

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHARLOTTE SLAUGHTER and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Dallas, TX

*Docket No. 03-1064; Submitted on the Record;
Issued October 22, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she was disabled from March 15, 2002 due to her July 28, 1992 employment injury or other factors of her employment.

In this case, the Office of Workers' Compensation Programs accepted that on July 28, 1992 appellant then a 48-year-old licensed vocational nurse, was injured while assisting a patient in a wheelchair. She did not stop work at that time and returned to limited-duty work. The Office accepted appellant's claim for cervical strain. Subsequently, she missed work on intermittent occasions and the Office paid appropriate benefits. These benefits included compensation for intermittent wage loss and for medical treatment and physical therapy from 1992 to at least 2000.

On March 16, 2002 appellant filed a CA-7 form claiming compensation for temporary total disability commencing March 15, 2002.¹

In an attending physician's report dated March 15, 2002, Dr. Malik indicated that she had severe neck pain and pain down the arms with tingling of the hand. He indicated that appellant had decreased ROM of the neck and pain and tenderness in the neck with mild right arm weakness. Dr. Malik diagnosed cervical disc disease and post-traumatic recurrent cervical strain. He checked the box "yes" in response to whether he believed the condition was caused or aggravated by an employment activity and indicated that appellant was continuously disabled from work since February 9, 2001. Dr. Malik added further, that appellant's recurrent increase in neck pain and pain radiating in the left and right arm resulted in her not being able to engage in daily activities such as cleaning, mopping and sweeping, with loss of control of use of arms.

¹ Appellant alleged that she was totally disabled as indicated in the March 15, 2002 Form CA-20, from her attending physician, Dr. Zafar I. Malik, a Board-certified specialist in pulmonary disease.

In a letter dated August 15, 2002, the Office advised appellant of the additional factual and medical information needed to establish her claim.

Appellant subsequently submitted an August 8, 2002 attending physician's report, wherein Dr. Malik indicated that she had cervical radiculopathy, cervical strain and cervical disc disease. He again checked the box "yes" in response to whether he believed the condition was caused or aggravated by an employment activity. Dr. Malik stated that appellant was disabled since July 28, 1992.

On September 5, 2002 appellant filed a CA-2a form, notice of recurrence of disability. She indicated that a recurrence of disability occurred on August 8, 2002 and was attributable to the July 28, 1992 employment injury.

By letter dated October 25, 2002, the Office again advised appellant of the type of evidence needed.²

In a November 11, 2002 report, Dr. Malik noted appellant's history of injury. He noted examination findings and reported that appellant had mild pain in the back, left side and pain in the neck and arms with such severe neck pain that she was unable to work and needed around the clock medication. Dr. Malik diagnosed cervical radiculopathy and cervical strain. He described a course of treatment that did not relieve the pain. Dr. Malik reviewed a June 14, 1994 cervical myelogram and post myelogram computerized tomography (CT) scan and noted that there was a 2 mm bulge at C3-4 and at C5-6 there was a 3 mm anterior extradural defect and slightly reduced filling of the C nerve root sheath with a C7 narrowing and a right C7 nerve root sheath not filling properly. He opined that appellant had continuously suffered from the symptoms of pain, numbness of the arms and hands, despite therapy and had required pain medications. Dr. Malik indicated that appellant had continuously and with intermittent increases in her symptoms, suffered from the work-related injury to her neck, which was initially labeled as neck strain and with subsequent additional changes of cervical compression neuropathy. He opined that appellant was not able to return to work due to the neck pain and related symptoms of pain in the arms and hands.

In a December 5, 2002 decision, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that she sustained a recurrence of disability beginning March 15, 2002 causally related to July 28, 1992 employment injury. The cover letter for the decision also indicated that further medical treatment was terminated.

The Board finds that appellant has not met her burden of proof in establishing that she was disabled from March 15, 2002 due to her July 28, 1992 employment injury or other factors of her employment.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the period of claimed disability was caused or adversely affected by the

² This letter appears to have been in response to the submission of the recurrence claim. The Office did not specifically develop a recurrence of disability claim, but instead subsequently adjudicated the claim as one of causal relationship between the accepted injury and the period claimed in the March 15, 2002 CA-7 form.

employment injury. As part of this burden, she must submit rationalized medical opinion evidence based on a complete factual and medical background showing a causal relationship between her disability and the federal employment.³

Causal relationship is a medical issue⁴ and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. This consists of 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.⁵ The physician's opinion 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.⁶

In the instant case, appellant filed a CA-7 form, claiming compensation for temporary total disability commencing March 15, 2002.

In support of her claim for compensation, appellant provided several reports from Dr. Malik. In his March 8 and 15, 2002 reports, Dr. Malik indicated that appellant had cervical disc disease and posttraumatic recurrent cervical strain. The condition of cervical disc disease was not an accepted condition. Further, he checked the box "yes" indicating that appellant's condition was caused by her employment activity and caused her to be disabled. However, checking of the box "yes" that the disability was causally related to employment is insufficient without further explanation or rationale, to establish causal relationship.⁷ Dr. Malik did not offer a rationalized medical opinion as to how appellant's employment caused or aggravated her condition.⁸

In a November 11, 2002 report, Dr. Malik indicated that appellant was not able to return to work due to neck pain and related symptoms of the arms and hands as a result of the work-related injury to her neck, which was initially labeled as neck strain and with subsequent additional changes of cervical compression neuropathy. He diagnosed cervical radiculopathy and cervical strain; however, he did not explain how the radiculopathy was related to the accepted cervical strain or how it was otherwise employment related. Further, Dr. Malik did not

³ See *Nicolea Bruso*, 33 ECAB 1138 (1982).

⁴ *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

⁵ *Duane B. Harris*, 49 ECAB 170, 173 (1997).

⁶ *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

⁷ *Barbara J. Williams*, 40 ECAB 649 (1989).

⁸ The opinion of the physician must be based upon 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. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion. See *James Mack*, 43 ECAB 321 (1991).

explain how a 1992 cervical strain could cause the claimed disability beginning in March 2002. For example, he did not explain why an accepted neck strain would persist for years and cause the claimed disability instead of other diagnosed conditions that were not accepted by the Office.

As appellant has not submitted a reasoned medical report explaining why her 1992 cervical strain would cause disability, she has not met her burden of proof.

The Board further notes that, to the extent that the Office's December 5, 2002 decision purports to terminate medicals for the accepted cervical strain, the Office has not met its burden of proof.⁹ The Office, in its December 5, 2002 decision, found that the medical evidence failed to establish that appellant was disabled for work. The medical records however, clearly show that appellant continued to suffer continuing residuals, from her accepted cervical strain. The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.¹⁰

⁹ Following the issuance of the Office's December 5, 2002 decision, appellant submitted additional evidence. However, the Board may not consider such evidence for the first time on appeal. Appellant can submit the new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2) (1999); *see* 20 C.F.R. § 501.2(c).

¹⁰ *John F. Glynn*, 53 ECAB ___ (Docket No. 01-1184, issued June 4, 2002).

The December 5, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed, as modified.

Dated, Washington, DC
October 22, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member