

**United States Department of Labor
Employees' Compensation Appeals Board**

NADINE H. MILLIGAN, Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
COATESVILLE VETERANS ADMINISTRATION)
MEDICAL CENTER, Coatesville, PA, Employer)

Docket No. 04-46
Issued: April 13, 2004

Appearances:
Nadine H. Milligan, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On October 6, 2003 appellant filed a timely appeal from the July 9, 2003 decision of the Office of Workers' Compensation Programs denying modification of its previous decisions finding the evidence of record insufficient to establish that appellant sustained a recurrence of a medical condition causally related to her November 2, 1999 employment injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that she sustained a recurrence of a condition requiring medical treatment commencing February 27, 2002 causally related to her accepted November 2, 1999 employment injury.

FACTUAL HISTORY

On November 3, 1999 appellant, then a 28-year-old nursing assistant, filed a traumatic injury claim alleging that on November 2, 1999 she sustained a muscle pull/strain while working

with patients. Appellant stated that she experienced soreness and then pain in her neck. She stopped working on November 5, 1999 and returned to light-duty work four hours a day on December 9, 1999. Appellant performed light-duty work six hours a day beginning December 16, 1999. She returned to work full-time light-duty work on January 15, 2000.

By letter dated February 8, 2000, the Office accepted appellant's claim for cervical strain and sprain, and right shoulder strain. The Office authorized home cervical traction by letter dated May 4, 2001.

On November 15, 2000 appellant was released to full-duty work with no restrictions due to her accepted employment injuries by her attending orthopedic surgeon, Dr. Andrew S. Frankel.¹ On March 27, 2002 appellant filed a claim alleging that she sustained a recurrence of a medical condition commencing February 27, 2002 causally related to her November 2, 1999 employment injury. Appellant stated that she started to have more frequent pain around February 2002. She further stated that it was the same type of pain she experienced when she was first injured and it was in the same area, the cervical spine and right arm. She noted that, after returning to work following the accepted employment injury, her medications helped sometimes and that she could not use the techniques she learned in therapy. Appellant stated that generally she was not able to do the things she did prior to her injury.

In support of her recurrence claim, appellant submitted Dr. Frankel's June 5, 2001 treatment notes revealing that she required home cervical traction. Dr. Frankel's March 27, 2002 attending physician's report indicated that appellant's cervical trapezius strain and radial tunnel syndrome were caused by an employment activity by placing a checkmark in the box marked "yes." In his treatment notes of the same date, Dr. Frankel stated that appellant returned for a follow-up examination and that she had a flare-up of symptoms involving her cervical spine with radiation down her arm. He provided his findings on physical examination and diagnosed lateral epicondylitis, radial tunnel syndrome, a chronic cervical sprain and probably some mild discal pathology but not enough to warrant surgical intervention.

By letter dated April 29, 2002, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office further advised appellant to submit additional information including a narrative report from her physician with his opinion as to the causal relationship between her need for continuing medical treatment and the accepted employment-related injury.

In response, appellant submitted a May 13, 2002 letter describing her November 2, 1999 employment injury, physical restrictions and pain. She noted that she reported regularly to Dr. Frankel for physical therapy and that she received the last treatment in October 2000 which helped her up until the current time. She stated that in December 2000 she applied for a new job as a file clerk at the employing establishment and since October 2001 she worked as a data validation technician. She noted her job duties and days missed from work in 2002 due to the pain she experienced. Appellant stated that she had been working part time in the box office of a

¹ Dr. Frankel imposed physical restrictions upon appellant that were due to lateral epicondylitis and radial nerve tunnel syndrome, conditions that have not been accepted by the Office.

movie theater selling tickets since March 2001. She indicated that her current pain was due to her original injury and requested that the Office provide continuing care for this injury.

In a June 25, 2002 decision, the Office denied appellant's recurrence claim. The Office found the evidence of record insufficient to establish that the claimed recurrence was causally related to the November 2, 1999 employment injury because Dr. Frankel's reports and treatment notes did not discuss whether appellant's claimed condition on recurrence was related to the accepted employment injury.

In response to the Office's April 29, 2002 letter requesting additional medical evidence, Dr. Frankel submitted several treatment notes and reports. His July 6, 2000 treatment notes revealed appellant's complaints of neck and right shoulder pain and the need for a magnetic resonance imaging (MRI) scan to evaluate appellant's neck and right shoulder if she did not improve within one month. Dr. Frankel's August 16, 2000 treatment notes showed appellant's complaint of right elbow pain. He diagnosed lateral epicondylitis; rotator cuff tendinitis and chronic cervical trapezius strain, and recommended that appellant continue with physical therapy. In his September 13, October 11 and December 13, 2000, January 17, April 23 and June 5, 2001 and March 27, 2002 medical treatment notes, Dr. Frankel continued to note that appellant suffered from her cervical trapezius strain and lateral epicondylitis. He also noted that appellant suffered from radial tunnel syndrome. Dr. Frankel's November 15, 2000 treatment notes revealed that appellant's cervical shoulder strain had resolved and his finding that her lateral epicondylitis and radial tunnel syndrome were not related to her neck condition.

In his November 22, 2000 attending physician's report, Dr. Frankel indicated that appellant had lateral epicondylitis caused by her November 2, 1999 employment injury by placing a checkmark in the box marked "yes." Similarly, in his April 23 and June 5, 2001 attending physician's reports, Dr. Frankel indicated that appellant's chronic cervical sprain and radial tunnel syndrome were caused by the November 2, 1999 employment injury by placing a checkmark in the box marked "yes." Dr. Frankel submitted a duplicate of his March 27, 2002 attending physician's report indicating with an affirmative mark that appellant's cervical trapezius strain and radial tunnel syndrome were caused by her November 2, 1999 employment injury. His work capacity evaluation forms dated April 23 and June 5, 2001 provided appellant's physical restrictions.

