U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTYE WAGNER and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Northport, NY

Docket No. 00-2073; Submitted on the Record;
Issued May 23, 2001

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant established that she sustained a recurrence of disability on and after February 4, 1996 and intermittent periods thereafter causally related to the April 27, 1995 employment injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant has not established that she sustained a recurrence of disability.

On April 27, 1995 appellant, then a 47-year-old practical nurse, sustained a cervical strain and a lumbosacral sprain as a result of her employment-related duties. She returned to limited duty on May 25, 1995 and subsequently filed claims for recurrences sustained during August 1, 1995 and February 4, 1996. The recurrence of injury on August 1, 1995 was accepted by the Office of Workers' Compensation Programs.

Appellant returned to full-time, limited-duty work on August 13, 1996 and worked until her alleged February 4, 1996 recurrence. Appellant again returned to full-time, limited-duty work on February 16, 1996. Appellant sustained intermittent periods of disability after her return to work on February 16, 1996. Following further development, by decision dated August 24, 1996, the Office denied the recurrence claims on and after February 4, 1996. By decision dated January 9, 1998, the Office denied appellant's request for reconsideration. The Board, in a decision dated February 8, 2000,[1] vacated the Office's decision of January 9, 1998 and remanded the case for a merit review of its prior decision. By decision dated May 5, 2000, the Office, after performing a merit review, denied modification of its August 24, 1996 decision. The instant appeal follows.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record

[1] Docket No. 98-1164 (issued February 8, 2000).

establishes that he 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 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.[2] This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[3] Causal relationship is a medical issue[4] and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence, which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[5]

The relevant medical evidence from the claimed recurrence of February 4, 1996 and for intermittent periods thereafter includes an OWCP Form CA-20 dated February 14, 1996 from Dr. Evangelos A. Mavrogeorgis, a Board-certified internist, in which appellant's total disability of February 6 through 15, 1996 was said to be causally related to her employment activity by virtue of a check mark. In a November 2, 1996 report, Dr. Mavrogeorgis related that appellant had a history of neck injury and back injury at work on March 15, 1995 and was seen on February 9, 1996 for neck pain and low back pain. He opined that the recurrence of symptoms on February 9, 1996 was related to the previous injury of March 15, 1995 and advised that appellant was out of work from February 9 through 16, 1996.

In a July 15, 1997 medical report, Dr. John V. Scelfo, a chiropractor, related that he first saw appellant on February 13, 1996 for injuries sustained at work on April 27, 1995. Dr. Scelfo noted the history of injury, conducted a physical examination and stated that he reviewed a magnetic resonance imaging (MRI) scan of the lumbar spine dated December 29, 1995 taken by a Long Island MRI scan and a February 19, 1997 neurology report by Dr. Sulidhavi. Based on his review of appellant's history, complaints, physical examination, MRI scan findings and her neurology report, Dr. Scelfo diagnosed lumbar radicular syndrome; lumbar subluxation at L2-3, L4-5; brachial neuritis/radiculitis; and subluxation of cervical vertebrae at C1-2 and C4-5. Results of subsequent examinations along with type of treatment rendered were also provided. He stated that appellant's injuries to her lumbar spine, cervical spine and shoulder were the result of the injury of April 27, 1995 and further stated that those injuries remained symptomatic, with periods of exacerbation, relapse and reoccurrence which have caused appellant to become

[2] *George DePasquale*, 39 ECAB 295 (1987); *Terry R. Hedman*, 38 ECAB 222 (1986).

[3] *Frances B. Evans*, 32 ECAB 60 (1980).

[4] *Mary J. Briggs*, 37 ECAB 578 (1986).

[5] *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

disabled from not only her job but also from everyday activities. Dr. Scelfo opined that appellant was totally disabled and unable to perform any work from February 4 through 16, 1996 and from the period November 26, 1996 through February 5, 1997 as a result of reoccurrence of her April 27, 1995 work injury from which appellant has never fully recovered. He related that as of June 11, 1997, appellant returned to light-duty part-time work. Dr. Scelfo further stated that appellant continues to have active symptoms of lumbar and cervical myalgia.

On appeal appellant's counsel contends that the Office's reference to an alleged recurrence of injury of November 26, 1997 is an error of fact as it should read November 26, 1996. Appellant argues that the medical evidence supports recurrences of total disability commencing February 4 and November 26, 1996. He further contends that the medical evidence also supports that appellant sustained injuries, in addition to those accepted by the Office and argues that the Office has failed to properly expand the class of accepted conditions to include the other conditions.

Although the Board agrees that a typographical error might have occurred in reviewing the evidence for an alleged recurrence of November 26, 1997 as opposed to November 26, 1996, the medical evidence of record is insufficient to establish that appellant sustained a recurrence of disability causally related to the accepted employment injury on and after February 4, 1996 and intermittent periods thereafter. The February 14, 1996 OWCP Form CA-20 from Dr. Mavrogeorgis is not sufficient to meet appellant's burden of proof as his opinion, which indicated causal relationship to the employment incident by a check mark on the form, without explanation or rationale, is insufficient to establish causal relationship.[6] Although in Dr. Mavrogeorgis November 2, 1996 report, he opined that the recurrence of February 9, 1996 was related to appellant's work injury, no medical rationale was provided as to why such a recurrence would occur or how it related to the work injury. Moreover, Dr. Mavrogeorgis has an inaccurate history of appellant's work injury as he refers to a March 15, 1995 injury when the accepted injury occurred April 27, 1995. Furthermore, the Board notes that a chiropractor cannot be considered a physician under the Federal Employees' Compensation Act unless it is established that there was a subluxation demonstrated by x-ray.[7] While Dr. Scelfo diagnosed subluxation, there is no indication in his report that this condition was diagnosed by x-ray. Dr. Scelfo, therefore, is not a physician pursuant to section 8101(2), as a chiropractor is only considered a physician for purposes of the Act where he diagnoses subluxation by x-ray; there is no provision in the Act or regulations for acceptance of a chiropractor's report as probative medical evidence where subluxation is diagnosed by MRI scan. Dr. Scelfo's report, therefore, is of no probative value regarding appellant's condition or any disability suffered therefrom. Accordingly, appellant's argument regarding the Office's failure to expand the class of accepted conditions is rendered moot.

The May 5, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

[6] *Robert Lombardo,* 40 ECAB 1038 (1989).

[7] *See Samuel Theriault*, 45 ECAB 586 (1994); *Kathryn Haggerty*, 45 ECAB 383 (1994); 5 U.S.C. § 8101(2).

Dated, Washington, DC
May 23, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member