

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

LINDA J. RICKETTS, Appellant

and

**U.S. POSTAL SERVICE, Spokane, WA,
Employer**

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**Docket No. 03-2218
Issued: January 2, 2004**

Appearances:
Linda J. Ricketts, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On September 10, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 29, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case

ISSUE

The issue is whether appellant met her burden of proof to establish that she was disabled from February 12 to December 4, 2000 causally related to a September 21, 1998 employment injury.

FACTUAL HISTORY

On August 3, 1999 appellant, then a 51-year-old postmaster, filed an occupational disease claim alleging that she developed osteomalacia, bursitis of the shoulders, lumbar lordosis, thoracic hypophosis, paravertebral muscle spasms, plantar fasciitis in the left foot, osteoarthritis in the feet and back and swelling of the right knee as a result of performing her employment duties.

Appellant stopped work in October 1998 and returned to a part-time position in November 1998. She gradually increased her hours and was working full time by February 2000.

In a treatment note dated January 26, 2000, Dr. Charles M. Colwell, a Board-certified orthopedist, noted appellant's treatment for overuse injuries involving her shoulder girdle, neck and upper back which he felt was related to appellant's job as postmaster.

On February 7, 2000 the Office referred appellant for a second opinion to Dr. Scott V. Linder, a Board-certified orthopedic surgeon. In a report dated February 17, 2000, Dr. Linder diagnosed Vitamin D dependent ostomalacia (rickets), degenerative disc disease of the cervical and lumbar spine, rotator cuff tendinitis and degenerative arthritis of her knees. He opined that any period of total disability and physical limitation was related to her underlying condition and was not work related.

In a decision dated March 2, 2000, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that her conditions were caused by the factors of employment as required by the Federal Employees' Compensation Act.¹

By letter dated March 15, 2000, appellant requested a hearing before an Office hearing representative. In a decision dated August 29, 2000, the Office determined that there was a conflict in medical evidence between Dr. Colwell, appellant's treating physician who opined that appellant's conditions were aggravated by her work, and Dr. Linder, the Office referral physician, who opined that appellant's conditions were not employment related. The Office vacated its March 2, 2000 decision and remanded the case for referral to an impartial medical examiner.

Appellant was referred to Dr. Dean S. Ricketts, a Board-certified orthopedic surgeon, selected as the impartial medical specialist. In a report dated December 4, 2000, he diagnosed osteomalacia, degenerative disc disease of the cervical and lumbar spine, degenerative kyphoscoliosis, degenerative arthritis and obesity plantar fasciitis, all nonwork related. Dr. Ricketts related that appellant developed possible tendinitis of the left shoulder with myofascial pain which may be industrial related. He advised that appellant had no work-related disability and that any restrictions would be because of her underlying nonindustrial conditions.

On July 24, 2001 the Office referred appellant for a second impartial medical examination to Dr. Judith A. Heusner, an orthopedic surgeon.² In a report dated August 20, 2001, Dr. Heusner diagnosed osteomalacia, degenerative disc disease of the cervical, lumbar and thoracic spine, degenerative kyphosis of the thoracic spine, degenerative arthritis and obesity, all unrelated to her employment. She advised that she did not believe that there were any shoulder

¹ 5 U.S.C. §§ 8101-8193.

² In electronic mail from February 2001, the Office advised that the report from Dr. Ricketts had not been received and did not appear to be forthcoming. It referred appellant to a second impartial medical examiner. The record reflects that appellant through her attorney also inquired as to the status of the medical report in July 2001. The record reveals that Dr. Ricketts' report was date-stamped as received by the Office on December 30, 2000.

or upper extremity symptoms attributable to appellant's employment. Dr. Heusner opined that there was no work-related disability.

The Office accepted appellant's claim for left shoulder tendinitis, temporary aggravation of left plantar fasciitis and temporary aggravation of osteomalacia of the bilateral tibias and feet.³

Appellant filed a Form CA-7, claim for compensation for the period of February 12 to December 4, 2000 due to a downgrade in her position. At the date of injury, appellant was a Grade EAS 18 with a salary of \$50,958.00 a year and, in February 2000, she was downgraded to an EAS 11 with a salary of \$39,515.00 a year. On the Form CA-7, the employer noted that appellant did have a loss of time during the period of February 12 to December 4, 2000; however, the downgrade in her position was the result of an Equal Employment Opportunity (EEO) settlement and not due to the September 1998 work injury.

In a letter dated January 8, 2002, the employing establishment controverted appellant's claim for compensation based on the downgrade between February 12 and December 4, 2000. It reiterated that appellant was downgraded due to an EEO settlement agreement of December 9, 1999. A copy of the settlement agreement indicated that appellant would take a voluntary reassignment to the Malden postal facility at a lower grade level prior to February 1, 2000.

By letter dated January 18, 2002, appellant, through her attorney, indicated that she accepted the downgraded position in the Malden postal facility because she could not physically perform her postmaster position at the Bonners Ferry postal facility. Appellant submitted a report from Dr. Colwell dated September 13, 1999, which diagnosed chronic overuse tendinitis of both shoulders, myofascial pain syndrome and cervical spondylosis and noted that her rickets and plantar fasciitis had stabilized. He advised that appellant could not work, but could return to her job within three months.

Ron Carroll, appellant's manager, indicated, in a letter dated January 22, 2002, that the employing establishment was in the process of removing appellant in October 1999 because of her poor performance which dated back to 1994 and was documented by letters of warning. He noted that on December 3, 1999 he recommended an unacceptable rating for appellant based on a failure to protect postal revenue or to follow instructions. Mr. Carroll advised that, on December 9, 1999, appellant participated in a redress settlement and an agreement was reached whereby she would be downgraded to another facility and not given an unacceptable rating.

