

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA CURTIN and U.S. POSTAL SERVICE,
POST OFFICE, Detroit, MI

*Docket No. 00-1486; Submitted on the Record;
Issued September 18, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability on September 1 or November 8, 1998.¹

The Board has duly reviewed the case record on appeal and finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability on September 1 or November 8, 1998, causally related to her June 28, 1997 accepted 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 shows 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.²

¹ In support of an earlier claim, appellant submitted a June 10, 1995 report from Dr. Raymond Weitzman, who stated that appellant had Raynaud's phenomenon, which requires that she "not be exposed to cold on a regular basis and that therefore her job should be modified to permit her to work in a warm area." Dr. Weitzman added that appellant also had arthritis in the hands and should "refrain from repetitive lifting of heavy or even small objects." The Office of Workers' Compensation Programs accepted the claim for left shoulder strain. On April 17, 1996 appellant accepted a limited-duty job offer consistent with Dr. Weitzman's medical restrictions. Her job as a mark-up clerk allowed for her to sit down answering telephone calls. Appellant was restricted to no more than 2 hours standing, bending, twisting or pulling, from no more than 4 hours walking or kneeling, from lifting over 10 pounds and from all overhead reaching requirements. She encumbered this limited-duty position when she filed her subsequent recurrence claims.

² *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry Hedman*, 38 ECAB 222, 227 (1986).

On June 28, 1997 appellant, then a 37-year-old part-time mark-up clerk, filed a claim for traumatic injury alleging that on that date she sustained muscle strain and pain in the left upper back and neck area.

In a report dated July 8, 1997, Dr. John L. Cavell, appellant's osteopath, stated that appellant had acute myositis and left rhomboid-overuse syndrome.

In an attending physician's report dated September 9, 1997, Dr. Cavell stated that appellant's acute myositis was related to her June 28, 1997 work-related injury, that she was totally disabled from that date to September 11, 1997 and that she could return to work on September 15, 1997 with the following restrictions: no lifting more than 8 to 10 pounds; no standing for more than 2 hours daily; and no overhead reaching; pushing or pulling with the involved shoulder.

By decision dated October 17, 1997, the Office accepted appellant's claim for acute myositis upper back sprain (muscle).

On January 22, 1998 appellant filed a claim for occupational disease, noting that she had been working in cold temperatures, which caused her medical condition. She attributed her pain, muscle spasms and stiffness to the cold work environment. Appellant stated that she aggravated her June 28, 1997 work-related injury. She noted that her work environment had unregulated temperatures which were either very hot or very cold. Appellant noted that she had worked in this condition since October 1993, up to 12 hours a day and for 6 or 7 days a week. Appellant added that her June 28, 1997 work-related injury was caused by performing repetitive activities at two-hour intervals.

In support of her claim, appellant submitted a January 5, 1998 report from Dr. Cavell who recommended that appellant "be moved to an area that is more conducive to her recovery and where temperature fluctuations are not present, and the repetitive motions she is involved in *e.g.*, throwing mail and bundles, and forward bending with lifting wrong shoulder muscles." (sic)

In a report dated January 5, 1998 and received by the Office on March 16, 1998, Dr. Cavell stated:

"On recent reevaluation of [appellant], concerning her ongoing symptom[at]ol[o]gy during her rehabilitation and present work status, her symptoms of increased pain and present work status have raised the concern that her present work duties are aggravating the involved muscle groups. It is my recommendation that [appellant] be moved to an area that is more conducive to her recovery and when temperature fluctuations are not present, and the repetitive motions she is involved in *e.g.*, throwing mail and bundles and forward bending with lifting shoulder muscles." (sic)

In a medical report dated March 2, 1998, Dr. Cavell stated that appellant's aggravation of her work-related injury was caused by working conditions. He related appellant's description of her work environment, noting that the temperature would be so cold that employees would be "forced to put on outer clothing such as coats, hats, scarves and gloves while working. When temperatures fall, [appellant] experience(s) pain and stiffness and must leave work to avoid

further aggravation.” Upon examination, Dr. Cavell found that appellant had muscle tightness and stiffness. He then stated that “the fluctuating temperatures and the repetitiveness of [appellant’s] work caused aggravation to her condition which I recommended be corrected or modified to aid in the recovery of her condition.”

