U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLAUDETTE C. DAVENPORT and U.S. POSTAL SERVICE, POST OFFICE, Baltimore, MD

Docket No. 01-2141; Submitted on the Record;
Issued April 26, 2002

DECISION and ORDER

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

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability due to the March 11, 1990 employment injury, commencing November 16, 1998.

The Board has duly reviewed the case record in the present appeal and finds that the Office of Workers' Compensation Programs properly determined that appellant did not meet her burden of proof in establishing that she sustained a recurrence of disability, due to her March 11, 1990 employment injury, commencing November 16, 1998.

An individual who claims a recurrence of disability, due to an accepted employment-related injury, has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.[1] 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.[2] As part of this burden, the employee must show a change in the nature and extent of the light-duty job requirements or a change in the nature and extent of the injury-related condition.[3] This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[4] An award

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[1] *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

[2] *George DePasquale*, 39 ECAB 295, 304; *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[3] *Id*.

[4] *See Nicolea Bruso*, 33 ECAB 1138 (1982).

of compensation may not be made on the basis of surmise, conjecture, or speculation or an appellant's unsupported belief of causal relation.[5]

The Office accepted appellant's claims for bilateral carpal tunnel syndrome and aggravation of bilateral carpal tunnel syndrome and left carpal tunnel release. The Office also issued appellant a schedule award for a 15 percent permanent impairment of the right and left upper extremities from September 17, 1998 to July 3, 2000.

On August 30, 2000 appellant filed a claim for a recurrence of disability, alleging that on November 16, 1998 she sustained a recurrence of disability due to the March 11, 1990 employment injury. Appellant stated that the light-duty work to which she returned on January 17, 1995 exceeded her restrictions and she suffered pain in her neck and shoulders, migraine headaches and pain from swollen arms, hands and wrists. Appellant stated that she was unable to handle the flat mail which varied in weights and sizes. Appellant has not worked since August 2000. Appellant indicated that, prior to returning to the light-duty work, she had been off work for nearly two years.

On August 7, 1995 appellant's treating physician, Dr. Michael F. Jaworski, a Board-certified orthopedic surgeon, stated that appellant had restrictions of no lifting over five pounds and no filing, sorting and lifting over her head. In a report dated June 23, 1999, Dr. Magdi G. Henein, a Board-certified orthopedic surgeon, stated that appellant should not lift over two pounds and could not do bending or prolonged standing. Appellant's light-duty job of distribution clerk had physical requirements of lifting 5- to 10-pound trays, ability to lift envelopes up to shoulder level and ability to key mail at one's own pace.

By letter dated November 6, 1998, an employing establishment manager stated that appellant's workplace believed that appellant's work assignment was in compliance with her restrictions.

In a statement dated November 16, 1998, appellant generally stated that her work exceeded her restrictions. She stated that she was placed in different locations and had to work with a person who had more restrictions than she did. In a report dated November 24, 1998, Dr. Jaworski stated that appellant's job had changed "somewhat" and she was lifting heavier flats of mail in excess of 5 to 10 pounds on a regular basis. He stated that appellant's weight restrictions should be reduced to two pounds and appellant should "probably" have a more sedentary position that involved less repetitive movements.

In an attending physician's report dated August 1, 2000, Dr. David J. Tolner, a Board-certified orthopedic surgeon, diagnosed cervical spondylosis and checked the "yes" box that it was work related. He stated that appellant was totally disabled from June 27, 2000 and continuing and that she required surgery.

In a report dated September 22, 2000, appellant's treating physician, Dr. John C. Barry, a Board-certified orthopedic surgeon, stated that he first saw appellant on August 21, 2000 and that she related a long history of neck and right arm pain. He stated that appellant had no specific

[5] *See William S. Wright*, 45 ECAB 498, 503 (1994).

history of trauma that she could recall and related that "she does quite a bit of heavy work" which involved regularly lifting 50 to 70 pounds and that she had been doing this heavy lifting for several years. Dr. Barry stated that "this type of work aggravates" appellant' s neck and arm and recently produced occipital headaches. He performed a physical examination and reviewed x-rays of the cervical spine, which showed significant cervical disc disease with disc space narrowing, osteophyte formation and foraminal encroachment at the C3-4 and C4-5 levels. Dr. Barry stated that a magnetic resonance imaging (MRI) scan also showed significant neural encroachment, particularly on the right side at the two levels. He concluded that appellant's neck and arm symptoms were directly related to her cervical disc disease, which in turn was related to her "long-standing strenuous type of employment."

In another report dated September 22, 2000, Dr. Barry stated that he was treating appellant for severe cervical spondylosis and degenerative disc disease at the C3-4 and C4-5 levels and those degenerative changes were secondary to the patient's repetitive heavy lifting and other strenuous duties at work.

In notes dated March 14 and 22, 2001, the district medical adviser opined that appellant had a cervical sprain and that a disc herniation on an MRI scan on July 15, 1998 eight years after her work-related injury, did not establish a causal relationship. The district medical adviser also noted that there was no mention in the record of a cervical condition until 1995, more than five years after her March 11, 1990 employment injury. The district medical adviser opined that the objective findings were not related to appellant's neck injury.

By decision dated May 3, 2001, the Office denied appellant's claim, stating that she did not meet the requirements for establishing that she sustained an injury as alleged.

Appellant has failed to present evidence to corroborate that her light-duty work exceeded her restrictions. Her statements that her work exceeded her restrictions were noted by Dr. Jaworski in his November 24, 1998 report, but there was no independent evidence of appellant's assertion. Further, in its November 6, 1998 letter, a manager from the employing establishment claimed that appellant's work was within her restrictions.

The medical evidence does not establish that appellant's cervical spondylosis resulted from her March 11, 1990 employment injury or from her activities at work. Although, in his September 22, 2000 report, appellant's treating physician, Dr. Barry, opined that appellant's cervical disease was directly related to her "long-standing strenuous type of employment," his report is not probative because it is based on inaccurate factual information. The Board has held that to be probative, a medical opinion must be based on a complete factual and medical background with an accurate history of claimant's employment injury.[6] In this case, Dr. Barry based his opinion on causation on information that appellant was regularly lifting 50 to 70 pounds and had been doing so for several years. The record establishes that appellant began her light-duty job in 1995 but no evidence of record indicates that appellant performed heavy lifting as described by Dr. Barry. Further, the fact that Drs. Barry and Henein opined subsequent to the alleged recurrence of disability that appellant's lifting restrictions should be reduced from up to 10 to 2 pounds does not establish appellant's alleged recurrence of disability resulted from her

[6] *Kathleen M. Fava*, 49 ECAB 519, 523 (1998).

March 11, 1990 employment injury. Even if, however, appellant's lifting at work aggravated her neck condition, that would constitute a new claim, not a recurrence of disability.[7]

Dr. Tolner's August 1, 2000 attending physician's report in which he checked the "yes" box indicating that appellant's cervical spondylosis was work related is not probative because Dr. Tolner did not provide a rationalized medical opinion on causation.[8]

Inasmuch as appellant failed to submit the requisite evidence either showing her work restrictions changed or that the nature and extent of her physical condition changed and that the physical change was causally related to her March 11, 1990 employment injury, she has failed to establish her claim for a recurrence of disability.

The May 3, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 26, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[7] *See* 20 C.F.R. § 10.104; *Willie J. Clements, Jr.*, 43 ECAB 244, 247 n. 8 (1991).

[8] *See Ruth S. Johnson*, 46 ECAB 237, 243 (1994).