

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA A. BAKER and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Biloxi, MS

*Docket No. 03-1348; Submitted on the Record;
Issued November 21, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant met her burden of proof in establishing that she became totally disabled during a functional capacity evaluation (FCE) on April 17, 2000 that prevented her from performing the duties of her half-time nursing position.

This case has been before the Board previously.¹ In a decision dated July 24, 2002, the Board set aside the Office's denial of appellant's recurrence of disability case, finding that the medical evidence submitted in support of the claim demonstrated a worsening of her accepted back condition following the April 2000 FCE.² The Board found that, while the evidence was insufficiently rationalized to establish whether this worsening was causally related to the accepted lumbar strain and prevented appellant from performing the duties of her half-time position, the evidence required further development and the Board remanded the case. The law and complete facts as set forth in the previous Board's decision are incorporated herein by reference.

On September 18, 2002 the Office referred appellant to Dr. Timothy Jackson, a Board-certified orthopedic surgeon, along with the factual summary of the case for a second opinion pursuant to the remand order. The Office requested that Dr. Jackson evaluate appellant's condition and disability as it related to the July 15, 1992 work injury and FCE in April 2000.

¹ On July 15, 1992 appellant, then a 41-year-old registered nurse slipped in the hallway at work and fell on her buttocks. The Office of Workers' Compensation Programs accepted the claim for strain of the lumbar spine. Appellant immediately stopped work following the July 15, 1992 work injury and returned to a light-duty nurse position on June 1, 1993 for four hours a day. On May 4, 1994 she sustained a new injury of bilateral carpal tunnel, which was accepted by the Office and combined with the original claim under one case number. Appellant was totally disabled as a result of the second injury from June 3, 1999 until February 17, 2000, when she returned to her light-duty nursing position for four hours a day.

² Docket No. 02-806.

In a report dated November 22, 2002, Dr. Jackson reviewed the factual history of the case, the entire medical record and his findings on physical examination. He diagnosed back sprain with aggravation of lumbar degenerative disc disease and right lower extremity radiculopathy with aggravation directly related to her injury. Dr. Jackson further diagnosed left carpal tunnel syndrome without surgical improvement and right carpal tunnel syndrome with mild residual remaining symptoms after right carpal tunnel release, both related to the work-related carpal tunnel syndrome. He lastly diagnosed cervical spine degenerative disc disease and pain unrelated to appellant's work injury.

The Office presented Dr. Jackson a series of specific questions regarding appellant's condition related to the work injury and April 2000 evaluation. The Office inquired about her subjective complaints and the physician responded that appellant's subjective complaints of back and right-leg pain seemed out of proportion with the objective findings on examination. Dr. Jackson noted, however, that there was objective evidence of residuals from her injury.

The Office asked Dr. Jackson his opinion as to whether appellant had reached maximum medical improvement from her back and bilateral carpal tunnel work injuries and he replied that she had, approximately one year after the work injuries and release of the right carpal tunnel. He further opined in the report that the aggravation of appellant's lower back pain after the FCE done on April 14, 2000 could represent a temporary recurrent aggravation of her lower back strain. Dr. Jackson indicated, however, that any such aggravation from that occurrence should likewise have resolved within approximately seven months from the date of the FCE.

The Office asked Dr. Jackson to discuss the causation, aggravation or acceleration of appellant's condition and the work injury and he opined that the original back strain was an aggravation of some underlying degenerative lumbar disease and accelerated the progression of this disease, connecting the diagnosis to the work injury. Dr. Jackson likewise stated that appellant's cervical spine degenerative disease and pain were likely preexisting and the aggravation of her cervical injury caused by an earlier motor vehicle accident was not likely related to her work injury. He further opined that appellant's symptoms related to the accepted carpal tunnel syndromes were aggravated or precipitated by repetitive work activity.

The Office asked Dr. Jackson his opinion as to whether it was medically probable that appellant suffered injuries as a result of the authorized FCE and also requested that he discuss her current residuals. He stated:

“[I]t was possible that the type of activities required in a FCE could aggravate the lumbar spine and cervical spine arthritis and cause [appellant] some further aggravation of her injury. While this FCE likely caused an aggravation of her pain, which should be considered a temporary aggravation, it is not medically probable that a significant portion of [appellant's] current complaints are directly related to injuries or aggravations sustained during the FCE. Rather, the majority of [appellant's] current problems would most likely be associated with her previous injuries.

