

**United States Department of Labor
Employees' Compensation Appeals Board**

KIM A. YOUEL, Appellant)
and) Docket No. 03-1936
U.S. POSTAL SERVICE, POST OFFICE,) Issued: December 10, 2003
Johnstown, CO, Employer)

)

*Kim A. Youel, pro se
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On August 1, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated April 29, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue on appeal is whether appellant has established that she sustained a recurrence of disability causally related to her September 7, 2002 employment injury.

FACTUAL HISTORY

On September 18, 2002 appellant, then a 49-year-old rural carrier, filed a claim alleging that on September 7, 2002 she injured her back while pulling flats at work. She stopped work on September 17, 2002. Appellant submitted treatment reports from Dr. Phyllis Gilmore, a Board-certified family practitioner, dated September 17 to 20, 2002 and from Dr. Michael G. Holthouser, who is Board-certified in preventive medicine, dating from September 20 to November 5, 2002. Also submitted were magnetic resonance imaging (MRI) studies of the thoracic and lumbar spine

dated September 27, 2002, which demonstrated degenerative changes of the lower thoracic spine and moderate stenosis at L4-5; and facet hypertrophic degenerative changes at L4-5, L3-4 and L5-S1, with the most severe degenerative changes at the thoracolumbar junction.

On October 7, 2002 the employing establishment offered appellant a limited-duty position that had been approved by Dr. Holthouser. Appellant refused the offered position on October 8, 2002. In a form report dated October 25, 2002, Dr. Holthouser diagnosed lumbar strain and advised that appellant could return to regular duty on that date. In a November 5, 2002 report, Dr. Holthouser noted that appellant reported that, on October 25, 2002, while riding in a car with lumbar support in place, she had the sudden onset of a cold water sensation throughout her buttocks and waist level, down through her legs and feet. This sensation had occurred about 20 times since but could always be completely reversed by any significant movement. He stated that appellant reported that she stopped wearing a lumbar support because it seemed to be associated with the cold water sensation. Dr. Holthouser noted appellant's MRI scan findings, diagnosed lumbar strain and recommended that she have flexion extension views of the lumbar and thoracic spine.

By letter dated January 7, 2003, the Office accepted that appellant sustained an employment-related lumbar strain that had resolved by October 25, 2002. The Office advised appellant that physical therapy was authorized from the date of injury to January 7, 2003 and that diagnostic studies, including computerized tomography and MRI scans, were authorized if ordered by her physician. The Office further informed appellant of the proper procedures to follow for reimbursement of medical expenses.

On January 24, 2003 appellant filed a recurrence of disability claim, stating that she had gradually improved and had returned to full duty on October 25, 2002 but late that day, when she was not at work and was using a lumbar support pillow, she experienced an intense, electrical shock sensation from her lumbar spine to her toes. She did not stop work. Appellant submitted a report from Dr. Holthouser dated February 4, 2003 in which he diagnosed lumbar strain and stated that appellant was released from his care and could return to regular duty that day.¹

By letter dated February 13, 2003, the Office advised appellant of the evidence needed to support her recurrence of disability claim, to include a personal statement regarding her work duties and physical condition with an explanation of why she believed her current condition was related to the original injury. She was also to submit medical records of all treatment received for her lumbar strain condition subsequent to October 25, 2002, which was to include a physician's opinion with supporting explanation regarding the causal relationship between her current condition and the September 7, 2002 employment injury.

Appellant submitted a treatment note dated February 4, 2003 in which Dr. Holthouser indicated that appellant had returned for a check on her September 7, 2002 employment injury, stating that she felt "the pattern of symptoms is better with no pain." He noted that appellant had changed the type of lumbar support used and advised that she was performing her job without difficulty but "was asked to come in for flexion-extension views of the thoracic and lumbar spines" for spinal stenosis. He noted a negative examination with full range of motion and no pain on

¹ Appellant also submitted reports from Dr. Holthouser dated October 7, 2002 that were previously of record.

palpation. X-rays demonstrated degenerative changes of the thoracic and lumbar spines. Dr. Holthouser diagnosed past symptoms of altered skin sensation T10 downward in pants-stocking distribution bilaterally with no pathology identified and advised that appellant should use a lumbar support while driving or sitting for prolonged periods. He advised that she could continue regular activity and released her from care.

