

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of BECKY J. MOORE and U.S. POSTAL SERVICE,  
POST OFFICE, Lansing, MI

*Docket No. 00-2694; Submitted on the Record;  
Issued July 1, 2002*

---

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 March 15, 1994 causally related to her December 23, 1990 and May 22, 1992 employment injuries.

The Board has duly reviewed the case record and finds that this case is not in posture for a decision.

On December 24, 1990 appellant, then a 35-year-old letter carrier, filed a claim for traumatic injury, Form CA-1, alleging that on December 23, 1990 she sustained injuries when she slipped and fell on an icy sidewalk while in the performance of duty. Appellant stopped work on December 24, 1990. The Office of Workers' Compensation Programs accepted her claim for cervical and lumbar strains. Appellant returned to part-time limited duty on February 2, 1991, stopped work again on July 2, 1991 and returned to part-time limited duty on December 16, 1991. She remained in her limited-duty capacity until she was reinjured on May 22, 1992, while taking part in a fitness-for-duty examination. The Office accepted that on May 22, 1992, appellant sustained aggravation of the preexisting lumbar strain and aggravation of cervical spondylosis with cervical disc displacement, which required anterior cervical discectomy at C5-6 and interbody fusion without bone grafting on June 8, 1992. Appellant returned to a part-time limited-duty work schedule on December 23, 1993 in accordance with the recommendations of both her treating physician and an Office second opinion physician.<sup>1</sup>

On March 15, 1994 appellant stopped work and filed a claim for a recurrence of disability. She stated that on the morning of March 15, 1994 she woke up in extreme pain and

---

<sup>1</sup> In a report dated November 17, 1993, appellant's treating physician, Dr. Alexander Iwanow, stated that she could return to light duty on a schedule of four hours a day for two weeks and then increasing to six hours a day for two weeks and then finally to eight hours. In a report dated November 18, 1993, Dr. Gavin I. Awerbuch, an Office second opinion physician, also stated that appellant could return to light duty on a gradual schedule.

was unable to turn her head or lift her arms. With the approval of her physician, appellant returned to work on May 10, 1994, but stopped work again on May 11, 1994 and did not return.

In a decision dated June 23, 1994, the Office denied appellant's recurrence claim. Following an oral hearing, held at appellant's request, in a decision dated November 1, 1995, an Office hearing representative affirmed the Office's prior decision. Appellant requested reconsideration and by decision dated August 17, 1998, the Office found that the newly submitted evidence and arguments to be insufficient to warrant modification of the prior decision. She appealed to the Board and by decision issued April 21, 2000, the Board set aside the decision on the grounds that the record was incomplete and remanded the case for reconstruction of the record by the Office, to be followed by a *de novo* decision.<sup>2</sup> On remand, by decision dated June 6, 2000, the Office reissued its August 17, 1998 merit 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 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 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.<sup>3</sup> 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.<sup>4</sup> Causal relationship is a medical issue<sup>5</sup> 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.<sup>6</sup>

In the present case, appellant does not allege a change in the nature and extent of the light-duty job requirements. The record shows that on December 23, 1993 she returned to work in a limited-duty capacity with certain work restrictions. Appellant worked until March 15, 1994 when she stopped, alleging that she woke up that day with severe pain. In a medical report dated February 16, 1994, Dr. Iwanow, noted that appellant's current job was quite good and was not

---

<sup>2</sup> Docket No. 99-455 (issued April 21, 2000).

<sup>3</sup> *George DePasquale*, 39 ECAB 295 (1987); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>4</sup> *Frances B. Evans*, 32 ECAB 60 (1980).

<sup>5</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>6</sup> *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

causing any significant increase in her symptomatology. In a narrative statement dated April 15, 1994, appellant stated that the employing establishment had worked to ensure that her job duties stayed within her restrictions but that the activities which required either constant motion or sitting with her neck bent over, caused stress on her neck and shoulder area and increased pain. Therefore, the record does not establish that the claimed March 15, 1994 recurrence of total disability was caused by a change in the nature or extent of the light-duty job requirements.

The evidence relevant to the issue of whether appellant suffered a worsening of her accepted injury-related conditions such that she could no longer perform her light-duty work beginning March 15, 1994, includes a series of medical reports from her treating physician, Dr. Iwanow. In the most contemporaneous evidence of record, a March 18, 1994 disability slip and March 23, 1994 attending physician's report, Form CA-20, Dr. Iwanow diagnosed right shoulder internal derangement and neck pain, stated that appellant was disabled for work and indicated by check mark that her disabling condition was causally related to her employment. In a May 6, 1994 telephone call with the Office, Dr. Iwanow explained that appellant presented at his office in March 1994 and indicated to him that her pain had worsened and that she could no longer work. He stated that he could not "prove" that her injury-related condition had worsened, as required by the Office, but as appellant had always been honest in her complaints, he believed that her pain had worsened to the point of disability. Dr. Iwanow explained that the type of condition appellant has will lend itself to periodic problems and require rest periods. In a follow-up note also dated May 6, 1994, he explained that current technology simply was not good enough to allow a physician to see the type of changes that might be responsible for appellant's increased pain.<sup>7</sup> In a report dated August 17, 1994 and in a deposition taken on August 30, 1994, Dr. Iwanow stated that he saw appellant several times after her December 23, 1993 return to work and that while she had pain, she appeared to be tolerating it with medication. However, when she complained that her pain increased, he took her off work. Dr. Iwanow reiterated that current testing methods could not detect all of the slight changes that could cause increased symptoms and that sometimes physicians had to rely on a patient's word and on physical findings such as palpations and tenderness. He further stated that symptoms often fluctuate without any immediately observable change in underlying pathology and that it might be years before a patient's increased symptoms finally show up as increased pathology visible through diagnostic testing. In a second deposition taken on March 27, 1995, Dr. Iwanow stated, in pertinent part, that appellant's December 23, 1993 return to work was not successful because her pathology was greater than he had anticipated and returning to work had increased her symptoms. In an April 5, 1994 report, treating physician Dr. Lawrence T. Kurz, a Board-certified orthopedic surgeon, stated that appellant's symptoms may be related to right C6 nerve root compression and recommended further testing. Magnetic resonance imaging (MRI) performed on April 27, 1995 at the request of Dr. Iwanow revealed a slightly eccentric bulging disc at C3-4 with accompanying spur to the left, mild bulging disc at C4-5 and T1-2, which represents a change from her June 3, 1992 computerized tomography (CT) scan, which demonstrated a small central defect at C3-4 and C5-6 levels and minimal degenerative changes at C3-4 and C5-6 with slight impingement in the thecal sac and June 3, 1992 MRI, which demonstrated a small central herniation at C5-6 with some impingement on the thecal sac and

