U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CATHY J. JOHNSTON and U.S. POSTAL SERVICE,
POST OFFICE, Elkton, MD

Docket No. 00-2437 & 00-2438; Oral Argument Held January 10, 2002;
Issued March 18, 2002

Appearances: *Cathy J. Johnston, pro se; Jim C. Gordon, Jr., Esq.,* for the
Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether appellant sustained a recurrence of disability on October 5, 1999 causally related to her accepted cervical sprain and lumbar sprain; and (2) whether appellant met her burden of proof in establishing that she sustained a cervical sprain and subluxation of her cervical spine in the performance of duty.

On June 22, 1999 appellant, then a 50-year-old rural carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that on May 14, 1999 she was injured when her vehicle was struck in the rear while it was stopped. A June 21, 1999 roentgenological report by Dr. Samuel G. Charles, a chiropractor, indicated moderate osteophyte development at L3-4 and L5, and a right rotational subluxation at L4-5. On July 26, 1999 appellant's claim was accepted for cervical sprain and lumbar sprain.

On October 15, 1999 appellant filed a notice of recurrence of disability and claim for continuation pay/compensation (Form CA-2a) alleging that on October 5, 1999 she sustained a recurrence of the May 14, 1999 injury. In support of her claim, she submitted an October 13, 1999 medical note from Dr. Samuel G. Charles, a chiropractor, wherein he authorized appellant's absence from work commencing October 8, 1999 due to a reaggravation of her cervical spine injury.

On November 1, 1999 the Office of Workers' Compensation Programs sent appellant a letter stating that further information was needed to support her recurrence claim, specifically, a statement including a description of her duties upon return to work following her original injury, a description of her physical condition from her return to work until present, a description of any other illnesses or injuries she had during this period and an explanation of why she believed that her current condition was related to the original injury. In response thereto, on November 5, 1999 appellant submitted a second claim for a recurrence, wherein she stated, "Because of the

injury received on October 5, 1999, while I was delivering mail the reoccurrence of the muscle strain and sprain. Because my job requires me to turn my head left to right causing the reaggravation."

By letter dated December 2, 1999, the Office requested that appellant submit further information in support of her claim. The Office requested that appellant submit the statement requested in the previous letter and also indicated that she needed to have a physician submit a narrative medical report which included, *inter alia*, the dates of examination and treatment, a history given to physician by appellant, a detailed description of findings and a physician's opinion and a "physician's opinion, with supporting explanation, as to the causal relationship between your current disability/condition and the original injury."

In response thereto, Dr. Charles submitted a medical report dated December 14, 1999, wherein he indicated that appellant was injured in a motor vehicle accident on May 14, 1999 for which she began treatment with him on June 21, 1999. He noted that she was off work from June 21 to July 12, 1999. Dr. Charles indicated that he continued to see her three times a week until mid-September and then saw her twice a week. However, on October 5, 1999 he indicated that on October 5, 1999 appellant "reaggravated her neck while doing her job and was disabled by the pain and dysfunction until November 8, 1999." Dr. Charles explained:

> "[Appellant] was slowly recovering from her injuries from the motor vehicle accident which occurred on May 14, 1999 and had been reducing her treatment when she exceeded her abilities and aggravated her neck while doing her normal job. It is my opinion that a combination of the decrease frequency of treatment and by the fact that she probably did more than she was capable of doing thereby causing a worsening of her neck."

Dr. Charles diagnosed appellant as suffering from a cervical sprain, lumbar sprain, subluxation of cervical spine C5 and subluxation of lumbar spine. Appellant also submitted treatment notes from Dr. Charles, covering the period June 21 to November 1, 1999.

By decision dated January 20, 2000, the Office denied appellant's claim, finding that she had not established a recurrence on October 5, 1999 that was causally related to the injury of May 14, 1999.

On February 18, 2000 appellant filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained a cervical sprain and subluxation of cervical spine at C5 as a result of her federal employment, and specifically, that she started suffering from the same pain in the neck that she previously suffered as a result of an accident. By letter to appellant dated February 29, 2000, the Office requested further information. No additional evidence was received and by decision dated April 4, 2000, the Office denied appellant's claim as it found that appellant had not met the requirements for establishing that she sustained an injury as alleged.

The Board finds that the evidence of record is insufficient to establish that appellant sustained a recurrence of disability on October 5, 1999 causally related to her accepted employment injuries.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability commencing on or about May 14, 1999 and her accepted injury.[1] The burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.[2]

Dr. Charles noted that "on October 5, 1999 [appellant] reaggravated her neck while doing her normal job," and further stated that appellant "was recovering from the motor vehicle accident which occurred on May 25, 1999 and had been reducing her treatment when she exceeded her abilities and aggravated her neck while doing her normal job." However, he does not provide an explanation as to how this occurred or that he had any knowledge of what appellant's job duties involved. Furthermore, although Dr. Charles arguably links appellant's condition to her motor vehicle accident of May 14, 1999, he did not provide a rationalized medical opinion explaining the relationship. The Board has long held that medical opinions not containing rationale on causal relation are entitled to little probative value.[3] The Office informed appellant that it needed further medical information by letters dated November 1 and December 2, 1999. However, the necessary medical evidence was never received. Therefore, the Board affirms the January 20, 2000 decision denying appellant's claim for a recurrence.

The Board further finds that appellant has failed to meet her burden of proof in establishing that she sustained a cervical sprain and a subluxation of the cervical spine in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act[4] has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[5] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[6]

In an occupational disease claim, claimant must submit: (1) medical evidence establishing the existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the disease; and (3) medical evidence establishing that the employment factors were the proximate

[1] *Mark A. Cacchione*, 46 ECAB 148 (1994).

[2] *Id.*

[3] *Carmen Gould*, 50 ECAB 504 (1999); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

[4] 5 U.S.C. §§ 8101-8193.

[5] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *Charles E. Evans*, 48 ECAB 692 (1997).

cause of the disease, or stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant.[7] As part of this burden, appellant must furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.

In this case, appellant failed to submit medical evidence linking her cervical condition to factors of her federal employment occurring on October 5, 1999. Although Dr. Charles indicated in his report of December 14, 1999 that on October 5, 1999 appellant reaggravated her neck while doing her job, he did not describe the specific activities to which he attributed the aggravation. An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on appellant's unsupported belief of causal relation. The mere fact that a disease or condition manifests itself or worsens during a period of employment[8] or that work activities produce symptoms revelatory of an underlying condition[9] does not raise an inference of causal relationship between the condition and the employment factors.[10] Accordingly, appellant failed to meet her burden of proof in establishing an injury under the Act.[11]

[7] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[8] W*illiam Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[9] *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

[10] *Michael E. Smith*, 50 ECAB 313 (1999).

[11] The Board notes that Dr. Charles' reports and appellant's allegations do not suggest either a recurrence or an occupational disease, but rather suggest a new injury. If appellant had proven an exacerbation or aggravation of the May 14, 1999 accepted injury this would constitute a new injury, not a recurrence or an occupational disease. A recurrence of disability is defined as a spontaneous material change in the employment-related condition without an intervening injury. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(1) (January 1995). If appellant is alleging that a new incident occurred, this would be a new injury and a notice of traumatic injury (Form CA-1) should be filed.

The decisions of the Office of Workers' Compensation Programs dated April 4 and January 20, 2000 are hereby affirmed.[12]

Dated, Washington, DC
March 18, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

[12] The Board notes that Bradley T. Knott who participated in the hearing held on January 10, 2002 was not an Alternate Board Member after January 25, 2002 and he did not participate in the preparation of this decision and order.