

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THERESA J. DiSALVO and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

*Docket No. 02-1819; Submitted on the Record;
Issued December 3, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a recurrence of disability on March 14, 2002 causally related to the March 26, 1985 employment injury; and (2) whether the Office of Workers' Compensation Programs' refusal to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a) constituted an abuse of discretion.

On March 26, 1985 appellant, then a 39-year-old mailhandler, sustained an employment-related strain of the neck and left shoulder. The Office later accepted that she sustained employment-related cubital ulnar palsy of the left elbow. Appellant initially returned to work on May 3, 1985 and on August 31, 1995 sustained a recurrence of disability. She returned to limited duty for four hours per day on October 15, 1985. Appellant subsequently sustained a number of recurrences of disability and always returned to limited duty for four hours per day, most recently on December 5, 1998.¹ She continued to receive wage-loss compensation for four hours per day.

On March 19, 2002 appellant filed a recurrence claim, alleging that her condition worsened to the degree that she had to stop work on March 14, 2002.² By letter dated March 28, 2002, the Office informed appellant of the type of evidence needed to support her claim, and in response she submitted medical reports from her treating neurologist, Dr. Sondra De Antonio. In

¹ The record further indicates that, by decision dated January 13, 1998, the Office determined that appellant's actual earnings as a distribution clerk fairly and reasonably represented her wage-earning capacity. On June 8, 1998 appellant filed a claim for a schedule award. On August 24, 1998 appellant was granted a schedule award for a 32 percent impairment of the left arm, for a total of 99.84 weeks of compensation, to run from April 21, 1998 to March 19, 2000. The Board does not have jurisdiction over these decisions, as appellant's appeal was filed with the Board on June 27, 2002. 20 C.F.R. § 501.2(c).

² Appellant further alleged that she had carpal tunnel syndrome in the right hand. The record indicates that on August 8, 1994 she filed an occupational disease claim for right arm tendinitis. The record does not indicate that this condition was accepted as employment related nor does it contain a decision denying the claim.

a letter dated April 1, 2002, the Office referred appellant, along with a statement of accepted facts, a set of questions, a job description and the medical record, to Dr. Richard Bennett, who is Board-certified in psychiatry and neurology, for a second opinion evaluation. By decision dated May 16, 2002, the Office denied appellant's recurrence claim, finding that the weight of the medical evidence rested with the opinion of Dr. Bennett who advised that appellant could continue her part-time limited-duty position.

On May 21, 2002 appellant requested reconsideration, and submitted a May 21, 2002 report from Dr. De Antonio. By decision dated June 4, 2002, the Office denied appellant's reconsideration request. The Office noted that it had not received additional medical evidence from appellant. The instant appeal follows.

The Board finds that appellant has not established that she sustained a recurrence of disability on March 14, 2002 causally related to the March 26, 1985 employment injury.

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.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 medical evidence submitted by appellant prior to the May 16, 2002 Office decision does not support that she sustained a recurrence of disability causally related to the accepted left upper extremity condition. The medical evidence includes a report dated March 19, 2002 in which appellant's treating neurologist, Dr. De Antonio, noted the history of the work injury in 1985. Dr. De Antonio also advised that appellant had a history of cervical disc disease following a motor vehicle accident in the early 1980s. She noted appellant's complaints of "increasing symptoms" regarding both upper extremities. Findings on examination included bilateral sensory deficits and a bilateral positive Tinel's sign. Dr. De Antonio diagnosed ulnar compression neuropathy and cervical radiculopathy/disc disease along with median nerve

³ *Mary A. Howard*, 45 ECAB 646 (1994); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

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

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

dysfunction at the level of the wrists and complex regional pain syndrome and advised that appellant's condition had worsened. In a report dated April 2, 2002, Dr. De Antonio advised that for the above reasons she recommended that appellant discontinue working. In a treatment note dated April 23, 2002, she noted findings on examination and advised that appellant's symptoms had decreased since she stopped work.

Dr. Bennett, who is Board-certified in psychiatry and neurology, provided a second opinion evaluation dated April 19, 2002, in which he noted the history of injury, his review of the medical records and appellant's complaints of pain. Motor examination of both upper extremities revealed normal strength with no atrophy. Sensory testing was normal and Tinel's and Phalen's were absent bilaterally. Musculoskeletal examination revealed tenderness over the hands with joint swelling on the left and nodules suggestive of possible rheumatoid factors bilaterally. Range of motion of the cervical and lumbar spines was normal. Straight leg raising was negative. Dr. Bennett stated:

“Based upon my examination and review of available medical records, and in the presence of subjective hand pain without any definable abnormalities from a physical standpoint, there does not appear to be clinical evidence of cervical radiculopathy, nor does there appear to be evidence to suggest the diagnosis of carpal tunnel syndrome or ongoing ulnar neuropathy.... At this time, I feel [that she] can work at a sedentary job, avoiding using the left hand. I found the right hand to be totally asymptomatic.”

Dr. Bennett diagnosed possible osteoarthritis or rheumatoid arthritis and concluded that appellant could work 20 hours per week at a sedentary position. In an attached work capacity evaluation, the physician advised that appellant could work 8 hours per day with restrictions to her physical activity, including no repetitive movements or pushing with the left arm and a weight restriction of 20 pounds. In a supplementary report dated April 30, 2002, Dr. Bennett advised that he had reviewed appellant's job description and opined that she was capable of performing the described position.

The Board therefore finds that, while appellant submitted medical reports from Dr. De Antonio who provided a somewhat cursory opinion that appellant should not work, she did not provide a sufficient explanation of why appellant could not perform the part-time light-duty position. On the other hand, Dr. Bennett, who examined appellant and reviewed her medical record and job description as well as a statement of accepted facts, provided a comprehensive explanation advising that appellant could perform the position. Appellant thus failed to discharge her burden of proof to establish a recurrence of disability.

The Board, however, finds that the Office abused its discretion in denying appellant's request for merit review.

In its decision dated June 4, 2002 denying appellant's request for reconsideration, the Office specifically stated that it had not received a medical report from Dr. De Antonio, which appellant stated she had forwarded. The record, however, contains a report from Dr. De Antonio

dated May 21, 2002 that was received by the Office on June 3, 2002, one day before the Office issued the decision in question.⁶

The Board has duly considered the matter and notes that in the case of *William A. Couch*,⁷ the Board held that when adjudicating a claim, the Office is obligated to consider all relevant evidence properly submitted by a claimant and received by the Office before the final decision is issued. In the present case, the record contains medical evidence that was submitted by appellant and received by the Office on June 3, 2002. In its June 4, 2002 decision, the Office stated that it had not received the information requested. The Office, therefore, did not review this additional evidence as properly submitted. As the evidence submitted by appellant is relevant to the issue of whether she established that she sustained a recurrence of disability on March 14, 2002, the Board finds that the Office's failure to consider this evidence was improper. For this reason, the case will be remanded to the Office to enable it to properly consider all the relevant evidence submitted prior to the issuance of its June 4, 2002 decision. Following such further development as the Office deems necessary, it shall issue an appropriate *de novo* decision on the merits.

The decision of the Office of Workers' Compensation Programs dated May 16, 2002 is hereby affirmed. The decision dated June 4, 2002 is vacated and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, DC
December 3, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁶ In the May 21, 2002 report, Dr. De Antonio advised that appellant could not work at her current position or any occupation using repetitive use of her hands because she had developed overuse syndrome of the right hand.

⁷ 41 ECAB 548 (1990).