U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOLA A. JETTIE and DEPARTMENT OF JUSTICE, IMMIGRATION & NATURALIZATION SERVICE, St. Albans, VT

Docket No. 99-1421; Submitted on the Record;
Issued February 20, 2001

DECISION and ORDER

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

The issue is whether appellant has met her burden of proof to establish that she sustained a recurrence of disability on March 13, 1995 causally related to her September 23, 1993 employment injury.

On September 23, 1993 appellant, then a 53-year-old record technician, sustained low back spasm in the performance of duty. She described the occurrence of the injury as follows: "[W]hen climbing to the top of the ladder to reach the top shelf for files, the ladder tip[ped] to the left [and] I pulled to the right to steady the ladder." Appellant stopped work on September 23, 1993 and returned to work for four hours per day on January 4, 1994. She again stopped work in March 1994 and returned to part-time employment on October 3, 1994. In decisions dated February 2 and May 8, 1995, the Office of Workers' Compensation Programs found that appellant's actual earnings in her part-time position of record technician fairly and reasonably represented her wage-earning capacity. On August 26, 1996 she alleged that she sustained a recurrence of disability on March 13, 1995 causally related to her September 23, 1993 employment injury. Appellant stopped work following the alleged recurrence of disability on March 13, 1995 and did not return.

By decision dated February 3, 1997, the Office denied appellant's claim on the grounds that the evidence did not establish that she sustained a recurrence of disability on March 13, 1995 causally related to her September 23, 1993 employment injury. In decisions dated October 15, 1997, July 8, 1998 and February 19, 1999, the Office denied modification of its denial of appellant's claim for an employment-related recurrence of disability.

The Board has duly reviewed the case record on appeal and finds that appellant has not established that she sustained a recurrence of disability on March 13, 1995 causally related to her September 23, 1993 employment injury.

Where an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 to show that he or 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 sustained low back spasm due to an injury on September 23, 1993 following which she returned to part-time work with restrictions. There is no evidence in the record establishing any change in the nature and extent of appellant's light-duty position as a cause of her claimed disability after March 13, 1995.

Appellant also has not submitted sufficient medical evidence to establish that she sustained a recurrence of disability on March 13, 1995 causally related to her September 23, 1993 employment injury. In support of her claim for a recurrence of disability, appellant submitted a report dated March 16, 1995 from Dr. Rowland G. Hazard, a Board-certified internist and attending physician. He diagnosed back pain and stated:

> "Again, [appellant] continues to have her low back pain though she feels her legs are alright. She continues to work four hours a day but feels that her concentrating power is poor and she is fatigued a lot because of her having to put up with her pain. [Appellant] is sleeping poorly at night. She has a good deal of frustration over all of this and has decided that she is going to apply for retirement."

After examination, Dr. Hazard related that "[appellant's] functional capacity seems to be reasonably well maintained despite her reports that she is having continuing pain and secondary problems "concentrating." She seems quite certain that the time has come for retirement." While Dr. Hazard described appellant's personal view that she was no longer able to continue working, he did not find that she was disabled from her employment. In fact, Dr. Hazard noted that her functional capacity seemed "well maintained." A physician's report is of little probative value when it is based on the claimant's beliefs rather than the doctor's independent opinion.[2]

In a report dated April 18, 1995, Dr. Hazard noted that appellant had stopped work on March 13, 1995 and wanted to apply for disability retirement. He listed essentially normal findings on examination and noted:

> "[I]n spite of her objective findings, [appellant] very consistently says that she is not able to continue working simply because the pain is too intense and keeps her from being able to concentrate well enough to do her work accurately at an acceptable level."

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

[2] *Earl David Seal*, 49 ECAB 152 (1997).

In a letter to the employing establishment of the same date, Dr. Hazard described appellant's history of injury on September 23, 1993 and indicated that a magnetic resonance imaging (MRI) scan of her lumbar spine obtained on April 22, 1994 was interpreted as normal. He diagnosed chronic low back pain and stated that "[d]uring [appellant's] functional and office testing, she would appear to have some of the functional capacities required for her work, but her efforts to return to work have in fact not been successful because of her complaint of pain." Dr. Hazard noted that appellant had attempted to return to work at a low physical demand level and stated, "A recommendation to stop working even at this level is based on her personal reports of intolerance for pain she has experienced while actually trying to work." His report is of little probative value as it is based on appellant's belief that she can no longer work rather than the doctor's independent reasoning.[3]

In a report dated April 22, 1997, Dr. Hazard discussed appellant's history of lumbosacral pain radiating down her thigh since her injury in September 1993. He stated:

> "We do not have a surefire anatomic diagnosis though [appellant] has very consistently complained of pain in the lumbosacral and sacroiliac areas. Her objective findings and subjective complaints are listed above. [Appellant] has had no testing since her 1994 MRI [scan]. As far as I can tell, she has had a consistent history of her back complaints since her original work injury and therefore her current condition is related to that injury."

A medical opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.[4]

In a treatment note dated March 16, 1995, Dr. Susan Saferstein, appellant's attending physician who is Board-certified in family practice, noted that she was "advised to refrain from work activities from March 17, 1995 to indefinitely." She, however, did not render a diagnosis, address causation or provide a rationale for her disability finding and thus her opinion is insufficient to meet appellant's burden of proof.

In an office visit note dated March 20, 1995, Dr. Saferstein noted that appellant was "requesting permission to completely discontinue work. She is beside herself secondary to her chronic LBP [low back pain]. The pain interferes with [appellant's] concentration and her work accuracy has greatly suffered." Dr. Saferstein diagnosed "chronic LBP, presumably muscular, [p]ossible future disability [and] [a]nxiety/depression." She did not find appellant disabled from employment but rather noted that she may have future disability.[5] Therefore, her opinion does not support appellant's claim for a recurrence of disability on March 13, 1995.

