

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CYNTHIA L. CRAWFORD and DEPARTMENT OF THE TREASURY,
Kansas City, MO

*Docket No. 01-1872; Oral Argument Held January 7, 2003;
Issued March 14, 2003*

Appearances: *David W. White, Esq.*, for appellant; *Jim C. Gordon, Jr.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied continuation of pay for intermittent dates on the grounds that the medical evidence failed to establish disability; (2) whether appellant has established that she sustained a cervical condition causally related to her February 10, 2000 employment injury; and (3) whether the Office properly denied compensation benefits after March 27, 2001.

On February 11, 2000 appellant, then a 40-year-old clerk, filed a claim for back and leg pain occurring on February 10, 2000 in the performance of duty. She related that she "stepped in a floor plug that was [not] covered. I jerked my back and my leg [and] a sharp pain went through it...." The Office accepted appellant's claim for lumbar radiculopathy.

In a treatment note dated February 18, 2000, Dr. Andrew B. Kaufman, a Board-certified neurosurgeon and appellant's attending physician, noted that appellant was four months post surgical excision of a herniated disc at L4-5. He stated:

"In the course of her employment eight days ago, she stepped into a hole that she did not see. She twisted her back. She immediately had low back pain and thereafter for several days some tingling and pain in her left leg. The latter has disappeared almost completely. The back pain is much improved."

Dr. Kaufman diagnosed a back strain with possible radiculopathy and found that appellant could resume employment without restrictions.

Appellant received treatment on various dates from February through August 2000. In a treatment note dated April 7, 2000, a physician diagnosed lumbar radiculopathy and recommended an epidural. In a treatment note dated April 14, 2000, a physician noted that appellant had decreased pain and symptoms. In a treatment note dated April 21, 2000, a physician found that appellant had improved by 70 percent. In a treatment note dated April 27,

2000, a physician noted that appellant was feeling better but had some leg pain. He found that appellant was status post an excision of a herniated nucleus pulposus and diagnosed neuralgia secondary to her employment injury. The physician found that she could work with restrictions on pushing, pulling or lifting over 10 pounds. In a treatment note dated June 6, 2000, a physician noted that appellant had prior disc surgery in October 1999 with “no pain after the surgery [un]til now.” He noted her history of stepping into an electrical outlet at work. Appellant also received treatment on August 3, 2000 for chronic recurrent radicular L5-S1 pain secondary to her previous injury. The physician recommended that appellant “avoid prolonged sitting.” On August 18, 2000 appellant received treatment for increasing pain from her cervical to mid-spine. The physician diagnosed recurrent low back pain.

On August 15, 2000 appellant informed the Office that she was performing her regular employment duties but sometimes stopped work due to pain. In a letter response dated August 24, 2000, the Office notified appellant that she should submit medical evidence showing that she was disabled from employment due to her accepted injury in order to obtain wage-loss compensation.

In a treatment note dated January 9, 2001, a physician discussed appellant’s history of jerking her back stepping into an uncovered outlet. He diagnosed chronic back spasm and thoracic strain.

In a form report dated January 23, 2001, Dr. Linda Singh, a Board-certified internist, diagnosed a new herniated disc at L4-5 based on a December 20, 2000 magnetic resonance imaging (MRI) study. She noted appellant’s history of prior back surgery for a ruptured disc in October 1999 as well as the February 2000 employment injury. Dr. Singh indicated by checkmark that the diagnosed condition was not caused or aggravated by employment and found that appellant was disabled from work beginning December 8, 2000.

By letter dated February 5, 2001, the Office noted that the employing establishment had paid appellant continuation of pay (COP) from February 11 through August 3, 2000.¹ The Office informed appellant that she could only receive COP for 45 days from the date of injury, or March 26, 2000. The Office noted that medical evidence supported COP due to work-related disability from February 11 to 18 and February 24, 2000. The Office informed appellant that she should submit rationalized medical evidence regarding causation if she believed that she required surgery due to her February 10, 2000 employment injury.

