstrated by x-rays to exist. 5 U.S.C. § 8107(a).

³ Medical reports with a box checked "yes" with regard to whether a condition is employment related is of diminished probative value without further detail and explanation. *Lester Covington*, 47 ECAB 539, 542 (1996).

⁴ *James A. Long*, 40 ECAB 538, 542 (1989).

The decision of the Office of Workers' Compensation Programs dated March 8, 1999 is hereby affirmed.⁵

Dated, Washington, DC
October 25, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. *Martha L. Street*, 48 ECAB 641, 644 (1997). As appellant filed this appeal with the Board on July 13, 1999, the Office's March 8, 1999 decision is the sole decision within the Board's jurisdiction.