U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RITA LEEDS and U.S. POSTAL SERVICE, SOUTH JERSEY PROCESSING & DISTRIBUTION CENTER, Bellmawr, NJ

Docket No. 02-2381; Submitted on the Record;
Issued February 20, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability on February 21, 2001 causally related to her accepted April 1, 1998 lumbosacral sprain.

On April 1, 1998 appellant, then a 43-year-old distribution clerk, sustained injury while pushing a full hamper of mail with bad wheels. The Office of Workers' Compensation Programs accepted that appellant sustained a lumbosacral sprain. Appellant's treating physician, Dr. David Tobias, a Board-certified family practitioner, released appellant to return to work on May 1, 1998. Appellant worked six hours per day with restrictions of no lifting over five pounds, no pushing, pulling or twisting. A magnetic resonance imaging (MRI) scan of the lumbar spine performed on July 21, 1998 by Dr. Rustico C. Polutan, a Board-certified radiologist, showed herniated discs at levels L4-5 and L5-S1. Dr. Polutan stated that there were no signs of fracture or subluxation.

Dr. Tobias referred appellant for an orthopedic evaluation to Dr. Stephen Bosacco, a Board-certified orthopedic surgeon, who diagnosed appellant with chronic back strain and herniated nucleus pulposus (HNP) L4-5 and stated that appellant could work light duty, six hours per day. Appellant also underwent a work hardening program and a functional capacity evaluation. The results of the functional capacity evaluation performed on June 24, 1999 indicated that appellant could work at a light physical demand level and should continue to work in a modified capacity. Appellant continued to seek intermittent treatment from Dr. Bosacco and work six hours per day with restrictions of occasional bending and standing with increased lifting of 20 pounds or less.

On April 6, 1999 Dr. Bosacco stated that he believed appellant was on her way to recovery and estimated that she could return to full duty when she finished the work hardening program. On September 2, 1999 he stated that appellant had completed her physical therapy and work hardening program and had improved significantly, but that she still had residual pain in her back, intermittent right leg pain and felt slight weakness in her hamstrings and calf. He noted that her calf weakness seemed to be valid even though the MRI did not show a clear

abnormality to account for it. He suggested that appellant consider a job transfer to a less strenuous job since her symptoms did not seem to be subsiding.

On May 4, 2000 Dr. Bossaco indicated that appellant's right leg pain appeared to be permanent and recommended a high-back chair for added support. On December 18, 2000 he indicated that appellant was complaining of continuing and actually worsening pain in her back and right leg. Dr. Bossaco requested an MRI scan to determine whether there had been a worsening of appellant's prior lumbar disc problem or whether an eight-hour-per-day limited-duty position would be justified. By memorandum dated January 29, 2001, he stated that he "would n[o]t continue this any further" and that appellant needed to obtain an MRI scan. He indicated that if it was satisfactory appellant could work a permanent limited-duty job for eight hours per day.

On March 9, 2001 appellant filed a claim for a recurrence of disability, alleging that on February 21, 2001 she had increased pain in her right hip, back, leg and foot and was unable to sleep and unable to walk properly. She stopped work on May 24, 2001.[1] Appellant submitted a February 28, 2001 attending physician's report from Dr. Joseph Iannelli, a chiropractor, indicating that she was totally disabled as of February 23, 2001. Dr. Iannelli diagnosed right leg radiculitis and lumbar discopathy with subluxation and opined that appellant's condition was related to her April 1, 1998 work injury. In a March 12, 2001 narrative report, he indicated that numerous orthopedic, neurological and chiropractic tests were performed, but did not discuss the findings of these tests. On May 18, 2001 Dr. Iannelli stated that the July 21, 1998 MRI scan was positive for discopathy and lumbar subluxation with radicular symptoms. He continued to provide intermittent treatment and stated that appellant was totally disabled from work.

