

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUTH M. CUNNINGHAM and DEPARTMENT OF LABOR,
OFFICE OF WORKERS' COMPENSATION PROGRAMS, Cleveland, OH

*Docket No. 01-2202; Submitted on the Record;
Issued June 25, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant met her burden to establish that she sustained a recurrence of disability on January 8, 2001.

On May 30, 1999 appellant, a 52-year-old claims examiner, filed a Form CA-2 claim based on occupational disease, alleging that her preexisting psychiatric condition of depression/anxiety was aggravated by an excessive workload. The Office of Workers' Compensation Programs accepted her claim on August 9, 1999 for aggravation of major depression. The Office paid her appropriate compensation for total disability and placed her on the periodic rolls.

On September 16, 1999 the employing establishment offered appellant a light-duty job as a claims examiner.

In a report dated April 10, 2000, appellant's treating psychiatrist, Dr. Richard A. Schwartz, Board-certified in psychiatry and neurology, approved the employing establishment's job offer and released appellant to return to light duty beginning May 1, 2000. Dr. Schwartz noted that, although appellant continued to suffer from major depressive disorder related to her job, her condition had improved to the extent that she was capable of returning to work as a claims examiner on limited duty.

By letter dated May 22, 2000, appellant advised the Office that she was scheduled to undergo knee surgery unrelated to her employment and would commence working at the light-duty job when she recovered from surgery. Appellant began working for two hours per day on August 7, 2000; for four hours per day on August 14, 2000; for six hours per day on August 21, 2000; and for eight hours per day on August 28, 2000.

On January 10, 2001 appellant filed a Form CA-2a claim for recurrence of disability, alleging that she experienced an aggravation of her work-related psychiatric condition on January 8, 2001. In support of her claim, appellant submitted a January 8, 2001 report from Dr. Ruth S. Martin, Board-certified in psychiatry and neurology, who stated:

“Please be advised that [appellant’s] work-related aggravation of major depression has worsened. Due to the material worsening of her depression, secondary to work issues, she needs to be totally off work until [her] condition resolves enough for [her] return to limited duty. She is anxious, depressed and tearful and unable (in my clinical opinion) to return to the work environment at this time.”

Dr. Martin also submitted a report dated February 22, 2001, in which she stated:

“[Appellant] could not cope with the stress of work upon her return. She would quickly become overwhelmed and suicidal under stress. In my clinical judgment, I felt she would no longer handle even the stress of limited duty and recommended disability leave.... Her diagnosis remains major depression.”

By decision dated March 16, 2001, the Office denied appellant’s claim for recurrence of disability as of January 8, 2001.

In a letter received by the Office on June 4, 2001, appellant requested reconsideration. Appellant submitted an April 26, 2001 report from Dr. Martin, who stated:

“On and before May 10, 1999 [appellant] was assigned ... additional and more complex computer duties, which resulted in an aggravation of her underlying major depression and anxiety.

“She did recover enough to return to limited duty ... [for] eight hours per day beginning August 29, 2000 to January 8, 2001. I took her off work totally as of January 8, 2001 because her condition had worsened.

“She has remained off work since January 8, 2001 and should never return to any type of work due to her current and permanent work-related recurrence.

“The original condition was work related due to the new computer duties on and before May 10, 1999. The recurrence beginning January 8, 2001 and continuing is a worsening of that work-related condition and not due to some other problem in her life. There has been such a material worsening of this condition that it should be upgraded from a temporary aggravation of major depression to ... a permanent aggravation of the underlying condition.

“Appellant’s ability to concentrate is worse. She is having more tearful periods and her aggravation of major depression is much worse since January 8, 2001. She simply cannot work at all.

“To summarize for you from a medical point of view, there has been such a change in the nature and extent of [appellant’s] work-related condition that she simply cannot now or ever return to limited or full duty.... She cannot ever perform this assignment or any other due to the changes listed above.”

By decision dated June 25, 2001, the Office denied reconsideration.

By letter dated July 1, 2001, appellant requested reconsideration.

By decision dated September 5, 2001, the Office denied reconsideration.

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

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 job requirements.¹

In this case, Dr. Martin’s reports address the issue of causation by stating that appellant’s employment duties had aggravated her major depression, which had been accepted by the Office based on Dr. Schwartz’s opinion. Dr. Martin advised in her January 8, 2001 report that appellant’s work-related aggravation of major depression, secondary to work issues, had worsened to the extent that she needed to be totally off work. She related that appellant was anxious, depressed, tearful and unable to return to the work environment. In her April 26, 2001 report, Dr. Martin stated that appellant should never return to any type of work due to her current and permanent work-related recurrence. She asserted that the January 8, 2001 recurrence constituted a worsening of her work-related condition and was not attributable to any other problem. Dr. Martin emphasized that there had been such a material worsening of this condition that she recommended it be upgraded from a temporary aggravation of major depression to a permanent aggravation of the underlying condition. She opined that appellant’s ability to concentrate was worse, that she was having more tearful periods and that the aggravation of her major depression condition had worsened to the extent that she was now unable to work at all. Finally, Dr. Martin stated that, in her February 22, 2001 report, that appellant was unable to cope with the stress of work upon her return. She related that appellant would quickly become overwhelmed and suicidal under stress and was no longer able to handle even the stress of limited duty.

Appellant has submitted supporting medical evidence consisting of reports from Dr. Martin, which indicated that appellant’s accepted major depressive condition had been aggravated by her return to work. This evidence establishes a *prima facie* case for recurrence of disability; *i.e.*, a change in the nature and extent of her disability. The Board, therefore, finds that the evidence submitted by appellant, which indicates that she developed a worsening in the

¹ *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

nature and extent of her employment-related condition and contains a medical opinion that the condition found was consistent with the history of development, given the absence of any opposing medical evidence, is sufficient to require further development of the record.² Although the medical evidence submitted by appellant is not sufficient to meet appellant's burden of proof, the medical evidence of record raises an uncontroverted inference that her accepted major depression condition as of January 8, 2001 could have been caused or aggravated by her employment duties and is sufficient to require further development of the case record by the Office.

On remand, therefore, because the evidence in this case record has not been adequately developed, the Office must determine whether appellant met her burden of establishing that on January 8, 2001, the date she allegedly experienced a recurrence of her employment-related disability, a worsening had occurred in the nature and extent of her work-related condition, rendering her unable to perform the light-duty job and entitling her to continuing compensation for total disability. Accordingly, the Office should further develop the medical evidence by requesting that the case be referred to a Board-certified psychiatrist to submit a rationalized medical opinion on whether appellant currently suffers residuals from her employment-related psychological condition and, if so, whether she sustained a recurrence of these conditions as of January 8, 2001. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The March 16, 2001 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action in accordance with this decision of the Board.

Dated, Washington, DC
June 25, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

² *John J. Carlone*, 41 ECAB 354 (1989).