U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA L. GRILLS and DEPARTMENT OF JUSTICE, IMMIGRATION & DEPORTATION, Bradenton, FL

Docket No. 02-1117; Submitted on the Record;
Issued October 1, 2002

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on and after September 1, 2001 due to her June 22, 2001 employment injury, a right knee and lumbar strain.

On June 22, 2001 appellant, then a 50-year-old administrative support analyst filed a traumatic injury claim alleging that on that day she tripped over a plastic desk mat while walking to answer the telephone, slammed her right thigh into a typing stand and fell to her knees. The Office of Workers' Compensation Programs accepted the claim for right knee strain and lumbar strain. Appellant immediately returned to work following the June 22, 2001 injury with restrictions of no twisting, stooping, squatting, kneeling, bending and prolonged standing.

On January 10, 2002 appellant filed a recurrence of disability claim alleging that beginning on or about September 1, 2001 she experienced increased back pain which had originated with the June 22, 2001 employment injury. She attributed the recurrence of disability to work duties of stooping, bending, lifting and prolonged sitting.

In a letter dated February 5, 2002, the Office indicated that additional evidence was necessary in order to establish that appellant sustained a recurrence of disability causally related to the June 22, 2001 injury. The Office allotted appellant 30 days from the date of February 5, 2002 to submit such evidence.

Appellant submitted a January 30, 2002 work release form, which diagnosed "LBS" and outlined restrictions of lifting 10 pounds or less, no twisting, stooping, squatting, kneeling, bending, reaching or climbing. She submitted handwritten progress notes dated January 30, 2002 which discussed the range of motion, strength and sensation of appellant's back and indicated that appellant had a "reinjury in October." Another note dated "January 30" indicated that appellant presented with lower back pain and bilateral knee pain and noted June 22, 2001 as the date of injury.

In a letter dated March 6, 2002, the Office advised appellant that it still did not have medical evidence that supported the claimed condition related to the June 22, 2001 incident and clarification as to the injury of October that was referenced by her physician in a medical report. No further evidence was submitted.

In a decision dated March 22, 2002, the Office denied appellant's recurrence of disability claim. The Office found that there was no explanation regarding the new injury referenced by appellant's physician or medical evidence of record to establish a recurrence of disability causally related to the accepted employment injury.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability on September 1, 2001 causally related to her right knee strain and lumbar strain.

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] However, it is well established that proceedings under the Federal Employees' Compensation Act[2] are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[3]

Medical documentation submitted since the alleged recurrence of disability of September 1, 2001 consists of treatment notes dated January 30, 2002 which diagnosed "LBS," mentioned that appellant had a reinjury in October and outlined work restrictions. This evidence is insufficient to meet appellant's burden of proof, as it does not contain rationalized medical evidence attributing the claimed recurrence of the back condition to the accepted June 22, 2001 injury. Further, such evidence is not contemporaneous with appellant's September 1, 2001 alleged recurrence of disability. No other evidence of record establishes a causal relationship between appellant's alleged recurrence of disability and her June 22, 2001 employment injury.

With regard to appellant's ability to perform light work, appellant has alleged in her recurrence claim that her back pain increased after performing duties of stooping, bending, lifting and prolonged sitting. The record reflects that following the original June 22, 2001 injury appellant returned to work with restrictions of no twisting, stooping, squatting, kneeling, bending and prolonged standing. Although appellant has alleged that the above work duties aggravated her condition and caused the claimed recurrence of disability, appellant has not established with evidence a change in the nature and extent of her light-duty requirements. As appellant did not

[1] *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[2] 5 U.S.C. §§ 8101-8193.

[3] *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1983).

submit sufficient evidence showing a recurrence of disability due to a change in her injury-related condition or light-duty job requirements, she failed to satisfy her burden of proof.[4]

The March 22, 2002 decision of the Office of the Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 1, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[4] Appellant submitted additional evidence on appeal, which had not been reviewed by the Office at the time of its final decision. The Board does not have jurisdiction to review this evidence for the first time on appeal as its review of a case is limited to the evidence in the case record which was before the Office at the time of its final decision; *see* 20 C.F.R. § 501.2(c). Appellant may submit this additional evidence to the Office along with a request for reconsideration.