In a report dated January 12, 2001, received by the Office on February 16, 2001, Dr. Kaufman noted appellant’s complaints of pain radiating to her right arm and leg and stated:

“[Appellant] says this has been going on for one year, since she tripped at work and had to twist her body to catch herself. It hurts in the middle of her back and to the right interscapular region. At times she will get a numb, painful feeling, but generally pain is the issue. The arm is much worse than the leg. Upon examination as noted below, she did not mention anything about her left leg. She has continued her clerical work but she feels the pain in her back and arm are getting worse and more intense.”

¹ Appellant received continuation of pay from the employing establishment for intermittent dates from February 11 through August 3, 2000.

Dr. Kaufman noted that an MRI scan of the lumbar spine showed a herniated disc at L5-S1 on the left. He concluded:

“[Appellant] has several problems that ostensibly do not go together. Her main complaint is of a right interscapular pain and right arm pain, which could be reflective of a right cervical radiculopathy. Her right leg pain is minimal compared to her arm and may represent some residual scar tissue from her prior surgery....”

In a report dated January 29, 2001, Dr. Kaufman noted that appellant’s cervical MRI scan revealed a large right-sided herniated disc at C6-7 and an osteophyte at C4-5.²

On February 20, 2001 a claims examiner requested that an Office medical adviser review the medical evidence and discuss whether appellant’s cervical condition was due to her February 10, 2000 employment injury. In a report dated February 21, 2001, an Office medical adviser reviewed the evidence of record and related, “If [appellant] had sustained a cervical spine condition in the incident of February 10, 2000, symptoms would have certainly appeared within three to four [weeks].” He concluded that appellant’s cervical condition was not due to her employment injury.

In a report dated February 22, 2001, Dr. Singh noted that appellant had “missed a lot of time due to a back injury sustained on February 10, 2000.” She provided a list of dates and hours missed from work from March through August 2000. Dr. Singh diagnosed a large right-sided disc herniation at C6-7.

By decision dated March 27, 2001, the Office denied appellant’s claim for continuation of pay on February 25, March 1, March 3 and March 6 through 25, 2000. The Office further found that appellant had not submitted sufficient medical evidence to support disability from employment after August 17, 2000 due to her February 10, 2000 injury and terminated her authorization for medical treatment.

On April 8, 2001 appellant requested reconsideration of her claim. In support of her request, appellant submitted a February 27, 2001 operative report from Dr. Kaufman, who performed a right-sided discectomy and fusion at C6-7 on appellant.

Appellant submitted additional treatment notes from May through June 2000. In a note dated May 8, 2000, a physician described appellant’s complaints of increasing muscle spasms of the back, legs and arm. In a note dated May 23, 2000, a physician indicated that appellant experienced scapular pain in her upper back. In a note dated June 29, 2000, a physician diagnosed back pain secondary to appellant’s previous injury and found that she should “avoid prolonged standing.”³

Appellant submitted state workers’ compensation form reports from Dr. Kaufman dated February 16, March 1 and 28, 2001. In these reports, Dr. Kaufman diagnosed a herniated

² An MRI scan of appellant’s cervical spine dated January 17, 2001 revealed a C6-7 disc protrusion “unchanged or slight smaller than on the 1999 study.”

³ In a treatment note dated February 14, 2000, a physician indicated that appellant complained of back pain for two to three weeks and that she had “jarred” her back on February 9, 2000 causing pain into her leg and foot.

nucleus pulposus with lumbar and cervical radiculopathy and indicated “yes” that the condition was due to the history given, that of appellant stepping “into an uncovered electrical socket in the floor at work.” He found that it was “undetermined” when appellant could return to work.

In a report dated March 12, 2001, Dr. Kaufman noted that appellant was doing well subsequent to her cervical surgery. He stated: “In the meantime, she reminds me that she is still having some back pain and at times left leg pain going on ever since an injury at work in February 2000.” Dr. Kaufman noted that appellant’s December 2000 MRI scan of the lumbar spine showed a herniated disc at L4-5.

In a report dated April 3, 2001, Dr. Singh stated:

“Historically, [appellant] stepped into an electrical socket hole at work. The shock caused her to jerk back. She stated she could [not] move for several minutes. Afterwards pain shot down from her back to her left leg. The examining doctor diagnosed a lumbar radiculopathy. Of note [appellant] had undergone a right L4-5 herniated nucleus pulposus excision. Therefore, the subsequent radiological tests were compared with the previous tests which were helpful in determining new injury as a result of the on[-]the[-]job accident.”