By decision dated June 5, 2001, the Office denied appellant's claim for recurrence of disability, finding that the medical evidence of record did not establish that her total disability was due to a change in her injury-related condition or a change in her light-duty job requirements. The Office noted that the only contemporaneous medical evidence of record regarding appellant's claimed recurrence was from a chiropractor.

Thereafter, appellant submitted a May 18, 2001 narrative report from Dr. Iannelli, in which he indicated that he reexamined and treated appellant on May 16, 2001 and diagnosed subluxation of L5-S1, as well as lumbar chronic sprain with scar tissue and lumbar HNP. He noted chiropractic treatment to treat the L5-S1 subluxation.

Appellant also submitted a February 23, 2001 x-ray report from Dr. Iannelli indicating: "Antalgia from L3 through L5, spinous processes intact and normal, transverse processes within normal limits, foraminal enroachment on the right at L5-S1 and wedging of disc at L5-S1." He opined in the x-ray report that the subluxation was related to the work injury on April 1, 1998.

By letter dated June 24, 2001, appellant requested an oral hearing, which was held on December 11, 2001. At the hearing, appellant discussed her symptoms on February 21, 2001,

[1] After her claimed recurrence, appellant attempted to return to work for four hours per day for a few days with limitations, but stated that she had a bad chair, and stopped work altogether for thirty days. Then she returned to work again for four hours per day.

stating that on that morning she woke up and could not move without pain. She stated that she had intermittently experienced pain radiating in her right leg since her injury, but that the pain had never been as severe as on February 21, 2001. She noted that she did not return to Dr. Bosacco following her recurrence and continued to see Dr. Iannelli for chiropractic treatment. The record was held open for 30 days to submit additional medical evidence.

By decision dated February 25, 2002, the hearing representative affirmed the Office's June 5, 2001 decision, finding that the medical evidence of record was insufficient to establish that appellant's disability commencing February 21, 2001 was causally related to the April 1, 1998 work injury.

By letter dated March 13, 2002, appellant requested reconsideration and submitted a February 18, 2002 report from Dr. Bosacco, who indicated that the last time he saw appellant was on January 29, 2001 and that, at that time, she was still symptomatic and working limited duty six hours per day. He acknowledged that appellant had not been under his care recently and that her present condition was unknown to him. He diagnosed chronic lumbar strain or disc disease with right lower extremity radiculopathy and opined that appellant's symptoms were persistent and permanent.[2]

Appellant also submitted an April 17, 2002 report from Dr. Iannelli indicating that he reexamined and treated appellant on April 3, 2002. He diagnosed lumbar subluxation, lumbar disc herniation, lumbar discopathy, lumbar radiculitis, lumbar DJD consistent with macro and micro or repetitive-type injury and lumbar myospasm. Dr. Iannelli stated:

> "It was noted that in a letter from the division of Federal Employees' Compensation Act dated February 25, 2002 and signed by Marilyn R. Preuit on page five last paragraph it stated an MRI dated July 21, 1998 specifically noted no subluxation. It is widely accepted that the medical radiological definition of subluxation is not the chiropractic definition. These tests aided me in arriving at the following diagnostic impressions."

By decision dated June 12, 2002, the Office denied modification of the February 25, 2002 decision.

The Board finds that appellant has not established that she sustained a recurrence of disability on February 21, 2001 causally related to her accepted April 1, 1998 work injury.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a limited or light-duty position or the medical evidence establishes that the employee 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 to show that he or she cannot perform such light duty. As part of this burden, appellant 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.[3] Appellant must furnish

[2] Appellant also submitted a May 11, 2001 report from Dr. Robert J. Ponzio.

