

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANGEL M. BALMER and U.S. POSTAL SERVICE,
POST OFFICE, Clifton, NJ

*Docket No. 02-1206; Submitted on the Record;
Issued November 4, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on October 18, 2000 causally related to her accepted February 19, 1999 employment injury.

On February 20, 1999 appellant, then a 34-year-old letter carrier, filed a traumatic injury claim (Form CA-1), alleging that she injured herself on February 19, 1999, when she fell while delivering mail. The Office of Workers' Compensation Programs accepted the claim for neck strain, lumbosacral strain and bilateral shoulder sprain.¹ Appellant returned to work on April 27, 1999.

On October 17, 2000 appellant accepted a limited-duty position of modified letter carrier.² The physical requirements of the position were listed as two hours walking, two hours standing, one hour squatting and no kneeling or climbing. Duties of the position included scanning mail and logging mail into a logbook, casing mail for clerk and carrier route #1, mark ups, reviewing CFS mail, carrier case maintenance and entering change of address information into the computer.

On October 27, 2000 appellant filed a recurrence of disability claim alleging that disability commenced on October 18, 2000.

By letter dated December 19, 2000, the Office informed appellant of the type of evidence needed to support her recurrence claim, which was to include a rationalized medical report from her treating physician explaining why she was disabled from performing her limited duty position as a result of the February 19, 1999 employment injury.

¹ This was assigned claim number 02-0755086.

² An undated recurrence checklist indicates the limited-duty position was offered due to her claim number 02-0769767.

In response, appellant submitted a January 19, 2000 report, a February 18, 2000 treatment note and a December 14, 2000 attending physician's report (Form CA-20), from Dr. Bryan J. Massoud, an attending Board-certified orthopedic surgeon. In his January 19, 2000 report, Dr. Massoud diagnosed lumbar and cervical strain with radicular complaints. He noted the February 19, 1999 employment injury and diagnosed cervical and lumbar strain syndrome in his February 18, 2000 treatment note. In the December 14, 2000 Form CA-20, Dr. Massoud diagnosed bilateral chondromalacia of the patella and cervical and lumbar strain syndrome and left unchecked as to whether the condition was employment related.

By decision dated March 2, 2001, the Office denied appellant's recurrence claim.

Appellant requested reconsideration by letter dated March 26, 2001 and submitted a February 22, 2001 report by Dr. Anthony V. Porcelli, an attending Board-certified physiatrist. Appellant reported that she only worked three days in the limited-duty position and that it aggravated her existing condition. She reported that Dr. Porcelli recommended sedentary duty and that her light-duty position did not comply with his sedentary restriction.

Dr. Porcelli diagnosed lumbar and cervical myalgia with symptoms of chondromalacia patellae and radiculopathy. He opined that appellant was disabled from performing the position of letter carrier as she "does not tolerate prolonged standing or walking." The physician recommended clerical and light sedentary work for appellant.

On May 10, 2001 the Office denied appellant's request for modification.

Appellant's counsel requested reconsideration by letter dated July 9, 2001. She also requested the Office to expand the claim to include appellant's right leg, as the claim should have been processed for both legs.³ In support of her request, appellant submitted a statement by her dated June 28, 2001, Dr. Massoud's August 24, 2000 report.

In her June 28, 2001 statement, appellant noted the following:

"[I] was required to push, pull, twist, lift and bend over, reaching over my head to complete these tasks. I was told by my supervisors I was moving too slow and I had to speed up because my assignment in my first four hours at my limited-duty position. This caused me to experience pain and spasms in my legs, back and neck. I was forced to file a recurrence after only three days of working. I was forced to stand more than two hours, which exceeded Dr. Massoud's limitations and my work restriction.

Dr. Massoud, in an August 25, 2000 work capacity evaluation (Form OWCP-5c), indicated that appellant was capable of working eight hours and provided physical restrictions of walking and standing to two hours, no kneeling or climbing and one hour of squatting.