Dr. Singh related that, in April 2000, after a course of epidural steroid injections, appellant reported improvement but that, in May 2000, she experienced increased muscle spasms and problems with her upper back. She stated that she obtained an MRI scan of appellant’s lumbar spine which showed “an interval appearance of a new prominent left paracentral posteriorly extruded disc fragment at the lumbosacral junction with resulting left ventral extradural defect upon the thecal sac and likely significant mass effect upon the left S1 nerve root sleeve.” Dr. Singh indicated that she referred appellant to Dr. Kaufman, who obtained an MRI scan of the cervical spine. She stated:

“The result was hypertrophic vertebral body and uncinata spurs at C4-5 combined with a congenitally short pedicle to produce at least moderate right-sided foraminal narrowing and posterior displacement of and probable mild flattening of the right portion of cervical cord. These changes had shown slight interval progression since 1999. Also there was right-sided posterior disc extrusion at C6-7 unchanged or slightly smaller than on the 1999 study.”

Dr. Singh related that Dr. Kakufman performed a cervical discectomy and fusion on appellant and was going to follow-up after her recovery on her lower back problems. She concluded:

“In summary, [appellant] continues to suffer from the work injury of February 2000. She is still being evaluated and treated for this condition. At present I am unable to determine if this will become a permanent disability.”

In a decision dated July 10, 2001, the Office modified the March 27, 2001 decision to find that appellant’s entitlement to medical treatment and disability for employment ended March 27, 2001. The Office noted that appellant had not filed a claim for wage-loss compensation subsequent to March 26, 2000. The Office further found that appellant had not

established that she sustained a cervical condition due to the accepted February 10, 2000 employment injury.⁴

The Board finds that the Office properly denied continuation of pay for intermittent dates on the grounds that the medical evidence failed to establish total disability.

Appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he or she is disabled for work as a result of an employment injury or condition. This burden includes the necessity of submitting medical opinion evidence, based on a proper factual and medical background, establishing such disability and its relationship to employment.⁵ The same burden of proof applies for establishing entitlement to continuation of pay as for establishing entitlement to compensation.

In this case, the Office denied appellant's claim for continuation of pay not to exceed March 26, 2000 for dates other than February 11, February 14 through 18, February 24 and March 2, 2000. Appellant has not submitted any medical evidence supporting either disability from employment or that she received medical treatment for her employment injury for any other dates between from February 10 and March 26, 2000.⁶

The Board further finds that appellant has not established that she sustained a cervical condition due to her February 10, 2000 employment injury.

When an employee claims a new injury or condition causally related to an accepted employment injury, he or she must establish by the weight of the reliable, probative and substantial medical evidence that the newly alleged condition and any related period of disability, is causally related to the accepted injury. It is not sufficient merely to establish the presence of a condition. In order to establish his or her claim, appellant must also submit rationalized medical evidence, based on a complete and accurate factual and medical background, showing a causal relationship between the employment injury and the claimed conditions.⁷

In support of her claim, appellant submitted treatment notes dated May 23 and August 18, 2000 in which a physician described her complaints of pain in her upper back. However, the physician did not diagnose any cervical condition or address the causation between her

⁴ The Office mistakenly indicated that appellant had been in a motor vehicle accident subsequent to her employment injury. However, this error is harmless as it does not affect the disposition of the case. As discussed below, the Office properly found that appellant had not submitted sufficient medical evidence to meet her burden of proof.

⁵ *David H. Goss*, 32 ECAB 24 (1980).

⁶ Section 8118 of the Federal Employees' Compensation Act provides for payment of continuation of pay, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2). See 5 U.S.C. § 8118.

