U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RENATA SEALEY and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Columbus, OH

Docket No. 01-1340; Submitted on the Record;
Issued May 22, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant established that she sustained recurrences of disability from January 2 to 4, 1999, February 13 to 26, 1999 and November 26 to December 8, 1999, causally related to her October 8, 1998 accepted employment injury.

The Office of Workers' Compensation Programs accepted that appellant sustained a cervical strain on October 8, 1998 while lifting tubs of mail and paid her appropriate medical and compensation benefits. Dr. Paul Kirk, a Board-certified family practitioner and appellant's attending physician, indicated that she could work four hours a day five days a week, could do no above shoulder work and no lifting over five pounds. Appellant attempted to return to work several times since her injury for four hours a day, but stated that she stopped work several times due to pain. Her work restrictions essentially stayed the same from October 1998 to May 1999.[1] In May 1999, Dr. Kirk added that appellant should be allowed to get up and move around every half hour.

Appellant subsequently filed claims for recurrences of total disability for the periods January 2 to 4, 1999, February 13 to 26, 1999 and November 26 to December 8, 1999. By decision dated March 7, 2000, the Office denied compensation for total disability for these periods on the grounds that the evidence of record did not establish that she was disabled from performing her light-duty job. Appellant stated at a December 19, 2000 oral hearing that she stopped work due to increased pain in her neck, shoulder and hip and also due to depression.[2] By decision dated March 20, 2001, the hearing representative affirmed the Office's March 7, 2000 decision.

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[1] The Board notes there were several short periods, however, where Dr. Kirk indicated that appellant should not work at all.

[2] Appellant also indicated that for the past month she had been working four to six hours a day, instead of only four.

The Board finds that appellant has not established that she sustained recurrences of disability for work from January 2 to 4, 1999, February 13 to 26, 1999 and November 26 to December 8, 1999.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 to show that he or 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.[3]

In this case, appellant's physician returned her to work for four hours a day after her injury with restrictions. It is appellant's burden of proof to show that she could not work four hours a day on the days in question. This burden includes showing a change in the nature and extent of her accepted cervical condition by submitting rationalized medical opinion evidence. 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.[4] The Board finds there is insufficient medical evidence in this case to show that appellant's cervical condition had changed and that she was totally disabled during the dates in question.

The first period appellant claimed total disability from work was January 2 to 4, 1999. She submitted a duty status report from Dr. Kirk dated January 4, 1999, indicating that she was partially disabled from October 22, 1998 to January 4, 1999. Dr. Kirk did not provide a medical opinion and rationale stating that appellant was disabled on these days due to her accepted employment injury, nor did he explain how her condition had worsened or changed from the cervical strain. He only stated that appellant was unable to stand more than 15 minutes, unable to sit more than 1 hour and that her mobility was extremely limited. In an attending physician's report, Dr. Kirk indicated that appellant was partially disabled until January 25, 1999, but again provided no medical rationale. In a subsequent attending physician's report, he indicated that appellant was partially disabled until February 10, 1999, but again provided no medical rationale to support his statements. The Board has found that checking a box or filling in blanks that appellant is disabled during a certain period of time is insufficient probative evidence if not supported by medical opinion and rationale.[5] In this case, appellant did not provide a rationalized medical opinion stating that she was totally disabled from January 2 to 4, 1999 and could not perform her limited-job duties for four hours on those days. The Board also notes that Dr. Kirk indicated that appellant was only partially disabled on the days in question, not totally disabled, signifying that she should have been able to perform her limited-duty job.

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[3] *Terry R. Hedman*, 38 ECAB 222 (1986).

[4] *Delores C. Ellyett*, 41 ECAB 992, 994 (1990).

[5] *Rosa L. Hale*, Docket No. 98-2349 (issued May 18, 2000).

Appellant's second claimed period of total disability was from February 13 to 26, 1999. She submitted a February 10, 1999 duty status report from Dr. Kirk, indicating that she was totally disabled from February 10 to 19, 1999. He stated: "[Appellant's] symptoms are worsening and there are new neurological symptoms, we are awaiting a [magnetic resonance imaging] (MRI) [scan]." Dr. Kirk did not explain how appellant's symptoms had worsened from the accepted cervical condition, nor did he explain what the new neurological symptoms were. Appellant also submitted an undated attending physician's report from Dr. Kirk indicating that she was totally disabled until February 26, 1999, but provided no medical rationale or supporting statements.