By decision dated October 22, 2002, the Office denied appellant's claim for compensation on the grounds that the accepted conditions did not cause or contribute to the loss of pay that appellant incurred in the acceptance of the downgraded position.

³ The Board also notes that the Office improperly found a medical conflict on November 2, 2001 between two of the Office referral physicians. However, an Office referral physician cannot create a conflict on behalf of the claimant in a situation where the claimant did not use the referral physician as a treating physician. See *LeAnne E. Maynard*, 43 ECAB 482 (1992).

In a letter dated November 6, 2002, appellant requested an oral hearing which was held on May 12, 2003.

By letter dated May 31, 2003, the employing establishment noted that appellant was downgraded in her position as a compromise by the employing establishment to allow a voluntary downgrade in lieu of removal for poor performance. The employing establishment noted that appellant was downgraded because she could not handle the responsibilities of the position at the Bonners Ferry facility.

Appellant submitted a June 11, 2003 statement which contended that her downgrade was due to her medical conditions and the settlement of the EEO complaint. She indicated that Mr. Carroll did not consider her physically capable of handling the Bonners Ferry position. Appellant noted that, although the Malden postal facility position was not considered light duty, she had reasonable accommodations including being provided a stool and a remodeled restroom. She noted that from 1990 to the present she received ratings of “meets expectations” or “very good.” Appellant also submitted a June 13, 2003 report from Dr. H. Kenneth Cathcart, an orthopedic surgeon, who advised that appellant’s transfer to the Malden postal facility was because of her health care concerns and that the transfer was definitely indicated due to medical problems.

In a decision dated July 29, 2003, the hearing representative affirmed the October 22, 2002 decision.

LEGAL PRECEDENT

Under the Act, the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury has no disability as that term is used in the Act.⁴

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 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 his disability and the federal employment.⁵

ANALYSIS

The Office accepted appellant’s claim’s for left shoulder tendinitis, temporary aggravation of left plantar fasciitis and temporary aggravation of osteomalacia of the bilateral tibias and feet. However, the medical evidence submitted in support of her wage-loss

⁴ *Cherly L. Decavitch*, 50 ECAB 397 (1999).

⁵ *See Nicolea Bruso*, 33 ECAB 1138 (1982).

compensation claim for disability for the period of February 12 to December 4, 2000 is insufficient to establish that her disability was caused or aggravated by the accepted employment injuries.

Appellant submitted a report from Dr. Colwell dated September 13, 1999, which diagnosed chronic overuse tendinitis of both shoulders, myofascial pain syndrome and cervical spondylosis and noted that her rickets and plantar fasciitis had stabilized. He advised that appellant could not work at this time; however, “would be entirely ready to return to her job of injury” within three months or December 1999. The record is void of evidence that appellant was unable to return to the position that she held at the time of injury due to a work-related condition or disability. Furthermore, Dr. Colwell did not indicate any specific dates on which the accepted employment injury caused disability. Moreover, his report is dated several months prior to the date appellant attributed disability due to her accepted injuries. The reports from Dr. Linder or Dr. Ricketts, who examined appellant in February and December 2000, did not find that appellant was disabled due to a work-related injury. Rather, they indicated that there was no work-related disability and that any disability was due to appellant’s underlying conditions. Another report from Dr. Cathcart dated June 13, 2003 advised that appellant’s transfer to the Malden postal facility in 2000 was due to her health care concerns and indicated due to her medical problems. Even though Dr. Cathcart noted that appellant’s downgrade was due to health related issues, he did not specifically address whether appellant had employment-related disability beginning February 12 to December 4, 2000, nor did he indicate any specific dates on which the accepted employment injuries caused disability. The Board has found that vague and unrationalized medical opinions on causal relationship are of diminished probative value.⁶ These reports are insufficient to establish appellant’s disability claim.

Moreover, the evidence does not support appellant’s allegation that she was downgraded for the period of February 12 to December 4, 2000 due to her work-related injury. The EEO settlement specifically provides that appellant would take a voluntary reassignment to the Malden postal facility at a lower grade level prior to February 1, 2000. However, the settlement did not state that the downgrade assignment was in any way related to the work-related injury of September 1998. Mr. Carroll noted, in a January 22, 2002 letter, that the employing establishment was in the process of removing appellant in October 1999 due to poor performance which dated back to 1994. On December 3, 1999 he recommended an unacceptable rating for appellant for failure to protect postal revenue and to follow instructions. Mr. Carroll advised that, on December 9, 1999, appellant participated in a redress settlement and an agreement was reached whereby she accepted a downgrade to another facility in lieu of an unacceptable rating.

Although, appellant contended that she accepted the downgraded position at the Malden postal facility because she could not physically perform her postmaster position at the Bonners Ferry facility, she did not submit rationalized medical evidence to support that her disability, during this period, was due to the accepted conditions. Therefore, appellant has not met her burden of proof.

⁶ See *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

The remainder of the evidence fails to provide a specific opinion on the causal relationship between the claimed period of disability and the accepted employment injury of September 21, 1998. The medical evidence does not establish that the claimed period of disability was due to appellant's employment injury of September 21, 1998.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she had any disability from February 12 to December 4, 2000 causally related to the September 21, 1998 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 29, 2003 and October 22, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 2, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member