⁷ See *Armando Colon*, 41 ECAB 563 (1990).

complaints of cervical pain and her February 10, 2000 employment injury, and therefore the treatment notes are of diminished probative value.⁸

In a report dated January 12, 2001, Dr. Kaufman, a Board-certified neurosurgeon and appellant's attending physician, discussed her complaints of radiating pain to her right arm and leg and noted that she "says this has been going on for one year, since she tripped at work and had to twist her body to catch itself." He stated that appellant "has several problems that ostensibly do not go together. Her main complaint is of a right interscapular pain and right arm pain, which could be reflective of a right cervical radiculopathy." In a report dated January 29, 2001, Dr. Kaufman found that an MRI scan of appellant's cervical spine showed a large right-sided disc herniation at C6-7. While he noted that appellant related a history of pain to her right arm and leg since her employment injury, he did not specifically attribute appellant's cervical disc herniation to her February 10, 2000 employment injury and therefore his opinion is insufficient to meet her burden of proof.

In form reports dated February 16, March 1 and March 28, 2001, Dr. Kaufman diagnosed a herniated nucleus pulposus with lumbar and cervical radiculopathy and indicated "yes" that the condition was due to the history of accident given, that of appellant stepping "into an uncovered electrical socket on the floor at work." He found that it was "undetermined" when appellant could return to work. The Board has held that a physician's opinion on causal relationship that consists only of responding "yes" to a question on a form regarding causal relationship, without any explanation or rationale, has little probative value and is insufficient to meet appellant's burden of proof.⁹

In a report dated March 12, 2001, Dr. Kaufman noted that appellant was doing well subsequent to her cervical surgery. He related, "In the meantime, she reminds me that she is still having some back pain and at times left leg pain going on ever since an injury at work in February 2000." As Dr. Kaufman did not address the relationship between appellant's cervical condition and her February 2000 employment injury, his opinion is insufficient to establish causal relationship.

In a report dated February 22, 2001, Dr. Singh, a Board-certified internist and appellant's attending physician, listed dates that appellant missed work due to her February 10, 2000 back injury. She diagnosed a right-sided disc herniation at C6-7. Dr. Singh did not specifically attribute appellant's disc herniation to her February 10, 2000 employment injury, explain the mechanism of injury or provide any rationale for her opinion, and thus her report is of diminished probative value.¹⁰

In a report dated April 3, 2001, Dr. Singh provided a detailed discussion of appellant's history of injury and medical treatment received. She noted that the most recent MRI scan of appellant's cervical spine, when compared with a 1999 MRI scan, showed a "right-sided posterior disc extrusion at C6-7 unchanged or slightly smaller than on the 1999 study."

⁸ *Michael E. Smith*, 50 ECAB 313 (1999) (medical evidence which does not offer any opinion regarding the cause of the employee's condition is of limited probative value on the issue of causal relationship).

⁹ *Debra S. King*, 44 ECAB 203 (1992).

¹⁰ *Jacquelyn L. Oliver*, 48 ECAB 232 (1996) (medical conclusions unsupported by rationale are of diminished probative value).

Dr. Singh concluded that appellant “continues to suffer from the work injury of February 2000.” She, however, did not explain how, with reference to the specific facts of this case, appellant’s February 10, 2000 employment injury caused a cervical condition, particularly in view of the prior MRI scan findings of a herniated disc at C6-7. The opinion of a physician supporting causal relationship must be supported by affirmative evidence, address the specific factual and medical evidence of record and be explained by medical rationale.¹¹

Moreover, the record contains evidence that appellant’s cervical condition is not causally related to her accepted employment injury. In a report dated February 21, 2001, an Office medical adviser concluded that appellant’s cervical condition was not due to her February 10, 2000 work injury because of the length of time between the employment injury and her complaint of cervical symptoms.

Appellant, therefore, has not met her burden of proof to establish that her a cervical condition is due to the February 10, 2000 employment injury.

The Board further finds that the Office properly denied wage-loss compensation benefits after March 27, 2001.

An employee seeking benefits under the Act¹² has the burden of establishing the essential elements of his or her claim, including the fact that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.¹³

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant’s employment injury and must explain from a medical perspective how the current condition is related to the injury.¹⁴

In this case, the Office noted that appellant had not filed a claim for wage-loss compensation subsequent to March 26, 2000. The Office found that appellant was not entitled to compensation after March 27, 2001. With regard to compensation for wage loss, the Board finds that the Office properly determined that appellant did not have any employment-related disability as of March 27, 2001.

