U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RITA CLARK JERVISS and DEPARTMENT OF THE NAVY, MARE ISLAND NAVAL SHIPYARD, Vallejo, CA

Docket No. 98-1514; Submitted on the Record;
Issued March 29, 2001

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT, PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained a recurrence of disability beginning June 10, 1987, causally related to her accepted employment injuries; and (2) whether the Office of Workers' Compensation Programs properly terminated appellant's authorization to receive medical treatment.

On July 23, 1984 appellant, then a 34-year-old equipment cleaner, filed a claim alleging that on July 20, 1984 she injured her back while attempting to coil a large hose in the performance of duty. Appellant received continuation of pay from July 21 to August 19, 1984. The Office accepted appellant's claim for a subluxation of L5-S1. Appellant sustained a second employment-related back injury on February 5, 1985 and filed a claim for traumatic injury. The Office accepted this claim for low back strain, aggravation of degenerative lumbar disc disease, and subluxations at L5-S1 and C1-C2. Appellant was off work from February 6, 1985 to March 13, 1985, when she returned to a light-duty position.

Appellant never again performed her regular duties as an equipment cleaner, but was assigned to perform light-duty work beginning March 25, 1985. Appellant was given a series of short-term assignments, usually ranging from one day to a week in duration, in whichever shop was shorthanded and had some light-duty work available. The duties were clerical in nature, such as filing, timekeeping, answering the telephone, taking messages, data entry on a computer, light typing, sweeping or dusting and running errands. The physical requirements included no lifting over 10 pounds, no work in awkward postures, no work with arms above shoulder height and no repetitive forward bending. Appellant continued to be paid as an equipment cleaner.

On July 1, 1985 appellant experienced a recurrence of disability and stopped work until October 25, 1985, when she returned to light duty.

From October 10 through December 19, 1986, appellant received psychiatric treatment.

On September 24, 1986 appellant was involved in an employment-related motor vehicle accident. The Office accepted appellant's claim for cervical subluxation. Appellant was off work until October 20, 1986, when she returned to light duty.

On March 5, 1987 appellant sustained a recurrence of disability and was off work until March 14, 1987, when she returned to light duty.

On June 2, 1987 appellant submitted a voluntary resignation from her position at the employing establishment. Subsequent to her resignation, appellant worked in the private sector and participated in training programs.

On May 22, 1989 appellant filed a recurrence of disability claim, seeking lost wages on or after June 2, 1987. Appellant asserted that she stopped work only because her supervisor told her that he did not have any permanent light-duty work for her and suggested that she retire, which she did.

In a decision dated June 13, 1991, the Office denied appellant's claim for compensation after June 2, 1987. On December 2, 1991 the Office set aside the June 13, 1991 decision, as further development of the evidence was warranted.

By decision dated June 24, 1992, the Office denied appellant's claim for compensation after June 2, 1987, on the grounds that she had abandoned suitable work, in violation of section 8106(c) of the Federal Employees' Compensation Act. Following a hearing held at appellant's request, by decision dated April 8, 1993, an Office hearing representative affirmed the Office's June 24, 1992 decision finding that appellant had abandoned suitable work.

Appellant subsequently filed an appeal to the Board. By decision dated January 31, 1994, the Board granted the Director's Motion to Remand, and set aside the Office's April 8, 1983 decision on the grounds that adjudication of this case under the suitable work standard set forth at section 8106 was improper.[1] The Board directed the Office to readjudicate appellant's claim as a recurrence of total disability pursuant to the principles set forth in *Terry R. Hedman.*[2]

Following further development of the medical evidence, by decision dated July 18, 1994 the Office denied appellant's claim for a recurrence of disability. By letter dated August 9, 1994, appellant requested a hearing before an Office representative.

In a separate letter also dated July 18, 1994, the Office issued a notice of proposed termination of benefits. Appellant, through counsel, responded to the proposed termination by letter received August 17, 1994. In a decision dated August 22, 1994, the Office finalized the termination of benefits.

By letter dated September 21, 1994, appellant requested an oral hearing before an Office representative, which was held on March 29, 1995.

[1] *See* Docket No. 93-1989.

[2] 38 ECAB 222 (1986).

In a decision dated January 22, 1996, the Office hearing representative found that appellant had failed to establish a recurrence of disability on or after June 2, 1987 and that the evidence of record established that appellant has no continuing disability or residuals from her accepted employment injuries. On January 14, 1998 pursuant to a December 27, 1996 Order of the Board, the Office reissued its January 22, 1996 decision to protect appellant's appeal rights.[3]

The Board finds that appellant has not established that she sustained a recurrence of disability beginning June 2, 1987 causally related to her accepted employment injuries.

When 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 of record establishes that he or 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 he or 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.[4]

In this case, appellant did not allege that there was a change in the nature and extent of her injury-related conditions. According to appellant's own testimony, she was still coming to work on a regular basis up to the day she resigned. This is supported by the medical evidence of record. Following her prior recurrence of disability on March 5, 1987, appellant returned to her light-duty work on March 16, 1987. In a report dated May 21, 1987, shortly before appellant again stopped work, Dr. Don C. Christensen, appellant's treating chiropractor for her accepted subluxations, stated that while appellant needed additional care and treatment, temporary disability was not needed at the time.

