

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CELESTE A. ZHONG and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Richmond, VA

*Docket No. 02-2383; Submitted on the Record;
Issued August 20, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained a recurrence of disability as of January 19, 2001; and (2) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits.

Appellant, a 31-year-old customer service representative, injured her neck and right shoulder on February 19, 2000 when she slipped on an icy parking lot surface. She filed a claim for benefits on February 20, 2000, which the Office accepted for cervical and thoracic subluxations. Appellant received appropriate compensation for total disability. She returned to limited-duty work for four hours per day in November 2000.

Appellant submitted a Form CA-7 dated March 20, 2001, claiming total disability compensation from March 11 through 24, 2001. Appellant's supervisor stated on the form that appellant had returned to light duty on November 28, 2000 and had not worked since January 19, 2001.

In a letter to appellant dated March 28, 2001, the Office noted appellant's supervisor's statement that she had returned to light duty during the aforementioned period and advised that she had received an overpayment because she had been paid compensation for total disability during that period. The Office also indicated that it was treating appellant's claim as one based on recurrence of disability and advised her to file a Form CA-2a in furtherance of the claim.¹

In support of her claim, appellant submitted a January 19, 2001 report from Dr. John F. Chinnici, a chiropractor, who stated that as of January 19, 2001 she continued to experience bilateral cervical and upper thoracic symptoms caused by subluxation in those areas. Dr. Chinnici opined that appellant's complaints were causally related to her February 19, 2000

¹ There is no documentation in the case file indicating that appellant ever filed a Form CA-2a in response to the Office's request.

work accident and advised that she was still temporarily partially disabled. He indicated in a February 19, 2001 work restriction evaluation that appellant was capable of working with certain restrictions.

The Office referred appellant for a second opinion examination with Dr. Edward P. Ryan, a Board-certified neurological surgeon. In a report dated April 25, 2001, Dr. Ryan advised that there was no objective evidence to substantiate appellant's complaints and that she was able to perform her regular duties on a full-time basis. He noted that appellant had reached maximum medical improvement.

The Office determined that there was a conflict in the medical evidence regarding whether appellant still had residuals from her accepted conditions and referred appellant to Dr. Anthony G. Puglisi, a Board-certified orthopedic surgeon, for a referee medical examination to resolve the conflict.

In a report dated August 1, 2001, Dr. Puglisi stated findings on examination, reviewed the medical records and the statement of accepted facts and stated that there was no organic basis for appellant's symptoms. He advised that given the history she described, such a slip without a fall could not have produced anything more serious than a strain or sprain of her cervical spine. Dr. Puglisi opined that such an injury would have been expected to resolve within a few weeks, at most. He concluded that there was no basis for continuing her on disability from an orthopedic standpoint and opined that she was capable of performing the regular duties as a contact representative for eight hours per day.

By decision dated May 21, 2001, the Office denied appellant's claim for a recurrence of disability from March 11 through 24, 2001, causally related to her accepted February 19, 2000 employment injury.

By letter dated June 20, 2001, appellant requested reconsideration.

By decision dated September 25, 2001, the Office denied modification of the May 21, 2001 decision.

In a letter of proposed termination dated November 28, 2001, the Office found that Dr. Puglisi's referee opinion finding that appellant's February 2000 work injury had resolved and that she no longer was disabled represented the weight of the medical evidence.

By decision dated January 2, 2002, the Office terminated appellant's compensation, finding that Dr. Puglisi's opinion represented the weight of the medical evidence.

By letter dated March 29, 2002, appellant's attorney requested reconsideration of the Office's January 2, 2002 and May 21, 2001 decisions. In support of her request, appellant submitted a January 9, 2002 report from Drs. Daniel Shapiro and Robert J. Sachs, osteopaths and a February 28, 2002 report from Dr. Nolan Tzou, Board-certified in anesthesiology. The report from Drs. Shapiro and Sachs states findings on examination and notes appellant's complaints of pain in her lumbar and cervical areas, but does not relate these symptoms to any factors or incidents of employment. Dr. Tzou also noted complaints of pain in appellant's shoulders, arms and neck and stated that based on her history and physical examination there appeared to be total

disability and causal relationship to the accident on February 19, 2000, which prevented her from performing her duties at the employing establishment.

By decision dated July 3, 2002, the Office denied reconsideration.

The Board finds that appellant has not met her burden to establish that she was entitled to compensation for a recurrence of disability as of January 19, 2001.

When an employee, who is disabled from the job he 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.²

In the instant case, the record does not contain any medical opinion showing a change in the nature and extent of appellant's injury-related condition. Indeed, appellant has failed to submit any medical opinion containing a rationalized, probative report, which relates her condition or disability as of January 19, 2001 to her employment injury. For this reason, she has not discharged her burden of proof to establish her claim that she sustained a recurrence of disability as a result of her accepted employment injury.