On March 20, 1998 the Office accepted appellant’s occupational disease claim for an aggravation of acute myositis of the back.

On April 2, 1998 appellant filed a claim for recurrence of disability. She left work on March 31, 1998.

By letter dated July 22, 1998, the Office accepted appellant’s claim for a recurrence of disability on February 23, 1998.

On October 1, 1998 appellant filed a claim for a recurrence of disability, alleging that her work environment was cold and caused muscle spasms and stiffness when working at repetitive tasks. She stopped work on September 1, 1998 and returned to work on September 30, 1998.

In a report received by the Office on October 19, 1998, the employing establishment listed room temperatures on days when appellant worked, none of which was lower than 74.3 degrees.

By letter dated October 22, 1998, the Office advised appellant that the information she had submitted was insufficient to establish a recurrence of disability. The Office requested that appellant submit medical records pertaining to her condition.

On November 10, 1998 appellant filed a claim for a recurrence of disability based on her June 28, 1997 work-related injury. She also noted that she injured her knee on October 14, 1998 while at work. Appellant stopped work on November 8, 1998.

In a report dated November 20, 1998, Dr. Cavell stated that appellant was being treated for “acute and chronic myositis due to a compromised myofascial tissue and trigger point areas of acute ... which can be aggravated by little movement at work, repetitive movement, despite light-duty job description and temperatures below 70 degrees.”

In a medical report dated December 2, 1998, Dr. Cavell stated that appellant was off work for an undetermined amount of time based on her “acute medical treatment/illness with fever; because of muscle symptoms.”

By decision dated December 28, 1998, the Office denied appellant’s October 1, 1998 claim for recurrence of disability. In an attached memorandum, the Office stated that it had reviewed Dr. Cavell’s November 20, 1998 report that noted appellant’s inability to perform her job without escalating her symptoms. However it also stated that the medical evidence failed to establish that appellant’s current condition was related to her June 28, 1997 work-related injury.

On that same day, the Office advised appellant that it had received her November 10, 1998 recurrence of disability claim and advised her what she needed to submit to establish her claim.

In a report dated January 13, 1999, Dr. Cavell stated that the Office had misunderstood his last report and he wanted to clarify that appellant “is relating an inability to adequately perform her present work requirements with recent escalation of her symptoms.” He added that appellant’s condition had worsened and had been aggravated by her light-duty work, and that she was unable to perform that work because of the acceleration and aggravation of her acute and chronic myositis of upper back. Dr. Cavell then described appellant’s working environment including “working under overhead blowers and working in temperatures below 70 degrees.” Dr. Cavell stated that appellant should not return to work under her current working conditions. He added: “Patient is unable to work and will remain in my care.”

By decision dated January 28, 1999, the Office denied appellant’s claim for recurrence of disability filed on November 10, 1998. In an attached memorandum, the Office stated that Dr. Cavell’s reports lacked objective findings “other than fevers and does not explain how [appellant’s] back and muscle symptoms could cause fevers and is not considered a well[-]reasoned medical report.” The Office also noted that the employing establishment provided a thermometer to track the room temperature where appellant worked and that at no time did the temperature drop below 70 degrees.

In a report dated April 8 1999, Dr. Cavell stated that appellant’s clinical findings included acute tenderness, spacticity and reduced range of motion, specifically the rhomboid and trapezius muscle areas of the lower cervical and upper thoracic spinal muscle areas. He noted that the acute trigger points are in the thoracic region as well as reflex radiation to the neighboring areas. Dr. Cavell could not estimate when appellant could return to work. He noted the “progressive symptom[at]ol[o]gy and worsening of the involved areas” as the basis for appellant remaining off work.

By letter dated April 20, 1999, appellant requested reconsideration of the Office’s decisions denying her recurrence of disability claims, filed on October 1 and November 10, 1998.

By decision dated April 21, 1999, the Office denied appellant’s petition. In an attached memorandum, the Office noted the medical report from Dr. Cavell was lacking in objective findings that appellant’s condition had worsened.

