U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LaVONNE M. BRYAN and U.S. POSTAL SERVICE,
POST OFFICE, Yelm, WA

Docket No. 02-1916; Submitted on the Record;
Issued March 14, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability on August 19, 1996 causally related to her November 10, 1995 employment injury.

On November 10, 1995 appellant, then a 44-year-old rural carrier, sustained an employment-related low back strain and temporary aggravation of degenerative disc disease caused by bending and sorting mail. She began working limited duty and missed intermittent periods thereafter.[1] She continued working in a limited-duty capacity three days a week until she stopped on August 17, 1996. She voluntarily resigned on August 27, 1996.[2] On January 3 and May 8, 2001 appellant filed Forms CA-7, claims for compensation, for the period August 19, 1996 to May 8, 2001. In a June 18, 2001 letter, the Office of Workers' Compensation Programs advised appellant of the evidence needed to support her claim. By decision dated July 26, 2001, the Office found that appellant was not entitled to wage-loss compensation for the period August 19, 1996 to May 8, 2001 on the grounds that the medical evidence was insufficient to establish that she was disabled from work in August 1996 done to her accepted injury.

On July 28, 2001 appellant requested a hearing that was held on January 8, 2002. At the hearing appellant testified that she had been working 17 hours per week until she stopped work and that she resigned because her light-duty position had changed. She noted that, after her employment injury, she was provided with an aide to help her with packages when delivering her route but that the employing establishment stopped providing the second person. By decision dated March 11, 2002, an Office hearing representative affirmed the July 26, 2001 decision.

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[1] The record further indicates that appellant was off work for the period December 17, 1995 to January 27, 1996 following nonemployment-related surgery.

[2] In her letter of resignation, appellant stated that she was resigning due to her employment injury and her inability to "physically do work assigned me" and that the employing establishment "has been unable to provide me with acceptable alternative working hours and tasks, as prescribed by my physician(s)." She further indicated that she suffered mental anguish from her supervisor and coworkers.

The Board finds that appellant met her burden of proof to establish that she sustained a recurrence of disability.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she 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 show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.[3]

Causal relationship is a medical issue,[4] and the medical evidence 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]

In the instant case, appellant is arguing that there was a change in the nature and extent of the light-duty requirements. The medical evidence relevant to her condition in August 1996 includes a number of reports from her treating family practitioner, Dr. William J. Penn. In reports dated July 13 and August 16, 1996, Dr. Penn diagnosed a lumbar strain which he advised was temporary and provided restrictions to appellant's physical activity and a 25-pound lifting restriction. He advised that appellant could work 3 days per week, 6 hours per day, for a total of 18 hours per week. In a work capacity evaluation dated August 27, 1996, the doctor reiterated appellant's weight restriction and advised that she could stand, bend, twist and lift for two hours per day, sit for three hours per day, and work three days per week. The restrictions were to continue for six months.

In an undated statement, received by the Office on September 4, 1996, the postmaster, Al Prigge, advised:

> "I had [appellant] working on Saturdays on her route . . . and two days a week in our box section. As our box time is 10:00 a.m. I decided to use her three hours a day (0700-1000) four days a week in order to help us make our 10:00 a.m. commitment and she would still work her route on Saturday. When I told her of this (about the 15th of August) she stated she couldn't/didn't want to work every day. I informed her that her limitations allowed her to do this and that unless her

[3] *Mary A. Howard*, 45 ECAB 646 (1994); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

[4] *Mary J. Briggs*, 37 ECAB 578 (1986).

[5] *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

limitations changed she would be working the new schedule. She worked the 17th of August and called me on the 19th of August to tell me she was quitting."

While there is no medical evidence of record to establish that there was a change in the nature and extent of appellant's injury-related condition, the record does establish that there was a change in the nature of appellant's light-duty assignment to working for four days a week in the box section plus working her route on Saturday, for a total of five days of work per week. Her physician advised that she could only work three days per week. Appellant thus, met her burden of proof to establish that she sustained a recurrence of disability on August 17, 1996. However, she is only entitled to wage-loss compensation for the period August 17 to 27, 1996, when she voluntarily resigned.[6]

The decision of the Office of Workers' Compensation Programs dated March 11, 2002 and July 26, 2001 are hereby reversed.

Dated, Washington, DC
March 13, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[6] The Board notes that, subsequent to appellant's resignation, the Office referred her to Dr. Leland E. Rogge, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated November 12, 1996, Dr. Rogge diagnosed exogenous obesity, degenerative disc disease of the lumbar spine secondary to obesity and lumbosacral, chronic, secondary to work injury which he opined was temporary. He concluded that she was disabled from her regular employment due to the degenerative disc disease and not due to the employment-related lumbar strain. In a work capacity evaluation dated November 21, 1996, Dr. Rogge advised that appellant could work eight hours per day with restrictions to her physical activity and a 20-pound lifting restriction. The Office continued to provide appellant with medical benefits and, following referral to Dr. Alexander C. Miller, a Board-certified orthopedic surgeon, for a second opinion evaluation, on September 28, 1999, proposed to terminate her benefits. The Office then found that a conflict existed between the opinions of Drs. Penn and Miller and referred appellant to Dr. Robert Winegar, a Board-certified orthopedic surgeon, for an impartial medical evaluation. Dr. Winegar provided a February 2, 2000 report in which he advised that appellant continued to suffer residuals from the November 1995 employment injury, stating "she continues to experience discomfort following the injury."