Dr. Deborah A. Venesy, Board-certified in physical medicine and rehabilitation, indicated, in a February 3, 1999 report, that appellant was suffering from increased neck pain, low back pain and headaches. She did not address appellant's claimed periods of disability, nor did she describe how appellant's pain had increased, or explain how or if it was related to the accepted cervical strain. Dr. Venesy also did not state that appellant's condition had changed, if at all, from the original accepted condition.

Dr. James P. Fulop, a Board-certified neurologist, noted, in a March 10, 1999 report, that appellant injured herself at work in 1998 and developed immediate pain in the posterior neck region. He stated that her pain had "mushroomed over the last several months" and was now chronic, having precipitated into her neck and back. Dr. Fulop did not provide medical rationale to support his statements that appellant's condition had worsened from the cervical strain to chronic pain in her neck and back. He also did not address appellant's claimed periods of disability. Dr. Fulop also noted that a February 16, 1999 MRI of the cervical and thoracic spine was normal.

The third period appellant claimed total disability was from November 26 to December 8, 1999. Dr. Kirk indicated in a November 15, 1999 attending physician's report that appellant was partially disabled from November 15 to December 5, 1999. He did not state that she was totally disabled during this time and was unable to perform her limited-job duties for four hours a day. Dr. Kirk stated, in a December 8, 1999 attending physician's report, that appellant was totally disabled from December 2, to 8, 1999, but did not provide medical rationale to support his statement.

Dr. Kirk addressed appellant's claimed periods of disability in a January 26, 2000 report by stating:

> "It seems that there is a discrepancy in recorded dates of temporary total disability during the periods of January 2 to January 4 and February 13 to 26, 1999. As to the period January 2 to 4, 1999, our records show that [appellant] was seen on January 4, 1999 and was returned to part-time light duty on January 5, 1999. Her previous visit was on December 9, 1998, at which time she had been placed on the same restrictions. We do not have any record of our keeping [appellant] off work on January 2 [and] 4, 1999. Since January 2, 1999 was a Saturday, it is possible that she took herself off work, but we do not have any record of that."

Dr. Kirk acknowledged in his report that appellant was not disabled from work from January 2 to 4, 1999, signifying that appellant was able to work her light-duty job for four hours a day. He also addressed the period of February 10 to 26, 1999, stating that he kept her off work while awaiting the results of an MRI. The Office stated in its March 7, 2000 decision and the Board concurs, that waiting for an upcoming test, without supporting rationale, is insufficient to justify total disability from work. Dr. Kirk also stated that appellant was totally disabled from February 23 to December 30, 1999, but again did not provide medical rationale to support his statement.

Dr. Kirk also diagnosed appellant with fibromyalgia on July 21, 1999 and stated: "As to the question of justification for the time loss due to [appellant's] condition, these were all documented to be exacerbations of her symptoms brought about by her returning to work." He described the condition of fibromyalgia and stated that it is a widely accepted medical condition, noting that it is "the only thing he can offer" as far as a diagnosis in support of appellant's time off work. He did not provide medical rationale in support of his justification for time off work or explain how the accepted cervical strain had worsened or expanded to fibromyalgia. Dr. Kirk also did not specifically address the claimed periods of disability and only addressed appellant's general "time loss".

In an October 28, 1999 second opinion report from Dr. Marvin H. Thomas, a Board-certified internist, addressed the question of appellant's fibromyalgia and stated:

> "I do not believe there is any scientific evidence in the rheumatological literature that fibromyalgia results from any injury. I think [appellant] has more muscle pain than simply can be accounted for by fibromyalgia, although this is subjective, without a scientific basis. Therefore, I do not believe her work activities have resulted in her present subjective complaints."

