U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CYNTHIA D. MITCHELL and U.S. POSTAL SERVICE, PROCESSING CENTER, Inglewood, CA

Docket No. 02-359; Submitted on the Record;
Issued July 15, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she was entitled to wage-loss compensation for the period February 28 to September 11, 2000.

On April 27, 2000 appellant, then a 41-year-old mail processor, filed an occupational disease claim, alleging that factors of employment caused right shoulder tendinitis. She had stopped work on February 28, 2000. In support of her claim she submitted medical evidence from Dr. Herman Bell, an osteopathic physician. In a letter dated May 2, 2000, the employing establishment provided a description of appellant's work duties.[1]

By letter dated May 25, 2000, the Office of Workers' Compensation Programs accepted that appellant sustained employment-related right shoulder tendinitis. The Office informed appellant that, in order for her to be entitled to wage-loss compensation, she should file a Form CA-7, claim for compensation and submit medical evidence for any injury-related disability for the period claimed. In response, appellant submitted additional medical evidence. In a letter dated July 18, 2000, the Office informed appellant that the medical evidence of record was insufficient to establish that she was entitled to wage-loss compensation. She was given 30 days to provide additional evidence. Appellant submitted additional medical evidence and CA-7 forms for the period February 28 to September 11, 2000.

By decision dated October 17, 2000, the Office found that appellant was not entitled to wage-loss compensation for the period February 28 to September 11, 2000 on the grounds that the medical evidence was insufficient. Appellant continued to submit medical evidence and, in a letter postmarked October 1, 2001, filed an appeal with the Board. In an undated request that was stamped received on October 5, 2001, she requested a hearing before the Branch of Hearings

[1] The description stated: "She load[s] trays of letter mail onto the ledge of a BCR, OCR or DBCS machine. She sweeps the bins on these machines into letter trays. When the trays are full, she places them on to a handtruck or an APC."

and Review. By decision dated November 7, 2001, the Office denied appellant's request for a hearing as untimely.

The Board finds this case is not in posture for decision.

Under the Federal Employees' Compensation Act[2] the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury, but who nonetheless has the capacity to earn wages she was receiving at the time of injury, has no disability as that term is used in the Act, and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[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]

Initially, the Board notes that the Office and the Board may not have simultaneous jurisdiction over the same issue in the same case. Following the docketing of an appeal with the Board, which in the instant case was on October 1, 2001, the Office does not retain jurisdiction to render a further decision regarding a case on appeal until after the Board relinquishes its jurisdiction. Any decision rendered by the Office on the same issues for which an appeal is filed is null and void.[6] Thus, the November 7, 2001 Office decision in which the Branch of Hearings and Review denied appellant's request for a hearing is null and void.

The medical evidence relevant to appellant's ability to work for the period February 28 to September 11, 2000[7] includes a number of reports from her treating physician, Dr. Herman Bell. In a form report dated February 28, 2000, he diagnosed musculoskeletal dysfunction secondary to strain/sprain and advised that she could return to light-duty work on March 22, 2000. By

[2] 5 U.S.C. §§ 8101-8193.

[3] *Maxine J. Sanders*, 46 ECAB 835 (1995).

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

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

[6] *Noe L. Flores*, 49 ECAB 344 (1998).

[7] Appellant also submitted evidence that she sustained a shoulder sprain in a nonwork-related motor vehicle accident in 1996 and suffered from back and shoulder strains in 1997 to 1998. She also alleged that she sustained an employment-related right shoulder strain on December 5, 1997.

report dated March 6, 2000, Dr. Bell diagnosed right shoulder tendinitis with cervical and mid-thoracic muscle spasms. He stated that it was a chronic condition and advised that repetitive motion "may aggravate frequency of chronic condition." In a form report dated April 19, 2000, Dr. Bell advised that appellant could not work from March 23 to April 25, 2000 due to otalgia and right shoulder sprain. In a form report dated June 13, 2000, he advised that she could not work from May 5 to September 11, 2000. In attending physician's reports dated June 27, 2000, Dr. Bell advised that appellant could not return to work until September 11, 2000. He noted findings on examination of decreased shoulder range of motion with guarding and muscle spasms and pain on deep palpation of the cervical and thoracic muscle groups. Dr. Bell repeated his diagnosis of musculoskeletal dysfunction secondary to strain/sprain and checked the "yes" box, indicating that the condition was employment related. By report dated July 31, 2000, he stated:

> "[Appellant] has been a patient in this clinic over 10 years now. In 1997 [she] sustained a right shoulder injury at work that has n[o]t become any better[,] more of a chronic problem over the last six to eight months. This report is being written for her workers' compensation claim that was filed several months ago. She was on light duty for awhile. That did n[o]t help as far as recovery and going full time as anticipated. In her filing this claim, physical therapy, medications and being off from work, she should be able to return to full duty, probably in another work capacity that does n[o]t require such physical activity."

By report dated September 5, 2000, Dr. Lukvik Artinyan, a neurologist, noted the history of injury and diagnosed cervical sprain with myofascialgia, upper thoracic sprain and right shoulder sprain/strain. He advised that appellant could not perform her usual work and could perform no heavy lifting, pulling, pushing or repetitive motion of either upper extremity. In an undated attending physician's report, Dr. Artinyan repeated the above findings, checked the "yes" box, indicating that appellant's condition was employment related and advised that she needed further assessment to determine if she could return to work.

While these reports taken as a whole are insufficient to establish that appellant was disabled from work for the period February 28 to September 11, 2000, the fact that they contain deficiencies preventing appellant from discharging her burden does not mean that they may be completely disregarded by the Office. It merely means that their probative value is diminished. Dr. bell was consistent in reporting findings of spasms and tenderness on examination and advised that appellant could not work. Likewise, Dr. Artinyan diagnosed shoulder sprain/strain, provided restrictions to appellant's physical activity and recommended further assessment regarding her work capability.

The Board finds that these opinions are sufficient to require further development of the record.[8] It is well established that proceedings under the Act are not adversarial in nature,[9] and

[8] *See Lourdes Davila*, 45 ECAB 139 (1993); *John J. Carlone*, 41 ECAB 354 (1989). The Board notes that the case record does not contain a medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case for a second opinion evaluation.

[9] *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[10] On remand, the Office should refer appellant to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether her employment-related condition prevented her from work for the period February 28 to September 11, 2000. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated October 17, 2000 is hereby set aside and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, DC
July 15, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

A. Peter Kanjorski
Alternate Member

[10] *See Dorothy L. Sidwell*, 36 ECAB 699 (1985).