By letter dated October 26, 2001, appellant's counsel requested reconsideration. Her counsel noted that she had previously requested reconsideration in a letter dated July 9, 2001. In

³ Appellant requested that her claim numbers 02-0769767 and 02-755086 be consolidated.

support of her request, she submitted a February 22, 2001 report by Dr. Porcelli and an October 24, 2001 statement by appellant. In her October 24, 2001 statement, appellant noted that she had been told she had been moving too slow and that she was not wanted by her supervisors in her limited-duty position. She also stated that she was removed by the employing establishment in May 2001 and her shop steward informed her that her file was lost.

By merit decision dated December 21, 2001, the Office denied appellant's request for modification.

The Board finds that appellant has not established that she sustained a recurrence of disability due to her accepted February 19, 1999 employment injury.

When an employee, who is disabled from the job 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 of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and 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.⁴

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her recurrence of disability and her accepted employment injury.⁵ This 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.⁶

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁷ 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.⁸ 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.⁹

⁴ *Laurie S. Swanson*, 53 ECAB ____ (Docket Nos. 01-1406 & 02-765, issued May 2, 2002).

⁵ *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139, 142 (1993); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

⁶ *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

⁷ *John F. Glynn*, 53 ECAB ____ (Docket No. 01-1184, issued June 4, 2002).

⁸ *Richard O'Brien*, 53 ECAB ____ (Docket No. 00-1665, issued November 21, 2001).

⁹ *Patricia J. Glenn*, 53 ECAB ____ (Docket No. 01-65, issued October 12, 2001).

The Board finds that appellant did not submit sufficient factual evidence regarding any changes in her light-duty job occurring on and after October 18, 2000. She has failed to present evidence to corroborate that her light-duty work exceeded her restrictions. Appellant's statements that her work exceeded her restrictions were noted by Dr. Massoud in his August 25, 2000 work capacity evaluation (Form OWCP-5c), but there was no independent evidence of appellant's assertion.

The medical evidence does not establish that appellant's disability resulted from her accepted February 15, 2000 employment injury or from her activities at work. Although, in his February 22, 2001 report, Dr. Porcelli, opined that appellant was totally disabled from performing the position of letter carrier and recommended she be assigned to sedentary work, his report is not probative because it is based on inaccurate factual information. The Board has held that to be probative, a medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury.¹⁰ The record indicates that appellant returned to work on October 16, 2001 and the physical restrictions of her position included no walking more than two hours, no standing more than two hours, one-hour squatting and no kneeling or climbing. Her duties included scanning mail and logging mail into a logbook, casing mail for clerk and carrier route #1, mark ups, reviewing CFS mail, carrier case maintenance and entering change of address information into the computer.

The reports by Dr. Massoud are also insufficient to support appellant's recurrence claim. Dr. Massoud diagnosed lumbar and cervical strain with radicular complaints in his January 19, 2000 report and diagnosed cervical and lumbar strain syndrome in his February 18, 2000 treatment notes. In a form report dated December 14, 2000, Dr. Massoud diagnosed bilateral chondromalacia of the patella and cervical and lumbar strain syndrome and left unchecked as to whether the condition was employment related. None of the reports by Dr. Massoud provided any opinion as to whether appellant's condition had materially worsened or related her disability to her accepted employment injury. Thus, Dr. Massoud's January 19 and February 18, 2000 reports and his December 14, 2000 form reports are insufficient to establish a recurrence of disability causally related to her accepted February 19, 1999 employment injury.

The Board finds that appellant has not established a recurrence of disability. The evidence does not establish that there was a change to the light-duty job that was outside appellant's work restrictions, nor is there medical evidence showing a change in the nature and extent of the employment-related condition at the time appellant stopped working. Accordingly, the Board finds the Office properly denied the claim in this case.

¹⁰ *Kathleen M. Fava (John F. Malley)*, 49 ECAB 519, 523 (1998).

The December 21, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 4, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member