An impartial medical specialist, Dr. Robert A. Schriber, a Board-certified internist, opined on May 10, 2000 that appellant should undergo additional medical testing before he could diagnose fibromyalgia. He stated that if appellant did have fibromyalgia, that the syndrome was not permanently disabling and should not be considered a cause of permanent disability. After obtaining the results of the tests, Dr. Schriber stated on August 7, 2000 that the electromyogram (EMG) and nerve conduction studies were negative and that appellant was capable of working eight hours a day.

In this case, the only medical evidence of record supporting appellant's specific claimed periods of total disability from work are the duty status and attending physician's reports from Dr. Kirk, which do not contain medical rationale. He indicated on several forms dated from October 1998 to May 1999 that appellant was "totally" or "partially" disabled on particular days, but did not provide a medical opinion report with rationale to support his statements. As noted before, periods of claimed disability and inability to work must be supported by a physician's rationalized medical opinion.[6] Dr. Kirk also stated in his January 26, 2000 report, that appellant was not disabled from January 2 to 4, 1999 and that he did not keep her off work on those days. The Board also notes that the generalized statements from Dr. Kirk regarding appellant's general

[6] *Supra* note 4.

"time loss" do not address the specific alleged periods of disability and are insufficient to support total disability during these times. The Board also finds that there is insufficient medical evidence in the record relating appellant's diagnosed fibromyalgia to her accepted cervical strain. Appellant's attending physician did not provide a rationalized medical opinion explaining the relationship between the two conditions or explaining how the cervical strain may have expanded to develop into fibromyalgia. As noted earlier, appellant's burden of proof includes the burden to show a change in the nature and extent of her accepted condition by submitting rationalized medical opinion evidence.[7] The record does not contain a rationalized medical opinion report finding that the accepted cervical strain developed into fibromyalgia.

Dr. Thomas, the second opinion physician and Dr. Schriber, the impartial medical specialist, also both opined that there was no objective evidence supporting appellant's total disability and that she was able to work eight hours a day. The Board has found that the opinion of an impartial medical specialist is entitled to special weight.[8] The Board also notes that Dr. Kirk based his statements of intermittent periods of disability on appellant's complaints of increased pain in her neck and back and not on objective medical evidence. The Board has found that when a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that he or she hurt too much to work, without objective signs of disability being shown, the physician has not presented a medical opinion on this issue or a basis for payment of compensation.[9] In this case, the MRI and EMG and nerve conduction studies were normal. There is no objective medical evidence of record to support appellant's contention that she was totally disabled and could not work her light-duty job on the days in question. She has not submitted sufficient medical evidence to support her claimed periods of total disability from February 2 to 4, February 13 to 26, 1999, or November 26 to December 8, 1999.

The Board also finds that appellant did not show a change in the nature and extent of her light-duty job requirements. Her attending physician released her to light-duty work for four hours a day after her injury. From October 1998 to May 1999, appellant's work restrictions were four hour days, five days a week, no above shoulder work and no lifting over five pounds. Dr. Kirk later added that appellant could not stand more than 15 minutes or sit more than one hour and that she should be able to get up and move around every half-hour. There is no evidence of record to indicate that the duties appellant was performing went above and beyond the restrictions prescribed by Dr. Kirk. The record indicates that appellant's duties after she returned to work included sorting letters while sitting in a chair and putting the letters in boxes. Appellant indicated at her oral hearing that she did not carry any of the mail and that she had been working four to six hours a day. She also stated that she did not sit the whole time and that she was able to get up every half-hour to move around and could sit and stand intermittently. The Board notes that Dr. Schriber stated in his work capacity evaluation that appellant was able to work eight hours a day based on the objective physical tests, which were negative.[10] Since

[7] *Supra* note 3.

[8] *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

[9] *John L. Clark*, 32 ECAB 1618 (1981).

[10] *Supra,* note 7.

appellant was working within the restrictions prescribed by her attending physician for four to six hours a day and did not submit any evidence showing a change in her duties, the Board finds that appellant has not shown that the nature and extent of her light-duty position changed.

As appellant did not establish that she was totally disabled on the days in question and did not show a change in the nature of her condition or a change in her limited-job duties, she did not meet her burden of proof in this case.

The March 20, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 22, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member