[3] *Richard E. Konnen*, 47 ECAB 388 (1996); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

rationalized medical opinion evidence, based on a complete and accurate factual and medical history, showing a causal relationship between the claimed recurrence of disability and an accepted employment injury.[4] Causal relation and disability are medical issues that must be resolved by competent medical evidence.[5]

In this case, appellant did not claim that there was a change in the nature and extent of her light-duty job requirements after she returned to work on May 1, 1998. When appellant returned to work, Dr. Tobias stated that she could work six hours per day with restrictions of no lifting over five pounds and no pushing, pulling or twisting. He later referred appellant to Dr. Bosacco, who also agreed that appellant could work 6 hours per day with restrictions of occasional bending, standing and lifting under 5 to 10 pounds, which was later increased to 20 pounds. The results of appellant's functional capacity evaluation also indicated that she should continue to work in a modified capacity. Appellant continued to seek intermittent treatment from Dr. Bosacco, who stated that appellant should continue to work six hours per day in a limited capacity.

There is no evidence in the record to indicate that appellant's work duties were not in accord with her physical restrictions. A description of appellant's limited duty job offer on May 1, 1998 indicates that appellant's position entailed working six hours per day with intermittent standing, sitting and walking, with no lifting, carrying, pushing, pulling, climbing, bending, twisting or reaching. Her duties were described as casing letters in a manual letter case and casing letters while in a standing or sitting position. On October 15, 1998 appellant's job description expanded to include continuous sitting no lifting over 10 pounds. Dr. Bosacco eventually expanded appellant's duties to include lifting up to 20 pounds.

As appellant has not alleged that her light-duty job requirements changed and since there is no evidence in the record to suggest that they did change, the question becomes whether there was a change in the nature and extent of appellant's injury-related condition.

Appellant filed a claim for recurrence of disability, claiming that the pain in her right leg was unusually severe on February 21, 2001. At the oral hearing she stated that she woke up that morning and could not move without experiencing pain. She stated that she also had increased pain in her right hip, back and foot and was unable to sleep and walk properly.

In support of her claim for recurrence of disability, appellant submitted reports from Drs. Iannelli and Bosacco. Dr. Bosacco indicated in his December 18, 2000 report that appellant had been complaining of increased pain in her back and right leg, but this report is dated before appellant's claimed recurrence on February 21, 2001. In his report dated February 18, 2002, he acknowledged that he last treated appellant on January 29, 2001 and was not familiar with her present medical condition. Appellant also stated at the oral hearing that she did not return to Dr. Bosacco after her recurrence and started treatment with Dr. Iannelli. The Board finds that since Dr. Bosacco has not treated appellant since her claimed recurrence of disability on February 21, 2001, his reports are not considered contemporaneous evidence and are of little

[4] *Armondo Colon*, 41 ECAB 563 (1990).

[5] *Debra Kirk-Littleton*, 41 ECAB 703 (1990); *Ausberto Guzman*, 25 ECAB 362 (1974).

probative value. As in the case of *Harry E. Bullock*, evidence dated prior to appellant's claimed recurrence was found to lack probative value as it was not contemporaneous with appellant's alleged recurrence of disability.[6] As such, the only contemporaneous medical evidence of record are the reports from Dr. Iannelli.

In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under the Act. Section 8101(2) of the Act provides that the term "physician" ... includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[7] According to FECA Bulletin, 84-71, a subluxation is defined as "an incomplete dislocation, off-centering misalignment, fixation or abnormal spacing of the vertebrae anatomically which must be demonstrable on any x-ray film to individuals trained in the reading of x-rays." In this case, Dr. Iannelli diagnosed subluxation and indicated in his May 18, 2001 report that he was using chiropractic treatment to treat appellant's L5-S1 subluxation. He also performed an x-ray on February 23, 2001, in which he stated: "In my opinion this diagnosis including subluxations are related to said injury reported on April 1, 1998." In his report dated April 17, 2002, he also addressed the July 21, 1998 MRI scan noting no subluxation and stated that it is widely accepted that the medical radiological definition of subluxation is different than the chiropractic definition. Therefore, these reports would establish that Dr. Iannelli is a "physician" under the Act since they contain a diagnosis of subluxation as demonstrated by the February 23, 2001 x-ray to exist.[8]

It remains appellant's burden, however, to submit probative medical evidence to establish her claim. The Board finds that Dr. Iannelli's reports are insufficient to meet appellant's burden of proof. In these reports, Dr. Iannelli does not provide a clear statement as to causal relationship between the diagnosed subluxation and the claimed recurrence of disability on February 21, 2001.

