

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANN M. SAUER and U.S. POSTAL SERVICE,
POST OFFICE, Brookfield, CT

*Docket No. 02-2360; Submitted on the Record;
Issued April 15, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained a recurrence of disability on May 12, 1998 causally related to her work-related cervical strain.

This is appellant's second appeal before the Board. In the prior appeal, the Board issued a decision on May 13, 2002, in which it found that the Office of Workers' Compensation Programs improperly terminated appellant's compensation based on its finding that she had abandoned suitable work without considering whether she sustained a recurrence of total disability. The Board remanded the case to the Office for further development as a recurrence of disability claim. The facts and circumstances of the case are set out in the Board's prior decision and are hereby incorporated by reference.

On remand, the Office requested that appellant submit a Form CA-2a, notice of recurrence and a detailed narrative medical report, to assist it in determining whether or not her work stoppage on May 12, 1998 was due to her employment-related condition.¹

On June 16, 1998 appellant responded and filed a notice of recurrence of disability claim. Appellant indicated that, since the original injury, she had developed a weak posture and experienced chronic neck, shoulder and head pain, which was aggravated by prolonged sitting, standing or upper body movement. Appellant asserted that she stopped work on May 12, 1998 because the position required excessive sitting in an office chair that caused her problems and that she was not able to handle excessive sitting, for long periods without lying down.

¹ The medical evidence of record substantiated that appellant sustained a cervical strain as a result of an August 5, 1997 employment incident and was determined temporarily totally disabled effective March 5, 1998. On May 4, 1998 Dr. Thomas Nipper, a Board-certified orthopedic surgeon and appellant's treating physician, released appellant to light duty for no more than three hours of work each day. The employing establishment offered appellant a light-duty position consistent with Dr. Nipper's work restrictions, involving intermittent sitting, walking, standing and lifting of no more than 10 pounds for 3 hours per day. Appellant accepted the limited-duty position and returned to work on May 12, 1998; however, she stopped working after three hours that day for reported severe pain.

Appellant submitted in support of the recurrence claim medical notes from Dr. Nipper dated May and June 4, 1998 and a June 19, 2002 medical report from Dr. Randy Trowbridge, a rehabilitation specialist.

In his May 4, 1998 note, Dr. Nipper indicated that, on examination that day, appellant continued to have pain and muscle spasm in the cervical spine. In the June 4, 1998 note, he stated that appellant's pain symptoms including neck weakness continued further and that she was temporarily totally disabled from work.

In his June 19, 2002 report, Dr. Trowbridge noted that he first examined appellant on June 9, 1998 for chronic head, neck, shoulder and arm pains that begun following the August 5, 1997 employment incident. He stated that appellant's physical examination was notable for significant postural asymmetry in the spine and pelvis with subluxations in the cervical area and identifiable trigger points. Dr. Trowbridge indicated that appellant tried to return to work on May 12, 1998 but was unable to tolerate it, as her pain was aggravated. He further stated:

“It is clear to me that she has a bona fide organic musculoskeletal condition that is responsible for her ongoing symptoms. Mechanical dysfunction in the cervical spine related to positioning of the vertebral segments and related restrictive movement and myofascial tightness is responsible for her pain. This type of condition is easily aggravated by sub-optimal postural requirements related to many work activities, including those associated with the duties that [appellant] was performing when she had to stop work.”

The Office reviewed the evidence and, in a decision dated August 6, 2002, denied appellant's recurrence of disability claim. The Office found that Dr. Trowbridge's report dated June 19, 2002 failed to document a material worsening by virtue of objective findings on examination sufficient to have determined appellant disabled from performing the offered three-hour per day, limited-duty position.

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

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 of record establishes that he or 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 he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.²

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

² *Mary A. Howard*, 45 ECAB 646 (1994); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

employment factors. 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.³

The accepted condition in the instant case is a cervical strain. Dr. Nipper treated appellant following the August 5, 1997 employment injury for continual pain and muscle spasm in the cervical spine, however, on May 4, 1998 determined that appellant was capable of working the limited duties discussed above for three hours per week. Following her work stoppage on May 12, 1998, Dr. Nipper indicated that appellant was temporarily totally disabled and referred her to Dr. Trowbridge, a rehabilitation specialist, for evaluation. Dr. Trowbridge concluded that the work duties involved in appellant's limited-duty position aggravated her work-related condition such that she had to stop work. The Office, in its decision, rejected his opinion, finding that it was not rationalized.

The Board finds that the June 19, 2002 report of Dr. Trowbridge constitutes sufficient evidence in support of appellant's claim to require further development by the Office. Dr. Trowbridge, in his report, advised that his physical examination of appellant on June 9, 1998 showed significant postural asymmetry in the spine and pelvis with subluxations in the cervical area and identifiable myofascial trigger points. He reported that this type of condition is easily aggravated by sub-optimal postural requirements related to many work activities, including those associated with the duties that appellant was performing when she had to stop work. While his reports lack detailed medical rationale sufficient to discharge appellant's burden of proof to establish by the weight of reliable, substantial and probative evidence that she sustained a recurrence of disability on May 12, 1998 this does not mean that this report may be completely disregarded by the Office. It merely means that its probative value is diminished.⁴ In the absence of medical evidence to the contrary, Dr. Trowbridge's report is sufficient to require further development of the record.⁵ It is well established that proceedings under the Federal Employees' Compensation Act are not adversarial in nature⁶ and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁷

On remand the Office should compile a statement of accepted facts and refer appellant, together with the complete case record and questions to be answered, to a Board-certified specialist for a detailed opinion regarding whether appellant sustained a recurrence of disability

³ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *See Delores C. Ellyett*, 41 ECAB 992 (1990).

⁵ *John J. Carlone*, 41 ECAB 354 (1989). The Board notes that the case record does not contain a medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case for a second opinion evaluation.

⁶ *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

⁷ *See Dorothy L. Sidwell*, 36 ECAB 699 (1985).

on May 12, 1998. After such development as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated August 6, 2002 is hereby vacated and the case is remanded to the Office for further proceedings.

Dated, Washington, DC
April 15, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member