In a letter dated March 12, 2003, Dr. Holthouser discussed his treatment of appellant, noting the September 7, 2002 injury and the MRI findings, stating “[b]y October 25, 2002, the patient was felt to be at maximum medical improvement and ready to close the case. She was discharged that day with no impairment, no permanent restrictions and no medications.” He further described the November 5, 2002 incident and advised that lumbar spine films taken on February 5, 2003 were interpreted as showing an abnormal 32 degree L5-S1 difference in flexion and extension with slight motion in the thoracic spine between the mid and lower segments but the conclusion reached by the radiologist, Dr. John Lemon,² was that the study was normal. Dr. Holthouser noted that appellant was working with difficulty and continued:

“Seeing that there was abnormal motion in her spine, this is confirmed by the clicking sensation that she had, the immediate onset of paresthesia in stocking and pants-like distribution of the lower extremities and is remedied very quickly by moving into another position and then finally by changing lumbar support. Given the findings on x-ray, the fact that the condition improved itself very quick[ly] with position, it is highly probable that there was an anatomic condition that caused the numbness, tingling and cold water sensation in her legs. The distribution of pain that she described in her pain drawings initially were pain in the upper lumbar, lower thoracic areas and around the margin of the side on the right. Given that the initial injury was associated with movement as well, twisting, bending, lifting, it is probable that these two are related.”

By decision dated April 29, 2003, the Office denied the recurrence claim on the grounds that the medical evidence was insufficient to establish that her current medical condition was due to the accepted work injury.

LEGAL PRECEDENT

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.³ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁴ Causal relationship is a medical issue, and the medical evidence

² Dr. Lemon is a Board-certified radiologist.

³ *Ronald C. Hand*, 49 ECAB 113 (1997).

⁴ *Helen K. Holt*, 50 ECAB 279 (1999).

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 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.⁵

Under the Federal Employees' Compensation Act,⁶ the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Act.⁷ Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁸

ANALYSIS

The relevant medical evidence includes a number of reports from appellant's treating physician, Dr. Holthouser, who is Board-certified in preventive medicine. On October 7, 2002 Dr. Holthouser noted that appellant could perform the offered limited-duty position which conformed to restrictions that he had provided. In a report dated October 25, 2002, he advised that appellant could return to full duty. By report dated November 5, 2002, Dr. Holthouser noted that appellant reported that, on October 25, 2002, while riding in a car with lumbar support in place, she had the sudden onset of a cold water sensation throughout her buttocks and waist level, down through her legs and feet, and that this sensation had occurred about 20 times since but could always be completely reversed by any significant movement. He noted that she stopped wearing the lumbar support because it seemed to be associated with the cold water sensation. He noted her MRI scan findings, diagnosed lumbar strain, and recommended that she have flexion extension views of the lumbar and thoracic spine.

In a treatment note dated February 3, 2003, Dr. Holthouser noted that appellant felt her pattern of symptoms was better with no pain. He advised that she was performing her job without difficulty but had been asked to come in for flexion-extension views of the thoracic and lumbar spines. Physical examination was negative with a full range of motion and no pain on palpation, and x-rays demonstrated degenerative changes of the thoracic and lumbar spines. Dr. Holthouser diagnosed past symptoms of altered skin sensation with no pathology identified and advised that

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁸ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

appellant should use a lumbar support while driving or sitting for prolonged periods. He advised that she could continue regular activity and released her from care. In a letter dated March 12, 2003, Dr. Holthouser discussed his care and treatment of appellant, stating that, by October 25, 2002, she was felt to be at maximum medical improvement and was discharged that day with no impairment, no permanent restrictions and no medications.

The accepted condition in this case is lumbar strain. Dr. Holthouser returned appellant to full duty on October 25, 2002. While he later stated that appellant reported that she experienced an altered skin sensation later that day, Dr. Holthouser advised that this was of unknown etiology but was likely related to movement. In his February 4, 2003 report, he noted a negative examination. Dr. Holthouser did not provide a report to establish that appellant's condition after October 25, 2002 was caused by the September 7, 2002 employment injury. Her treating physician does not indicate that appellant had disability on or after that date causally related to the accepted lumbar strain. The Board finds that appellant failed to submit any medical evidence to indicate that her current cervical condition is causally related to the accepted September 7, 2002 employment injury. Appellant has failed to establish that she sustained a recurrence of disability on or after October 25, 2002.

On appeal appellant seems to be asserting that she was not reimbursed for medical services totaling \$176.04. The record before the Board, however, does not contain a decision regarding this expense. The Board's jurisdiction is limited to the review of final decisions of the Office issued within one year prior to the filing of the appeal.⁹ The Board, therefore, has no jurisdiction to consider this issue.¹⁰

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability on or after October 25, 2002 causally related to her September 7, 2002 employment injury.

⁹ 20 C.F.R. § 501.2(c); see *William M. Downer*, 52 ECAB 217 (2001).

¹⁰ In the acceptance letter dated January 7, 2003, the Office informed appellant of the procedures to follow for reimbursement of medical expenses.

ORDER

IT IS HEREBY ORDERED THAT the April 29, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 10, 2003
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member