“[Appellant] does continue to have objective findings of altered reflexes and sensation to the right lower extremity and lower back pain and a mildly positive

straight leg raising test on the right which support continued residual from the lumbar strain and with radicular pains in the right leg.”

The Office further inquired about a prognosis, recommendations for further treatment and asked Dr. Jackson to describe injury-related factors of disability and resulting limitations. He stated:

“The prognosis for significant recovery from [appellant’s] current condition was poor, but she is not likely to have rapid progression of her lumbar spine disease or wrist complaints related to her carpal tunnel syndrome. Her carpal tunnel disease seems to be fairly stationary without any significant progression over recent months and would not be expected to increase dramatically.”

“[Appellant’s] work-related disability from lumbar spine strain and aggravation of mild degenerative disc disease of the lumbar spine with right leg radicular symptoms are, namely, related to lifting activit[ies] and stooping and squatting activit[ies]. She should avoid lifting more than about 20 pounds and should be careful with her lifting technique. [Appellant] should also avoid forward stooping activit[ies] and should avoid frequent squatting activit[ies].”

The Office reviewed the report of Dr. Jackson and determined that clarification was needed. The Office requested that Dr. Jackson clarify his statements regarding the temporary aggravation of appellant’s lower back strain and whether there were objective findings that support that an injury occurred during such evaluation. In a supplemental report dated January 28, 2003, Dr. Jackson indicated that there was no objective evidence to support that an injury occurred during the FCE.

In a decision dated February 11, 2003, the Office denied appellant’s claim for recurrence of total disability. The Office determined that, although the medical information submitted by appellant supported that she had residuals from the July 15, 1992 work injury, she failed to submit sufficient evidence to support that a recurrence of her work-related injury occurred. The Office found that the medical reports of Dr. Jackson represented the weight of medical evidence in establishing that there were no objective findings that a material worsening had occurred and that appellant was no longer able to perform the duties of the light-duty nursing position.

The Board finds that this case is not in posture for a decision.

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 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, the employee 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

³ *Albert C. Brown*, 52 ECAB 152 (2000); *Barry C. Peterson*, 52 ECAB 120 (2000).

In this case, because the evidence submitted by appellant prior to the April 17, 2001 Office decision demonstrated a material worsening of her back condition following the April 2000 FCE, the Office was required to further develop the evidence with respect to appellant's work capacity based on both her accepted injuries. Consequently, the Office referred appellant to Dr. Jackson for his medical opinion on the issue.

Dr. Jackson stated, in his November 22, 2002 report, that appellant had reached maximum medical improvement from her back and bilateral carpal tunnel work injuries approximately one year after the work injuries and release of the right carpal tunnel. He further stated that her lower back pain after the FCE performed on April 14, 2000 represented a temporary recurrent aggravation of her lower back strain, however, that such aggravation likely resolved within seven months following the FCE. Dr. Jackson further discussed that appellant had objective findings of altered reflexes and sensation to the right lower extremity and lower back and a mildly positive straight leg raising test on the right which he stated supported continued residuals from the lumbar strain. He noted that, while the FCE likely caused appellant a temporary aggravation of pain, it was not medically probable that a significant portion of her current complaints were directly related to injuries or aggravations sustained during the FCE. Rather, he opined that the majority of her current problems would most likely be associated with her previous injuries. In a clarifying report dated January 28, 2003, Dr. Jackson indicated that there was no objective evidence to support that an injury occurred during the FCE.

The Board finds that Dr. Jackson failed to provide a clear opinion regarding appellant's disability status. He stated that appellant had a temporary aggravation from the FCE for seven months; however, he did not indicate whether she was totally disabled for that seven-month period. Dr. Jackson also found residuals of the employment injury although he never indicated whether these residuals were disabling on or after April 17, 2000. He needed to specifically address in his report, whether appellant was totally disabled as of April 17, 2000 due to an injury from the FCE, an aggravation of the employment injury or from residuals of the employment injury.

For this reason, the case will be remanded to the Office for the composition of specific questions to be addressed by Dr. Jackson, to resolve the outstanding issues of the case.

The February 11, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development in accordance with this decision of the Board.

Dated, Washington, DC
November 21, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member