---

<sup>7</sup> Electromyography performed on June 22, 1994 was interpreted by Dr. Iwanow as showing no acute "RLL" radiculopathy and "possible right L5 radiculopathy" that is years old.

early degenerative changes at multiple levels. In numerous additional treatment notes and Form CA-20, attending physician's reports, Dr. Iwanow consistently found appellant to be totally disabled and indicated by check mark that appellant's total disability was due to her employment-related conditions.<sup>8</sup>

The record also contains an April 1, 1996 deposition by Dr. Awerbuch, a Board-certified neurologist who performed a second opinion examination at the request of the Office on November 18, 1993 prior to appellant's return to work and began treating appellant in January 1996.<sup>9</sup> He testified that it was common for a patient with injuries such as appellant's to attempt to return to work, only to suffer an increase in symptoms which requires either that their restrictions are increased, or that they are taken off work again. Dr. Awerbuch further stated that in his experience, increased symptoms are not always supported by an increase in underlying pathology and that usually patients just suffer an aggravation of their underlying preexisting pathology. He stated that when he saw appellant again on January 25, 1996 she had a significant decrease in her cervical and lumbar range of motion, positive indirect straight leg raising and other definite signs of deterioration. Dr. Awerbuch stated that the April 27, 1995 MRI revealed increasing pathology in her cervical spine and represented objective evidence of a worsening of appellant's cervical condition. He concluded that based on his physical examinations before and after appellant's return to work and his review of the 1992 and 1995 radiologic testing he felt that appellant had sustained a recurrence of total disability as defined by the Office.

Proceedings under the Federal Employees' Compensation Act are not adversarial in nature, nor is the Office a disinterested arbiter. While a claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>10</sup>

While the medical reports of Drs. Iwanow and Awerbuch are not sufficiently well rationalized to establish a change in the nature and extent of appellant's injury-related condition, as Dr. Iwanow did not offer sufficient physical findings or medical rationale in support of his decision to take appellant off work on March 15, 1994 and Dr. Awerbuch based his conclusion that appellant's condition had worsened in part on an MRI taken more than a year after she stopped work, the Board finds that Drs. Iwanow's and Awerbuch's medical reports, taken together, raise an inference of causal relationship between appellant's 1994 recurrence of

---

<sup>8</sup> Appellant submitted follow-up treatment notes and attending physicians reports from Dr. Iwanow dated April 7 and 8 and May 10 and 16, June 1, 7 and 28 and August 26, 1994, January 25, April 28, May 31 and December 12, 1995 and April 3, 1996.

<sup>9</sup> Dr. Awerbuch saw appellant on January 25, March 4, June 1 and July 1, 1996.

<sup>10</sup> *William J. Cantrell*, 34 ECAB 1223 (1983).

disability and her accepted employment injuries and are sufficient to require further development of the case record by the Office.<sup>11</sup> Additionally, the Board notes that the record contains no medical opinion contrary to appellant's claim and that the Office did not seek advice from an Office medical adviser or refer the case for a second opinion on the issue of recurrence of disability.

On remand, the Office should further develop the medical evidence by referring appellant, together with a complete statement of accepted facts and copies of the relevant medical evidence of record, to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether appellant sustained a recurrence of disability due to a change in her medical condition, if so, for what periods was she disabled and whether appellant's current medical condition is causally related, either directly or by way of aggravation, acceleration or precipitation, to her 1991 and 1992 accepted back and neck conditions.

The decision of the Office of Workers' Compensation Programs dated June 6, 2000 is set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, DC  
July 1, 2002

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

---

<sup>11</sup> See *John J. Carlone*, 41 ECAB 354 (1989). The Board further notes that while the record contains medical reports in addition to those submitted by Drs. Iwanow and Awerbuch, including a March 28, 1996 second opinion evaluation by Dr. Dean R. Olson, these additional reports are not relevant to appellant's current claim as they do not discuss her March 15, 1994 claimed recurrence of disability. In addition, the Board notes that appellant also submitted several medical reports which support a finding that, subsequent to stopping work on March 15, 1994 she developed a severe psychological condition culminating in a suicide attempt and hospitalization. However, this evidence is not relevant to appellant's claim for a recurrence of disability, as the Office did not accept that appellant sustained a psychological injury due to her 1991 and 1992 injuries and there is no evidence in the record that appellant has filed a claim for an employment-related emotional condition.