[3] *Id.*

[4] *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

[5] The Board has held that fear of future injury is not compensable; *see William A. Kandel*, 43 ECAB 1011 (1992).

In an office visit note dated April 3, 1995, Dr. Saferstein noted that appellant continued to work part time but had excessive pain. She stated:

> "At this point, [appellant] is requesting relief from work. She believes that if she is experiencing pain, the mechanical stressors at work exacerbate her symptoms, setting up a worsening pain cycle. [Appellant] notes that she is increasingly unable to cope with her symptoms, in part because there has been no relief in sight. She believes that she should go on disability so that she can reset her back when her pain is flaring. Her work supervisor and coworkers have encouraged her to apply for disability having observed her functioning in extreme pain as well demonstrating a decrease work performance secondary to poor concentration and at times confusion from medication side effects."

Dr. Saferstein related that she had "advised [appellant] that at least temporarily she should not return to work." As discussed above, a physician's report is of diminished probative value when it is based on appellant's beliefs rather than the independent finding of a physician.[6] Additionally, Dr. Saferstein did not provide any rationale for her opinion that appellant should temporarily stop work. Medical conclusions unsupported by rationale are of diminished probative value.[7]

In a form report dated July 17, 1995, Dr. Saferstein diagnosed low back pain secondary to muscle spasm, checked "yes" that the condition was due to the injury for which appellant claimed compensation and found her totally disabled from employment. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.[8]

In office visit notes dated May 20 and October 23, 1995 and March 11, 1996, Dr. Saferstein noted continued findings of low back pain. In a report dated October 1, 1996, she indicated that appellant was disabled "by severe low back pain, which is presumed secondary to muscle spasm." Dr. Saferstein noted that appellant had tried various testing, treatment and medication and stated, "Prior to her injury, she was an extremely hard working person who rarely missed any work whatsoever." Dr. Saferstein, however, did not discuss how, with reference to the specific facts of this case, appellant's September 1993 employment injury of low back spasm continued to cause disability three years later. Further, Dr. Saferstein's diagnosis of presumed muscle spasm is equivocal and therefore of little probative value.[9]

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[6] *See Earl David Seal*, *supra* note 2; *Salvatore M. Martilla*, 33 ECAB 1275 (1982).

[7] *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

[8] *Lee R. Haywood*, 48 ECAB 145 (1996).

[9] *Linda I. Sprague*, 48 ECAB 386 (1997).

In an office visit note dated October 8, 1997, Dr. Saferstein related:

> "[Appellant] suffers from chronic low back pain since injuring herself [on] September 22, 1993. I believe her disability is permanent and that she is completely unable to work. [Appellant] has undergone an unsuccessful thorough medical work-up and management plan and has been compliant throughout. She is also intolerant to all analgesic and anti-inflammatory medication."

Dr. Saferstein, however, did not provide any rationale for her finding that appellant was disabled from employment. A physician's opinion on causal relationship between a claimant's disability and an employment injury is not dispositive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.[10]

In a report dated February 17, 1998 in connection with appellant's application for disability retirement, Dr. Saferstein stated:

> "[Appellant] has suffered from chronic low back pain since September 22, 1993. At that time she noted progressive back pain while at work. Work detail at that time involved climbing up and down ladders, lifting and bending while cleaning out several files. Multiple examinations by several physicians and physical therapists have been confirmatory of severe lumbar muscle spasm. MRI [scan] of the lumbar spine [dated] April 22, 1994 was essentially negative."

Dr. Saferstein diagnosed severe, chronic low back pain presumed secondary to muscle spasm and opined that appellant was totally disabled. However, to establish causal relationship, a physician's opinion must be based on a complete and accurate factual and medical background and must be supported by medical rationale.[11] In this case, Dr. Saferstein related an inaccurate history of injury, that of appellant noticing progressive back pain while climbing ladders, lifting and bending, rather than a traumatic injury occurring when appellant steadied herself on a tilting ladder. Consequently, Dr. Saferstein's report is of diminished probative value.[12]

In a report dated December 12, 1998, Dr. Saferstein opined that appellant's September 23, 1993 employment injury caused chronic low back pain and muscle spasm. She concluded, "In summary, I believe [appellant] is permanently disabled from her work since March 13, 1995 resulting from injury incurred at work on September 23, 1993." She noted that appellant received disability benefits from the Social Security Administration and from the

[10] *Jean Culliton*, 337 ECAB 728 (1996).

[11] *Roger Dingess*, 47 ECAB 123 (1995).

[12] *Joseph M. Popp*, 48 ECAB 624 (1997).

Office of Personnel Management.[13] Dr. Saferstein did not provide rationale for her disability finding and therefore her opinion is insufficient to meet appellant's burden of proof.[14]

In an office visit note dated June 23, 1998, Dr. Elizabeth Schneider, who is Board-certified in family practice, treated appellant for an exacerbation of muscle spasm after "excessive trips in the car." She noted that appellant's "[o]riginal injury occurred while employed by [the employing establishment] [] after she was yanked off a ladder." As Dr. Schneider did not relate appellant's diagnosed condition of an exacerbation of muscle spasm to her employment injury, her opinion is of little relevance to the issue at hand.

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between her claimed condition and her employment.[15] To establish causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination of appellant, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to discharge her burden of proof.

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

Dated, Washington, DC
February 20, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[13] Findings of other administrative agencies are not determinative with regard to proceedings under the Federal Employees' Compensation Act, which is administered by the Office and the Board. *George A. Johnson*, 43 ECAB 712 (1992).

[14] *Ronald C. Hand*, 49 ECAB 113 (1997) (a medical opinion not fortified by medical rationale is of little probative value).

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