

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MAE H. HENRY and U.S. POSTAL SERVICE, MARINA
PROCESSING & DISTRIBUTION CENTER, Inglewood, CA

*Docket No. 03-1146; Submitted on the Record;
Issued July 16, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she was disabled for the period September 21, 2002 to February 21, 2003, causally related to her accepted September 20, 2001 contusion to the head with postconcussion syndrome and strain of the cervical spine.

This is the second appeal in this case.¹ On the first appeal, the Board reviewed the Office of Workers' Compensation Programs' November 15, 2001 decision, in which the Office denied appellant's claim on the grounds that she had submitted insufficient evidence to establish that she sustained an injury on September 20, 2001 at the time, place and in the manner alleged. By decision dated September 5, 2002, the Board reversed the Office's decision, finding that the evidence of record was sufficient to establish that, on September 20, 2001, while in the performance of duty, appellant sustained a contusion to the head with postconcussion syndrome and severe strain and spasms to the cervical spine. The Board remanded the case to the Office for a determination of entitlement to continuation of pay, period or periods of disability and medical expenses. The complete facts of this case are set forth in the Board's September 5, 2002 decision and are herein incorporated by reference.

On remand on October 16, 2002 the Office accepted appellant's claim for contusion to the head with postconcussion syndrome and severe strain and spasms to the cervical spine. Appellant received continuation of pay until October 26, 2001, and returned to full duty on October 29, 2001. Appellant again stopped work on September 21, 2002, and submitted claims for wage-loss compensation, CA-7 forms, for disability for the period September 21, 2002 to February 21, 2003, as well as supporting medical evidence.

By letter dated October 16, 2002, the Office requested that appellant's treating physician, Dr. Marvin White, Jr., an internist, submit a comprehensive narrative medical report explaining

¹ Docket No. 02-860 (issued September 5, 2002).

why appellant became disabled for work on September 21, 2002, especially in light of the fact that she had been back at work for a year and there was no record of medical treatment since that time.

By letters dated October 17, 2002, the Office referred appellant, together with a statement of accepted facts and copies of medical records to Dr. H. Harlan Bleecker, a Board-certified orthopedic surgeon, and Dr. Jay Jurkowitz, a Board-certified neurologist, for evaluations as to whether appellant was disabled for work on or after September 21, 2002, causally related to her accepted employment injuries.

In a decision dated February 26, 2003, the Office denied appellant's claim for wage-loss compensation for the period September 21, 2002 to February 21, 2003, on the grounds that the medical evidence of record was insufficient to establish that appellant was disabled for work during that time, causally related to her accepted employment injuries.

The Board finds that appellant has failed to meet her burden of proof to establish that she was disabled for the period September 21, 2002 to February 21, 2003, causally related to her accepted employment injuries.

In order to establish entitlement to wage-loss compensation for disability from work, appellant has the burden to 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 employment factors and supports that conclusion with sound medical reasoning.² An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on appellant's unsupported belief of causal relation.³

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed total disability for work for the period September 21, 2002 to February 21, 2003 and her accepted contusion to the head with postconcussion syndrome and severe strain and spasms to the cervical spine.⁴ The Board has held that the mere belief that a condition was caused or aggravated by employment factors or incidents is insufficient to establish a causal relationship between the two.⁵ As applied to this case, appellant's assertion that her disability for work for the period September 21, 2002 to February 21, 2003 was causally related to the accepted conditions. Without supporting medical rationale from a physician, appellant's diagnosed medical conditions, and her personal belief that she was totally disabled for work from September 21, 2002 to February 21, 2003 due to work factors, are not sufficient to establish her claim.

Appellant provided medical evidence from Dr. White, her treating internist, pertaining to the period September 21, 2002 to February 21, 2003. In CA-20 form reports dated September 23

² *Alfredo Rodriguez*, 47 ECAB 437 (1996).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

and October 30, 2002 and January 15, 2003, Dr. White noted appellant's history of injury and listed his findings on physical examination as increased cervical muscle tone, transient spasmodic activity, decreased range of motion in the cervical muscles and photosensitivity. Dr. White listed his diagnoses as chronic headaches, secondary to head trauma, paracervical strain/sprain, and contusion to the right side of the head, further noted that appellant suffered from bouts of dizziness and visual blurriness of the right eye, and indicated that appellant was totally disabled for work from September 21, 2002 to February 21, 2003. Although Dr. White also indicated by check mark that appellant's disability for work for the claimed period was causally related to her employment injuries, as these form reports do not contain medical rationale explaining how and why factors of appellant's federal employment would cause this disability for work, they are insufficient to meet appellant's burden of proof with regard to establishing the claimed period of employment-related disability.⁶ The Board notes that, despite the Office's request, no narrative medical reports were received from Dr. White prior to the issuance of the Office's February 26, 2003 decision.