By letter received by the Office on June 9, 1999, appellant again requested reconsideration. In support of her petition, she submitted a June 2, 1999 report from Dr. Cavell who stated that appellant remained under his care for acute and chronic myositis and undifferentiated connective tissue disease. He noted that other factors or contributing illnesses or disease processes have been ruled out. Appellant also submitted laboratory test results and physical therapy notes.

By decision dated September 7, 1999, the Office denied appellant’s request for reconsideration. In an attached memorandum, the Office stated that Dr. Cavell’s report contains no objective findings to support a worsening of appellant’s condition and that the diagnosis of undifferentiated connective tissue disease has not been accepted by the Office. The other evidence was determined to have no relevance to the claim.

By letter dated November 12, 1999, appellant requested reconsideration.

On December 21, 1999 the Office referred appellant to Dr. Paul E. Weing, a second opinion physician and an osteopath.

In a report dated January 6, 2000, Dr. Weing stated in a cover letter that he had examined appellant on that day and found that appellant had upper thoracic pain, etiology unknown, probably secondary to previous injury, Raynaud's phenomenon and positive abnormal antinuclear antibody, etiology unknown. He noted no objective signs of underlying muscle problems, stating that "findings are purely on a subjective basis." In his report, Dr. Weing noted a familiarity with appellant's history of injury and reported findings upon examination. He noted pain upon abduction of the shoulders bilaterally and upon external and internal rotation. There was no restricted range of motion, appellant's handgrip was normal bilaterally and her upper and lower flexors were within normal range and symmetrical. However, he noted weakness of the neck extensors and flexors. There was no evidence of atrophy of the back muscles, although Dr. Weing noted tenderness to palpation on both sides of the spine.

In the recommendations section of his report, Dr. Weing stated that "At the present time there is absolutely no objective evidence of any muscle spasm or acute muscle problems." He added that he could not determine whether there was a causal relationship between what happened three years ago and her current condition. Dr. Weing noted that appellant had "a couple of exacerbations which have been seen by other doctors, but again with no objective evidence."

By decision dated February 9, 2000, the Office denied her request for reconsideration, stating that Dr. Weing, the second opinion physician, could not determine that appellant's condition was causally related to her work-related injury. The Office also noted that medical evidence in the case file did not include a rationalized medical opinion establishing a work-related injury.

In this case, the Office accepted appellant's June 28, 1997 claim for acute myositis, upper back sprain, on March 20, 1998 for an aggravation of acute myositis and on July 22, 1997 for a recurrence of disability sustained on February 23, 1998. Appellant then filed additional claims for recurrence of disability on October 1 and November 11, 1998. In support of these claims, she submitted multiple reports from her treating osteopath, Dr. Cavell. However, at no time did Dr. Cavell make objective findings or explain how appellant's acute myositis upper back sprain was related to her current condition. For example in his November 20, 1998 report, Dr. Cavell noted appellant's symptoms but did not establish a causal relationship between her condition at that time and her accepted injury. Indeed, he opined that her "acute and chronic myositis ... can be aggravated by little movement at work, repetitive movement ..., and temperatures below 70 degrees." This report is speculative and also includes a causative factor, working in temperatures under 70 degrees, which relates to appellant's condition of Raynaud's phenomenon that the Office had not accepted as work related.

In his December 2, 1998 report, Dr. Cavell stated that appellant was disabled based on her acute medical treatment and illness with fever based on her muscle symptoms. This report also lacked objective findings and included an additional symptom, appellant's fever, which he

did not explain in any causally related manner. In his January 13, 1999 report, Dr. Cavell related appellant's worsening medical condition based, in part, on appellant's cold working environment. However, the employing establishment reported that the room temperature of appellant's working area was over 70 degrees on days appellant worked. Further, Dr. Cavell's April 8, 1999 report provided summary findings without supporting objective findings. Indeed, the doctor included a condition, undifferentiated connective tissue disease, which the Office had not accepted.

None of Dr. Cavell's reports is sufficient to meet appellant's burden of proof because he failed to support his conclusions with rationalized medical opinions establishing a causal relationship between appellant's current condition and her employment-related injury. Without any explanation or rationale for the conclusions reached, such reports are insufficient to establish causal relationship.

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

The decisions of the Office of Workers' Compensation Programs dated February 9, 2000, September 7 and April 21, 1999 are affirmed.

Dated, Washington, DC
September 18, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member