

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALICE T. ROBINSON and U.S. POSTAL SERVICE,
POST OFFICE, Meridian, MS

*Docket No. 00-1690; Submitted on the Record;
Issued January 25, 2002*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of total disability causally related to her accepted work injury.

On January 10, 1997 appellant, then a 51-year-old rural carrier, filed a traumatic injury claim alleging that on December 11, 1996 she injured herself in an automobile accident on the way to work. The Office of Workers' Compensation Programs accepted the claim for fracture of ribs, clavicle, foot, cervical and sacral strains. Appellant returned to light duty working four hours a day on May 12, 1997. She filed a recurrence claim on September 8, 1998 alleging that her total disability after July 29, 1998 was related to her December 11, 1996 employment injury.¹ Appellant also alleged that depression was due to continuous pain from the December 11, 1996 injury.

A functional capacity evaluation dated February 4, 1998 indicated that appellant was capable of working 8 hours a day in a sedentary position with no lifting more than 10 pounds.

In an April 21, 1998 report, Dr. Howard T. Katz, a Board-certified physiatrist, acting as a second opinion physician, concluded that appellant was capable of performing sedentary activities. Dr. Katz noted that appellant had "suffered a significant injury with permanent injury and is left with chronic pain" and opined that she had "a significant psychological component to her pain problem."

In a July 6, 1998 report, Dr. Donald E. Cook, an attending physician, opined that appellant was incapable of performing the duties of the offered position due to her low back problem which made it difficult for her to sit and her carpal tunnel syndrome which prevented her from continual grasping or any intermittent pulling or pushing. Dr. Cook disagreed with the

¹ Appellant applied for disability retirement which was denied by the Office of Personnel Management on July 14, 1999.

conclusion reached by the functional capacity evaluation that appellant was capable of working in a sedentary position. Regarding Dr. Katz's opinion, he stated:

"It is an accepted medical fact that most psychological conditions tend to magnify, potentiate and propagate physical limitations. This appears to be the case in this situation. The psychological aspect, however, is well outside the expertise of these particular physicians and an opinion thereto would be deferred to the treating psychologist."

In an August 3, 1998 report, Dr. Cook noted that there "apparently has been some degree of progressive deterioration, largely in her degree of depression which is magnifying, potentiating and propagating her pain. Appellant reported that she was "simply unable to handle her job any longer" and that she was "in persistent severe pain, most marked in the lower cervical region, interscapular region and low back region." In conclusion, Dr. Cook agreed with Dr. W. Paul Wilcox that appellant should be considered totally disabled at least temporarily.

On August 27, 1998 the Office referred appellant to Dr. Rahul Vohra, a Board-certified physiatrist, to resolve the conflict in the medical opinion evidence between Dr. Cook, appellant's attending physician, and Dr. Katz on the extent of appellant's disability. In a report dated September 17, 1998, Dr. Vohra diagnosed distal clavicular fracture secondary to left shoulder pain, chronic neck pain complaints with no evidence of radiculopathy, low back pain complaints with no evidence of radiculopathy and significant pain behavior and psychological overlay. He noted that appellant stopped working the light-duty part-time job at the employing establishment because she believed "she could no longer tolerate working even part time."

A physical examination revealed good cervical extension, flexion, rotation and lateral flexion, negative upper extremity tension signs, normal glenohumeral range in her left shoulder, normal lumbar and thoracic range. Dr. Vohra concluded that appellant was capable of working a sedentary to light-duty position 8 hours a day with no lifting over 15 pounds, no overhead lifting with her left extremity and restrictions on repetitive bending, stooping and twisting.

In a September 8, 1998 report, Dr. Cook indicated that appellant's depression was due to the 1996 injury. He noted that appellant was able to return to part-time light-duty work, but reported increased back and neck pain and increasing difficulty with her bilateral carpal tunnel syndrome.

In a September 30, 1998 report, Dr. Wilcox noted appellant "was allowed to return to part-time duty on May 12, 1997" which resulted in continued and increased pain. Dr. Wilcox concluded that appellant was totally disabled from working due to her and the fact that she became "completely dysfunctional due to her condition."

In a decision dated October 8, 1998, the Office denied appellant's recurrence claim.

In a letter dated October 16, 1998, appellant's counsel requested a hearing on the denial of her recurrence claim. A hearing was held on September 28, 1999 where appellant was represented by counsel and testified as to her disability.

Subsequent to the hearing appellant submitted a list of her prescriptions and reports dated November 1, 1999 and September 30, 1998 by Dr. Wilcox who noted that appellant had been treated by various medical specialists and concluded:

“Despite multiple approaches to manage her multiple areas of residual pain and nonclavicular fracture, she has continued to remain very symptomatic and unable to work. With various specific and limited returns to work, she has not been able to cope with the rigors of her job. Her case has progressed on to the point where she has become house confined and unable to manage simple housekeeping tasks. At one time it was of concern to the postal service that she was able to be up and walking about town and performing such tasks as shopping and visiting. This was confronted with the patient and in my observations of her activity as time has progressed, I have found no evidence that she is able to perform any degree of physical function outside of her immediate home environment. Her complaints of pain and physical limitation have not changed at all in the intervening time. With these observations of the progress involving [appellant], the only logical conclusion I can draw regarding her prognosis is that it will be extremely poor. I doubt that she will ever be able to reassume the work level required for her job as a rural mail carrier. Again in our observations of her performance at even the most severely limited work capacity, it appears that she cannot perform without severe limiting pain.”

By decision dated January 14, 2000, the hearing representative affirmed the October 8, 1998 decision denying appellant’s recurrence claim.

The Board finds that appellant has failed to meet her burden of proof to establish a recurrence of total disability.

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. 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 requirements.²

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.³

In this case, Dr. Vohra’s report was based upon a complete and accurate factual and medical history of appellant and her injuries and was well rationalized and thorough. Therefore, this report is entitled to special weight, which constitutes the weight of the medical evidence of

² *Carlos A. Marrero*, 50 ECAB 117 (1998).

³ *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

record in establishing that appellant's present condition was not causally related to her accepted employment injuries. Dr. Wilcox essentially reiterates his prior position as well as the position of Dr. Cook in concluding that appellant was "most severely limited" in her work capacity such that "she cannot perform without severe limiting pain. This report is not sufficient to outweigh the report of Dr. Vohra, or to create a new conflict of medical opinion.

The January 14, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.⁴

Dated, Washington, DC
January 25, 2002

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁴ The Office issued a decision terminating appellant's wage-loss benefits on October 27, 1998 on the basis that she refused an offer of suitable work. Appellant's counsel requested an oral hearing on this decision by letter dated November 8, 1998. The record contains no evidence that the Office has issued a decision on appellant's hearing request. Upon return of the case record, the Office should act on appellant's request for a hearing on the October 27, 1998 termination decision.