

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIE H. STAPLETON and U.S. POSTAL SERVICE,
POST OFFICE, Meridian, MS

*Docket No. 03-578; Submitted on the Record;
Issued August 12, 2003*

DECISION and ORDER

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

The issues are: (1) whether appellant sustained a recurrence of disability on or about November 9, 2000 as a result of her July 21, 2000 work-related injury; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for subpoenas.

On July 21, 2000 appellant, then a 39-year-old distribution clerk, filed a claim for traumatic injury alleging that on that day she fell and injured her right shoulder, lower back and left hip. She stopped work that day. The employing establishment stated that appellant was injured in the performance of duty and that she was off work from July 21 to 31, 2000.¹

In a report dated July 21, 2000, Dr. Shawn Anderson, Board-certified in family practice, noted that appellant was 7½ months pregnant and diagnosed low back pain and strain. In a report dated July 24, 2000, Dr. Ronnye D. Purvis, Board-certified in obstetrics and gynecology, advised that she could return to light duty on August 1, 2000.²

On November 30, 2000 appellant filed a claim for a recurrence of disability, alleging that on July 23, 2000 she sustained a recurrence of her July 21, 2000 work-related injury. In support of her claim, she submitted a report dated October 17, 2000, from Dr. Todd Clayton, Board-certified in family practice, who stated that he treated appellant that day for right shoulder pain. He stated that she related tingling in the left hand, but not in the right where her pain is located and that she "was unable to really fully complete her physical therapy due to her delivering of her child." Upon examination, appellant had full range of motion of all joint spaces with good internal and external rotation. Dr. Todd noted minimal tenderness on palpitation to the anterior shoulder along the edge of the anterior deltoid. He noted a "[G]enerally normal musculoskeletal

¹ Appellant was on light duty when she fell on July 21, 2000.

² Appellant returned to work on August 1, 2000 and worked until August 31, 2000. On September 11, 2000 she delivered a son.

examination.” Dr. Clayton advised, however, that appellant’s musculoskeletal pain was “related to repetitive motions and probably lifting and carrying of her child.” In another report dated October 17, 2000, Dr. Clayton stated that appellant had some mild musculoskeletal pain, but that she was released to return to a regular, eight-hour workday. In a report dated November 10, 2000, Dr. Clayton stated that he examined appellant on the prior day and restricted her work to four hours a day. He again noted that she had right shoulder and musculoskeletal pain.

On January 17, 2001 the Office accepted that appellant’s July 21, 2000 back contusion and lower back strain were caused by her employment. However, the Office also advised appellant that “the present evidence of record was insufficient to establish that her current condition was related to the July 21, 2000 injury.” The Office noted Dr. Clayton’s October 17, 2000 report, in which he returned appellant to full duty effective that day, while also noting that her right shoulder pain was “related to repetitive motions and probably lifting and carrying of [your] child.” Since Dr. Clayton reduced appellant’s work week to four hours a day on November 9, 2000 the Office considered that date to be the date of her claimed recurrence of disability and instructed her to submit a report from Dr. Clayton, in which he would need to diagnose a right shoulder condition and explain the connection between her work disability on November 9, 2000 and her work-related injury. In response, appellant submitted additional medical evidence, statements regarding the employment injury, evidence regarding the leave scheduling and a personal statement.

By decision dated June 26, 2001, the Office denied appellant’s claim for a recurrence of disability on the grounds that the medical evidence of record was insufficient to establish that her condition was causally related to the July 21, 2000 employment injury. On July 10, 2001 appellant requested an oral hearing and, by letter dated September 4, 2001, requested that certain documents be subpoenaed. A hearing was held on March 11, 2002. In a decision dated June 6, 2002, the hearing representative affirmed the Office’s June 26, 2001 decision denying appellant’s recurrence claim. The hearing representative further exercised her discretion and denied appellant’s request that specific documents be subpoenaed. By letter dated August 7, 2002, appellant requested reconsideration. By decision dated November 5, 2002, the Office denied modification of its June 6, 2002 decision affirming its June 26, 2001 decision denying her claim.

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained a recurrence of disability on or about November 9, 2000, causally related to her July 21, 2000 employment injury.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between the recurrence of disability on or about November 9, 2000 and her July 21, 2000 employment injury. This burden of proof requires that a claimant furnish 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 the employment injury and supports that conclusion with sound medical reasoning.³

³ *Ronald A. Eldridge*, 53 ECAB ____ (Docket No. 01-67, issued November 14, 2001).