In a report dated February 22, 2001, Dr. Singh provided dates of disability due to appellant’s February 10, 2000 back injury. However, Dr. Singh’s opinion is insufficient to establish the requisite causal relationship because she failed to explain how the February 10, 2000 employment injury caused the listed periods of disability from employment, particularly in view of her January 23, 2001 form report in which she found that appellant’s diagnosed

¹¹ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

¹² 5 U.S.C. §§ 8101-8193.

¹³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

¹⁴ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

condition and disability beginning December 8, 2000 was not causally related to her employment.

In a report dated April 3, 2001, Dr. Singh found that appellant continued to have problems due to her employment injury and that she was “unable to determine if this will become a permanent disability.” She, however, did not list any specific periods of disability associated with appellant’s employment injury or support her opinion with medical rationale explaining how the work injury caused her disability. Therefore, Dr. Singh’s report is insufficient to meet appellant’s burden of proof.

In form reports dated February 16, March 1 and March 28, 2001, Dr. Kaufman diagnosed a herniated nucleus pulposus with lumbar and cervical radiculopathy and indicated “yes” that the condition was due to appellant’s employment injury. He found that it was “undetermined” when appellant could return to work. However, as discussed above, a medical report in which a physician responds “yes” on a form report with regard to whether a condition is employment related is of diminished probative value without further detail and rationale.¹⁵

The Office, consequently, properly found that appellant did not establish that she had any employment-related disability subsequent to March 27, 2001.

The Board finds, however, that the Office improperly terminated appellant’s entitlement to medical benefits effective March 27, 2001.

With regard to authorization for medical benefits in its initial decision, the Office terminated appellant’s authorization for medical treatment effective March 26, 2000. On reconsideration, the Office modified its prior decision by finding that appellant was no longer authorized to receive medical treatment for her employment injury effective March 27, 2001.

The Office’s procedures state in pertinent part:

“b. *Notice Required to Terminate Medical Benefits.* The [Office of Workers’ Compensation Programs] must provide notice before terminating any of the following:

(1) *An authorization for treatment (e.g., Form CA-16) which was issued 60 days or less in the past.*

(2) *The services of a specific physician....*

(3) *A specific service which the claimant has received, or expects to receive, on a fairly regular ... basis for 60 days or more and for which [the Office] has paid....”*

* * *

(4) *All medical treatment.* Such terminations are usually associated with disallowances of all compensation benefits because the claimant is no longer disabled, or the disability is no longer

¹⁵ *Lester Covington, 47 ECAB 529 (1996).*

related to the work injury... The CE [claims examiner] should include specific references to medical benefits in preparing the pretermination notice.”

* * *

“d. *Notice Not Required to Terminate Medical Benefits.* Pretermination notice is not needed when:

(1) *The physician indicates that further medical treatment is not necessary or that treatment has ended.*

(2) *The Office denies payment for a particular charge on an exception basis.*”¹⁶

In this case, the Office terminated appellant’s authorization for medical benefits without issuing a pretermination notice. Neither of the exceptions to the requirement for a pretermination notice are present here as appellant’s attending physicians did not find that her need for treatment for an employment-related condition ended prior to March 27, 2001.

The Board accordingly finds that under the Office’s procedures a pretermination notice should have been sent to appellant advising that the Office proposed to terminate medical benefits and allowing appellant an opportunity to respond.¹⁷ Since there is no evidence that the Office provided notice and an opportunity to respond prior to termination of medical benefits, the termination was improper.

The decisions of the Office of Workers’ Compensation Programs dated July 10 and March 27, 2001 are affirmed in part and reversed in part.¹⁸

Dated, Washington, DC
March 14, 2003

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

¹⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.6(b)(4) (March 1997).

¹⁷ See *Marsha D. Stanowski*, 48 ECAB 607 (1997).

¹⁸ The Board notes that Chairman Michael J. Walsh who participated in the oral argument was no longer a member of the Board after January 10, 2003, as his appointment expired, and he did not participate in the preparation of this decision.