In a report dated December 14, 1987, the first medical report of record after appellant stopped work, Dr. Harle B. Grover, an Office referral physician, stated that appellant reported not having seen her treating physician since June. The next medical report of record, a September 28, 1988 report from Dr. Stephen Hurd, contains a diagnosis of chronic lumbar syndrome with radiculopathy and osteoarthritic scoliosis, but does not discuss any inability to perform her light-duty job. The next medical report of record, a December 19, 1989 report from treating physician Dr. Linda Specht, notes that appellant was not seen by her office between August 5, 1986 and June 15, 1989.

Appellant primarily asserted that she stopped work on June 2, 1987 because the employing establishment had no light-duty work available. In support of her allegation, appellant submitted a May 28, 1987 statement from her immediate supervisor, Mr. Odell Green, stating that appellant had not been able to be placed in a position on the shipyard because of nonselection, and that the shop could not accommodate her present position because of her restrictions. Appellant added that, although the employing establishment submitted a job description for the position of "clerk," she was never offered a permanent position as a clerk.

[3] *See* Docket No. 96-1756.

[4] *Gus N. Rodes*, 46 ECAB 519 (1995); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, *supra* note 2.

Appellant also asserted that while performing her light duty, she was often required to work outside her light-duty restrictions.

The evidence of record, however, does not support appellant's allegations. In a letter dated February 14, 1992, the employing establishment explained that following her return to work, appellant was assigned to a work-leveling shop, Work Center 29. This shop was available when an injured employee's parent shop could not provide a permanent position to meet the employee's physical restrictions. The employing establishment further explained that while there were no specific permanent light-duty positions available, at the time of her resignation appellant was working in a permanent light-duty capacity and that this light duty could have continued indefinitely.

Further, appellant testified that she was performing the duties of a clerk, which are described in the position description provided by the employing establishment. The record contains no evidence that appellant was ever required to work outside of her physical restrictions. The record supports that as of June 1987 appellant voluntarily resigned from work because she was dissatisfied with the nature of her work, which she considered monotonous. For these reasons, appellant has not met her burden of proof to establish that she sustained a recurrence of disability on or after June 2, 1987.

The Board further finds that the Office met its burden of proof in terminating medical benefits for appellant's work-related condition, effective August 22, 1994.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.[5] The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[6]

Subsequent to the Board's remand in this case, the Office referred appellant, together with a statement of accepted facts and a list of questions, to Dr. John W. Hutchinson, a Board-certified orthopedic surgeon, for an updated medical report. In his report dated June 27, 1994, Dr. Hutchinson summarized appellant's medical and employment history, reviewed the relevant medical evidence of record, and reported his findings on physical examination. Dr. Hutchinson diagnosed chronic low back strain, by history, resolved, with preexisting asymptomatic scoliosis to the left. He stated that there was no evidence of symptoms from spinal stenosis in the lumbar spine, and noted that appellant reported she could walk a mile and did not feel pain, weakness or numbness in her legs, but only needed an occasional short rest. Dr. Hutchinson further stated that appellant did not have symptoms or findings to indicate a present back condition. While in

[5] *Pedro Beltran*, 44 ECAB 222 (1992); *Mary E. Jones*, 40 ECAB 1125 (1989).

[6] *Frederick Justiniano*, 45 ECAB 491 (1994); *see Marlene G. Owens*, 39 ECAB 1320 (1988); *Calvin S. Mays*, 39 ECAB 993 (1988).

all medical probability, her back complaints were related to her employment, with flare-ups brought on by her job activities, she was receiving no treatment for her back at the time of his examination, and no treatment was required. He added that appellant reported low level subjective complaints, including minimal or mild stiffness and discomfort if she sat or stood for too long, but that there was no objective evidence of disability. Dr. Hutchinson concluded that aside from her low-level subjective complaints, appellant had no residual effects of her July 20, 1984, February 5, 1985 or September 1986 injuries, and has been able to perform the duties of her light-duty clerical job since June 2, 1987.

As appellant had, at one time, undergone psychiatric treatment, the Office also referred appellant to Dr. Danilo V. Lucila, a Board-certified psychiatrist, for a second opinion. In his report dated June 21, 1994, Dr. Lucila reviewed the medical and factual evidence of record and listed his findings on psychological examination. Dr. Lucila found that at the time of his examination, appellant did not have any psychological or psychiatric limitations and was not receiving any psychiatric treatment. Dr. Lucila acknowledged that in 1984 to 1985 appellant did have adjustment disorder with depressed mood, but clarified that this condition, while symptomatic, did not present with manifestations of a psychiatric nature that would have been either partially or totally disabling. Dr. Lucila concluded that from a psychiatric standpoint, appellant was capable of performing the duties of both an equipment cleaner and a clerk, without restrictions. As the reports of Dr. Hutchinson and Dr. Lucila establish that appellant no longer suffers residuals requiring medical or psychiatric treatment as a result of her accepted employment injuries, and as there is no contemporaneous contrary medical evidence in the record, the Office properly terminated appellant's entitlement to medical benefits effective August 22, 1994, the date of the Office's decision.[7]

The January 14, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
March 29, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

[7] The most recent report of record by a treating physician is the December 19, 1989 report of Dr. Linda Specht.