The relevant medical evidence includes reports from Dr. Clayton, appellant's treating physician, on December 22, 2000 and February 9 and 27 and April 24, 2001. In his December 22, 2000 and February 27, 2001 reports, Dr. Clayton stated that appellant could work up to six hours a day, while noting her right shoulder pain. In his February 9, 2001 report, he diagnosed right shoulder capsulitis and stated that appellant "was given clearance to return to her routine work duties." In his April 24, 2001 report, Dr. Clayton returned appellant to an eight-hour workday. In none of these reports did he explain why he believed that appellant's right shoulder pain or right shoulder capsulitis were due to her July 21, 2000 back injury. Further, he failed to explain why he returned appellant to an eight-hour workday on October 17, 2000 and then reduced that amount to a four-hour workday in his November 10, 2000 report. Dr. Clayton did not offer a medical opinion supporting his November 10, 2000 report, in which he reduced appellant's workday from eight to four hours daily. The Board finds that Dr. Clayton's reports are insufficient to meet appellant's burden of proof without medical reasoning explaining how and why appellant's current conditions were due to her employment injury.

In a report dated January 3, 2001, Dr. Howard T. Katz, Board-certified in physical medicine and rehabilitation, stated that he had examined appellant on that day and diagnosed a right shoulder impingement, early right frozen shoulder and some cervical and upper trapezius spasm associated with her shoulder injury, but no evidence of neurological impairment or obvious rotator cuff involvement. Although this report provides the first diagnosis of appellant's right shoulder condition, it does not explain how this condition is causally related to her July 21, 2000 work-related injury. In a report dated August 2, 2001, Dr. Felix H. Savoie, III, a Board-certified orthopedic surgeon, noted that appellant's right shoulder had improved. He reviewed the history of her injury, noting that "she fell, tore her cartilage and bruised her cuff." Dr. Savoie added that the injury had healed, but that she would need medications to reduce swelling." Neither Dr. Savoie nor Dr. Katz provided medical reasoning explaining how and why appellant's current shoulder condition was due to her employment injury, the Board finds that these reports are insufficient to meet appellant's burden of proof.

In a report dated September 8, 2001, Dr. Purvis, Board-certified in obstetrics and gynecology, stated that he "took care of [appellant] with her last pregnancy during the year 2000" and noted her complaints of right shoulder pain during her July and August appointments. He stated that after her cesarean delivery on September 9, 2000⁴ appellant's "symptoms had improved somewhat, but again there was still the dull aching sensation that was present." These reports predate appellant's release to full duty on October 17, 2000 and thus, provide no probative value in establishing a recurrence of disability on or about November 9, 2000.

In a report dated July 18, 2002, Dr. Savoie stated that he had treated appellant since January 30, 2001, "when she fell, subluxating her right shoulder...." He then opined that all of appellant's shoulder injuries were related to this fall and that she was seen that day with similar symptoms. The Board finds that Dr. Savoie's report is insufficient to meet appellant's burden of proof as the report is not based on an accurate history of injury. Appellant's work-related injury occurred on July 21, 2000, while Dr. Savoie advised that she sustained an injury on January 30, 2001. In a report dated September 19, 2002, he stated that a recent magnetic

⁴ Appellant indicted her so was born on September 11, 2000.

resonance imaging scan revealed tendinitis in her right shoulder. Dr. Savoie opined that this injury was a direct result of appellant's July 21, 2000 work-related injury, when she fell and developed a right adhesive capsulitis. Although this report provides evidence that appellant sustained a right shoulder injury, it does not establish a causal relationship between her July 21, 2000 work-related injury and her condition on or after November 9, 2000. Appellant did not provide the necessary rationalized medical opinion evidence to meet her burden of proof to establish that she sustained a recurrence of disability on or about November 9, 2000.⁵

The Board further finds that the Office did not abuse its discretion by denying appellant's request for a subpoena.

Section 8126.9 of the Federal Employees' Compensation Act states: "The Secretary of Labor, on any matter within his jurisdiction under this subchapter, may issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles." This section of the Act gives the Office discretion to grant or reject requests for subpoenas. The Office's regulation on subpoenas states, in part: "When reasonably necessary for full presentation of a case, an Office hearing representative may, upon his or her own motion or upon request of the claimant, issue subpoenas for the attendance and testimony of witnesses."⁶

The Office hearing representative, in a March 6, 2002 letter, reaffirmed in her June 6, 2002 decision, found that appellant made no persuasive argument that the documents she sought was necessary for a full presentation of her case or that she was unable to obtain the records herself. Appellant also failed to address what information the records would provide.⁷ Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts and similar criteria. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.⁸ The Board finds no abuse of discretion in the Office hearing representative's finding that the documents sought were not necessary for a full presentation of appellant's case.

⁵ At the hearing, appellant stated that her claim was not a recurrence of disability, but rather a continuation of her July 21, 2000 work-related injury.

⁶ 5 U.S.C. § 10.134(a).

⁷ Appellant requested documents associated with her need for a comfortable chair, pay analysis for July and August 2000, documents relating to her return to full duty after July 23, 2000, medical records pertaining to her delivery, authorization for physical therapy, a CA-17 form returning her to work on August 16, 2000, a CA-17 form limiting her work and documents received regarding her Equal Employment Opportunity complaint.

⁸ *Claudia Yantis*, 48 ECAB 495 (1997).

The decisions of the Office of Worker's Compensation Programs dated November 5 and June 6, 2002 are affirmed.

Dated, Washington, DC
August 12, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member