The only medical evidence that appellant submitted consisted of Dr. Chinnici's January 19, 2001 progress report and the reports from Drs. Sachs, Shapiro and Tzou. Dr. Chinnici's report provided a history of injury and a diagnosis of the condition, indicated generally that appellant complained of disabling pain as of January 19, 2001, imposed physical restrictions on certain work activities and stated that she was temporarily partially disabled, but did not constitute a probative, rationalized medical opinion sufficient to establish that appellant's disability as of January 19, 2001 was causally related to her accepted February 19, 2000 employment injury. In addition, the reports from Drs. Sachs, Shapiro and Tzou merely stated findings on examination and generally related appellant's complaints of back pain to her employment, but did not provide any rationalized, probative medical evidence indicating that she sustained a recurrence of disability as of January 19, 2001.

The reports from Drs. Chinnici, Sachs, Shapiro and Tzou do not constitute sufficient medical evidence demonstrating a causal connection between appellant's employment injury and her alleged recurrence of disability. Causal relationship must be established by rationalized medical opinion evidence.³ The reports submitted by appellant failed to provide an explanation in support of her claim that she was totally disabled as of January 19, 2001. Thus, these reports did not establish a worsening of appellant's condition and, therefore, do not constitute a probative, rationalized evidence demonstrating that a change occurred in the nature and extent of the injury-related condition.

² *Terry R. Hedman*, 38 ECAB 222 (1986).

³ *William C. Thomas*, 45 ECAB 591 (1994).

In addition, Dr. Ryan indicated in his referral medical opinion that appellant failed to establish a change in the nature and extent of her injury-related condition. Dr. Ryan stated in his April 25, 2001 report that there was no objective evidence to substantiate her complaints and that she was able to perform her regular duties on a full-time basis. He noted that appellant had reached maximum medical improvement. Therefore, as the Office properly found in its September 25, 2001 decision that Dr. Ryan's opinion that appellant did not experience a worsening of her condition in January 19, 2001 and that Dr. Puglisi's report constitutes the weight of the medical evidence. Appellant has failed to show a change in the nature and extent of her injury-related condition.

In addition, the Board finds that the evidence fails to establish that there was a change in the nature and extent of appellant's limited-duty assignment such that she no longer was physically able to perform the requirements of her light-duty job. The record demonstrates that appellant returned to work in November 2000 on light duty. Although appellant stopped working on January 19, 2001, she has submitted no additional factual evidence to support a claim that a change occurred in the nature and extent of her limited-duty assignment during the period claimed. Accordingly, as appellant has not submitted any factual or medical evidence supporting her claim that she was totally disabled from performing her light-duty assignment on January 19, 2001 as a result of her employment, appellant failed to meet her burden of proof. Thus, the Office properly found in its May 21, 2001 decision that appellant was not entitled to compensation based on a recurrence of her employment-related disability.

As there is no medical evidence addressing and explaining why the claimed condition and disability as of January 19, 2001 was caused or aggravated by her employment injury, appellant has not met her burden of proof in establishing that she sustained a recurrence of disability. The Board, therefore, affirms the July 3, 2002 and September 25, 2001 Office decisions affirming the May 21, 2001 denial of compensation based on a recurrence of her work-related disability.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.⁴ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁵

In this case, the Office based its decision to terminate appellant's compensation on the August 1, 2001 report of Dr. Puglisi, the independent medical examiner. In his referee medical opinion, Dr. Puglisi advised that appellant's accepted condition should have resolved within a few weeks and that there was no organic basis for appellant's current symptoms. He stated that she was capable of performing her regular duties for eight hours per day and advised that there

⁴ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁵ *Id.*

was no basis for continuing her on disability from an orthopedic standpoint. The Office relied on Dr. Puglisi's opinion in its January 2, 2002 termination decision, finding that all residual disability stemming from her accepted cervical and thoracic subluxations had ceased and that appellant currently suffered from no condition or disability causally related to her accepted February 2000 employment injury.

The Board holds that the Office properly found that Dr. Puglisi's referee opinion, negating a causal relationship between appellant's claimed current condition and her accepted thoracic and cervical injuries, was sufficiently probative, rationalized and based upon a proper factual background. The Office acted correctly in according Dr. Puglisi's opinion the special weight of an independent medical examiner.⁶ Accordingly, the Board finds that Dr. Puglisi's opinion constituted sufficient medical rationale to support the Office's January 2, 2002 decision terminating appellant's compensation. The Board, therefore, affirms the Office's January 2, 2002 Office decision terminating compensation.

Following the Office's termination of compensation, the burden of proof in this case shifted to appellant, who requested reconsideration and submitted the reports from Drs. Sachs, Shapiro and Tzou.⁷ These reports, however, did not contain countervailing, probative medical evidence that appellant continued to have residual disability from her accepted conditions. Accordingly, the reports from Drs. Sachs, Shapiro and Tzou did not satisfy appellant's burden of proof to warrant modification of the Office's January 2, 2002 termination decision. Dr. Puglisi's referee opinion properly constituted the weight of the medical evidence. Accordingly, the Board affirms the Office's January 2, 2002 termination decision.

⁶ *Gary R. Seiber*, 46 ECAB 215 (1994).

⁷ *Talmdge Miller*, 47 ECAB 673 (1996).

The decisions of the Office of Workers' Compensation Programs dated July 3 and January 2, 2002 and September 25, 2001 are hereby affirmed.

Dated, Washington, DC
August 20, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member