The record also contains a November 14, 2002 report from Dr. Bleecker, a Board-certified orthopedic surgeon who performed a second opinion examination at the request of the Office. In his report, Dr. Bleecker stated that he had examined appellant and reviewed the statement of accepted facts and relevant medical records provided by the Office. Dr. Bleecker further noted that appellant reported that her treating physician had placed her on disability beginning September 21, 2002 because of continued blurred vision, dizziness and headache. After examining appellant, the physician noted that she had normal range of motion in her neck, shoulders, elbows and wrists, but did have a positive Phalen's test in the right wrist and a positive Tinel's test bilaterally over the distribution of the median nerve. Dr. Bleecker stated that the only diagnoses that could be made were that of impingement syndrome, right shoulder and carpal tunnel syndrome, but noted that these diagnoses were not pertinent to this examination. Dr. Bleecker clarified that there was no diagnosis established in regards to appellant's cervical spine complaints, and that she did not have residuals of the accepted cervical strain from an orthopedic standpoint. With respect to whether appellant became disabled on September 21, 2002, Dr. Bleecker stated: "I defer to the neurologist, as the conditions this patient had from the work injury are neurological in nature." In an accompanying work capacity evaluation report, Form OWCP-5, Dr. Bleecker stated that appellant could immediately return to sedentary work, eight hours a day.⁷

The record also contains a report prepared on November 13 and 27, 2002 by Dr. Jay Jurkowitz, a Board-certified neurologist who performed a second opinion examination at the request of the Office. In his report, Dr. Jurkowitz stated that he had examined appellant and reviewed the statement of accepted facts and relevant medical records provided by the Office. In addition, Dr. Jurkowitz stated that he had reviewed the results of magnetic resonance imaging

⁶ A physician's opinion on causal relation that consists only of checking "yes" to the form's question of whether appellant's condition was related to the history as given, without any explanation or rationale, has little probative value and is insufficient to establish causal relation. *Beverly J. Duffey*, 48 ECAB 569 (1997); *Lee R. Haywood*, 48 ECAB 145 (1996).

⁷ The Board notes that appellant was on limited duty as a clerk at the time of her original September 20, 2001 injury.

(MRI) scan of the cervical spine, performed on November 26, 2002. He listed his findings on physical examination, and noted that the MRI scan revealed normal alignment of the cervical vertebral bodies, no disc protrusions or foraminal stenosis of the cord, and no cord lesion, but did reveal Type I end-plate changes of C3 and C4. Dr. Jurkowitz diagnosed post-traumatic headaches by history, cervical strain by history, episodes of possible neuralgia in the mid cervical region by history, and some nonanatomical findings on the examination. He emphasized, however, that appellant had no objective abnormalities from a neurological standpoint, and that all of the listed diagnoses and any associated residuals were subjective only. With respect to whether appellant became totally disabled on September 21, 2002 as a result of her accepted employment injuries, Dr. Jurkowitz stated that “it would be difficult for this examiner to determined for sure that the claimant became totally disabled on September 21, 2002 as a result of her injury but she attributed the increase in her neuralgic pain in the neck and face to her work injury.” In a supplemental report dated February 7, 2003, prepared at the request of the Office, Dr. Jurkowitz clarified his earlier conclusions, stating that there was no objective evidence to state that appellant became disabled on September 21, 2002 as a result of her injury.⁸

The Board finds that the second opinion report of Dr. Jurkowitz, as supported by the findings and conclusions of Dr. Bleecker, constitutes the weight of evidence. Each physician provided a history of appellant’s September 20, 2001 employment injury and medical treatment and his findings on physical examination. Dr. Bleecker found no current objective evidence of appellant’s accepted cervical conditions, and Dr. Jurkowitz found no current objective evidence of appellant’s accepted neurological conditions. On the issue of whether appellant’s accepted conditions caused her disability for work beginning September 21, 2002, a year after returning to full duty, Dr. Bleecker deferred to Dr. Jurkowitz, and Dr. Jurkowitz concluded that there was no objective evidence of record supporting appellant’s disability for work beginning September 21, 2002 as a result of her injuries.

The opinions of Drs. Bleecker and Jurkowitz are well rationalized and based on an accurate factual and medical background. In contrast, the opinion of Dr. White, appellant’s treating physician, does not contain a rationalized opinion explaining why appellant became disabled on September 21, 2002, nearly a year after her return to full duty, as a result of her accepted employment injuries. Consequently, appellant has not met her burden of proof to establish that she was totally disabled from September 21, 2002 to February 21, 2003 due to the

⁸ The Board notes that Dr. Jurkowitz’s February 7, 2003 supplemental report contains a typographical error, in that he states that there is no objective evidence to state that appellant became disabled “on September 20, 2001 as a result of her injury.” A review of Dr. Jurkowitz’s complete February 7, 2003 supplemental report, however, in which he references his original report, and also references the Office’s request for clarification, both of which contained the correct dates of disability, makes clear that Dr. Jurkowitz was in fact responding to whether appellant became disabled beginning September 21, 2002, due to her accepted injuries.

accepted contusion to the head with postconcussion syndrome and severe strain and spasms to the cervical spine or other factors of her federal employment.⁹

The decision of the Office of Workers' Compensation Programs dated February 26, 2003 is hereby affirmed.

Dated, Washington, DC
July 16, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ The Board notes that subsequent to the Office's February 26, 2003 decision, appellant submitted additional claims for compensation, CA-7 forms, claiming total disability compensation through April 21, 2003. Appellant also submitted additional medical reports from Dr. White, including a narrative report dated November 18, 2002. The Board cannot review appellant's additional claims or supporting medical evidence, however, as the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time it issued its final decision. *Charles P. Mulholland, Jr.*, 48 ECAB 604 (1997); *Robert D. Clark*, 48 ECAB 422 (1997).