On June 28, 2002 appellant appealed the Office's decision to the Board. By decision dated November 6, 2002, the Board affirmed the Office's June 25, 2002 decision. The Board found that none of the medical evidence submitted by appellant provided an opinion with supporting rationale causally relating a diagnosed condition and resulting disability to the November 2, 1999 employment injury.

On January 14, 2003 appellant requested reconsideration. She resubmitted Dr. Frankel's March 27, 2002 attending physician's report. She submitted Dr. Frankel's treatment notes dated July 6 and December 13, 2000, January 17, April 23 and June 5, 2001 and March 27 and December 3, 2002 revealing that she had a bulging disc of the cervical spine, right lateral epicondylitis, chronic cervical strain, radial tunnel syndrome and right rotator cuff tendinitis, and that she required physical therapy and medication. In a July 6, 2000 report, Dr. Frankel indicated that an MRI scan was within normal limits but it demonstrated two bulging discs at contiguous

levels. The June 17, August 14, September 1, and November 1 and 27, 2000 reports of appellant's physical therapists indicated that she was treated for her cervical condition, rotator cuff tendinitis and lateral epicondylitis.

By decision dated January 22, 2003, the Office denied appellant's request for modification based on a merit review of the claim. The Office noted that some of the evidence submitted by appellant was previously of record and considered in a prior decision. The Office found that the new evidence consisting of Dr. Frankel's December 13, 2000 and December 3, 2002 treatment notes and March 27, 2002 attending physician's report did not provide an opinion with supporting rationale in support of a causal relationship between a diagnosed condition and resulting disability and the accepted employment injury.

Appellant requested reconsideration in a March 26, 2003 letter accompanied by Dr. Frankel's March 26, 2003 treatment note indicating that she had been under his care for a cervical strain since November 19, 1999.

In a July 9, 2003 decision, the Office again denied appellant's request for modification based on a merit review of the claim. The Office found that Dr. Frankel's March 26, 2003 treatment note was insufficient to establish the claimed recurrence because it failed to explain how appellant's cervical symptoms were causally related to the November 2, 1999 accepted employment injury.

LEGAL PRECEDENT

A claimant seeking compensation under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence.³

Section 10.5(y) of the Office's implementing regulations defines a recurrence of medical condition as a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a "need for further medical treatment after release from treatment," nor is an examination without treatment.⁴

ANALYSIS

In this case, appellant has the burden of establishing that she sustained a recurrence of a medical condition on February 27, 2002 causally related to her November 2, 1999 employment injury as the evidence in this case establishes that appellant's treatment for her accepted cervical strain and sprain was not continuous in that it appeared to stop on June 5, 2001.

² 5 U.S.C. §§ 8101-8193.

³ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁴ 20 C.F.R. § 10.5(y) (1999).

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.⁵

The medical record in this case indicates that, on November 15, 2000, Dr. Frankel, appellant's treating physician, found that appellant's accepted conditions, cervical and right shoulder strains, had resolved. Further, on that date, he released appellant to return to full duty work with physical restrictions that were not related to her accepted employment injuries. Beginning on December 13, 2000 until June 5, 2001, appellant received medical treatment for her cervical condition, as well as, the nonemployment-related conditions of lateral epicondylitis, radial tunnel syndrome and rotator cuff tendinitis from Dr. Frankel and physical therapists.

Appellant did not receive medical treatment again for her employment-related cervical strain until March 27, 2002 when she was seen by Dr. Frankel. In his March 27, 2002 attending physician's report, Dr. Frankel indicated that appellant's cervical trapezius strain and radial tunnel syndrome were caused by an employment activity by placing a checkmark in the box marked "yes." In his March 27, 2002 treatment notes, Dr. Frankel stated that appellant returned for a follow-up examination and that she had a flare-up of symptoms involving her cervical spine with radiation down her arm. He diagnosed lateral epicondylitis, radial tunnel syndrome, a chronic cervical sprain and probably some mild discal pathology but not enough to warrant surgical intervention. Appellant claimed a recurrence of a medical condition on February 27, 2002 causally related to her November 2, 1999 employment injury.

Although the Office requested that appellant submit a narrative report from her physician with his reasoned opinion as to the causal relationship between her current condition and the injury of November 2, 1999, appellant failed to submit this evidence. Form reports indicating with an affirmative mark that a condition was caused or aggravated by employment activity are insufficient to discharge a claimant's burden of proof because such forms lack the necessary medical discussion explaining the basis of the physician's opinion.⁶ As Dr. Frankel's March 27, 2002 report did not provide any medical rationale explaining how or why appellant's current cervical condition and radial tunnel syndrome were caused by the November 2, 1999 employment injury, it is insufficient to satisfy appellant's burden.

Dr. Frankel's March 27, 2002 treatment notes failed to address whether appellant's lateral epicondylitis, radial tunnel syndrome, chronic cervical sprain and "probably" some mild discal pathology were caused by the November 2, 1999 employment injury. His December 3, 2002 statement that appellant was still under his care and that she was never cleared for full-work duty but changed jobs which allowed her to work with physical restrictions that were still applicable, does not provide a diagnosis and address how the diagnosed condition is causally related to appellant's accepted employment injury.

⁵ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

⁶ *E.g., Lillian M. Jones*, 34 ECAB 379 (1982).

As appellant has not submitted rationalized medical evidence supporting a causal relationship between her accepted November 2, 1999 employment injury and a recurrence of a medical condition on February 27, 2002, she has failed to meet her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a recurrence of a medical condition commencing February 27, 2002 causally related to her accepted November 2, 1999 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 9 and January 22, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 13, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member