Initially, Dr. Iannelli submitted a February 28, 2001 attending physician's report indicating that appellant was totally disabled as of February 23, 2001 and checked "yes" that appellant's condition was caused or aggravated by an employment activity, stating "consistent with April 1, 1998 injury." In a March 12, 2001 narrative report, he stated: "With respect to the degree of chiropractic certainty I do believe that the injury on April 1, 1998 is the cause of [appellant's] current condition." In a May 18, 2001 report, Dr. Iannelli diagnosed subluxation of L5-S1 and noted that he was using chiropractic treatment to treat appellant's condition. He reiterated that the injury on April 1, 1998 was the cause of appellant's condition. In his report dated April 17, 2002, he addressed the claims examiners statement that the July 21, 1998 MRI scan specifically noted no subluxation and stated that it is widely accepted that the radiologic definition of subluxation is different than the chiropractic definition. He specifically noted that appellant's treatment had consisted of specific spinal adjustments to restore proper vertebral motion and to reduce irritation in the vicinity of the spinal nerves. Finally, in the x-ray

[6] *Harry E. Bullock*, Docket 99-2063 (issued September 27, 2000).

[7] 5 U.S.C. § 8101(2); *Kathryn Haggerty*, 45 ECAB 383 (1994).

[8] *Lauramae Heard*, 42 ECAB 688 (1991);*John R. Hagenow*, Docket No. 95-1867 (issued June 25, 1997).

performed on February 23, 2001, Dr. Iannelli stated: "In my opinion this diagnosis including subluxations are related to said injury reported on April 1, 1998."

The Board finds that Dr. Iannelli's reports do not contain a rationalized medical opinion discussing the causal relationship between appellant's claimed recurrence of disability on February 21, 2001 and the diagnosed subluxation. In the case of *Albert Dickerson*, appellant's chiropractor did not actually state in his reports that appellant's subluxation caused his recurrence. He opined that appellant's subluxation was responsible for his current condition, however, he did not support his statements with medical rationale. The Board found that the chiropractor's reports were of little probative value.[9] In this case, Dr. Iannelli diagnosed subluxation yet did not correlate the diagnosis with the claimed recurrence. In other reports, he states that appellant's current condition is related to the April 1, 1998 injury but does not provide medical rationale. In the February 23, 2001 x-ray report, Dr. Iannelli opines that the diagnosed subluxation is related to the April 1, 1998 accepted work injury, but does not support his statements with medical rationale. These statements alone, without supporting medical rationale, are insufficient to discharge appellant's burden of proof. As in the case of *Dickerson*,[10] Dr. Iannelli does not actually state in his reports that appellant's subluxation caused his recurrence and does not support his other statements regarding causal relationship with medical rationale.

Appellant's burden, in showing that there was a change in the nature and extent of her injury-related condition, includes providing rationalized medical evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the accepted work injury. 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 accepted work injury.[11] In this case, Dr. Iannelli fails to provide medical rationale explaining the nature of the relationship between the diagnosed subluxation and the original work injury on April 1, 1998. His statement regarding causal relationship in the February 23, 2001 x-ray is conclusory and insufficient to discharge appellant's burden of proof. It is well settled that a conclusory statement without supporting rationale is of little probative value[12] and is insufficient to discharge appellant's burden of proof.

[9] *Albert Dickerson*, Docket No. 01-1126 (issued February 25, 2002).

[10] *Id.*

[11] *John J. Carlone*, 41 ECAB 354 (1989).

[12] *Marilyn D. Polk*, 44 ECAB 673 (1993).

The Office of Workers' Compensation Programs' decisions dated June 12 and February 25, 2002 are hereby affirmed.

Dated, Washington, DC
February 20, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member