United States Department of Labor
Employees' Compensation Appeals Board

MARY A. MUNGOVAN, Appellant	)	
and	)	**Docket No. 04-116**
	)	**Issued: March 10, 2004**
DEPARTMENT OF VETERANS AFFAIRS, E.N. ROGERS MEMORIAL VETERANS HOSPITAL, Bedford, MA, Employer	)	

Appearances:
Mary Mungovan, 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
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On October 9, 2003 appellant filed a timely appeal from Office of Workers' Compensation Programs' merit decisions dated June 4 and August 29, 2003. 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 on appeal is whether appellant was disabled from March 23 to July 28, 2001 causally related to her June 28, 1997 employment injury.

FACTUAL HISTORY

The Office accepted that appellant, then a 46-year-old licensed nurse practitioner, sustained an acute lumbar strain on June 28, 1997, while ambulating a patient at work. Appellant stopped work on June 30, 1997 and returned to limited duty for six hours per day, twice a week on August 14, 1997. On October 7, 1997 appellant began working six hours per

day, four days per week, with lifting and bending restrictions.[1] The Office authorized payment of all appropriate compensation benefits.

This case has previously been before the Board on appeal.[2] In a decision dated November 22, 2000, the Board affirmed Office decisions dated June 17 and September 9, 1999. The Board found that appellant failed to meet her burden of proof to establish that she sustained a recurrence of disability from October 22, 1998 to January 4, 1999, causally related to her accepted employment injury. The law and the facts as set forth in the previous Board decision are incorporated herein by reference.

Following the Board's November 22, 2000 decision, appellant filed a Form CA-7 claiming compensation for November 18, 2000 to March 23, 2001, for which she was paid compensation. She filed a second Form CA-7 claim for the period March 23 to July 28, 2001.[3]

On March 29, 2001 the Office received a January 3, 2001 magnetic resonance imaging (MRI) scan, in which Dr. Joseph Todaro, a Board-certified radiologist, determined that appellant had a large left posterior disc herniation at C5-6 with moderate flattening of the left side of the cord.

By letter dated August 9, 2001, the Office advised appellant that she needed to submit medical evidence of disability from March 23 to July 28, 2001.

Appellant submitted medical evidence including a May 17, 2001 report, in which Dr. Joseph W. Walek, a Board-certified in internal medicine, indicated that appellant suffered from advanced chronic reactive airways disease, with exacerbations of asthma. Dr. Walek advised appellant to avoid environments that would expose her to triggers as they could initiate a significant bronchoreactive response, which could be life threatening.

In a November 5, 2001 MRI scan, Dr. Robert Cantu, a Board-certified neurological surgeon, diagnosed moderately severe spinal stenosis at L4-5 and L5-S1, bilateral neural foramina stenosis L5-S1 predominantly due to facet joint arthritis with a right lateral disc protrusion narrowing the right neural foramen and moderate bilateral L4-5 neural foramina stenosis.

On April 3, 2002 appellant forwarded additional evidence comprised of treatment notes from Dr. Cantu dated November 14 and December 12, 2001 and January 16 and March 13, 2002, in which he noted appellant's complaints of back pain, that she underwent a lumbar epidural

[1] On November 14, 1997 appellant was involved in a motor vehicle accident unrelated to work and sustained an injury to her knee, which left her temporarily totally disabled. She returned to limited duty on November 24, 1997 working six hours per day, four days per week.

[2] Docket Number 00-384.

[3] The record reflects appellant originally filed Forms CA-8, one claiming compensation from November 18 to December 12, 2000 and the other claiming compensation from November 18 to March 16, 2001. However, she refiled the forms as the Office informed her the Forms CA-8 was obsolete.

injection and diagnosed lumbar stenosis. Additionally, the Office received a report of a lumbar myelogram operation performed by Dr. Cantu, dated March 20, 2002.

By decision dated June 4, 2003, the Office denied appellant's claim for wage loss from March 23 to July 28, 2001, on the grounds that she did not submit any medical evidence to support that she could not work because of her accepted injury, a lumbar strain.

On July 21, 2003 appellant requested reconsideration and submitted a July 5, 2003 report of computerized tomography (CT) scan on the lumbar spine, read by Dr. Wei Du, a Board-certified diagnostic radiologist, who indicated that appellant had postoperative changes of the lower spine and sacral sac, stenosis at the level of L4 and L5 with the most significant stenosis at the lower L5 region. A lumbosacral myelogram, of the same date, read by Dr. Du, revealed sacral sac stenosis at the level of L4 and L5. Appellant forwarded duplicates of Dr. Cantu's reports, an October 1, 2002 functional capacity evaluation from a physician whose signature is illegible, an October 8, 2002 functional capacity evaluation from Dr. Cantu, a May 7, 2002 operative report, in which Dr. Cantu performed a lumbar laminectomy and hospital progress notes, in which Dr. Cantu advised that appellant had done well and was discharged ambulatory.[4]

By decision dated August 29, 2003, the Office denied modification of the prior decision, finding that the medical evidence was insufficient to support that appellant's disability from March 23 to July 28, 2001, was causally related to the accepted employment injury.

LEGAL PRECEDENT

Once an employee establishes an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent disability for work, for which the employee claims compensation, is causally related to the accepted injury.[5] In order to establish entitlement to wage-loss compensation for disability from work, appellant has the burden to furnish medical evidence from a physician, who on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.[6] An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on appellant's unsupported belief of causal relation.[7]

ANALYSIS

In the instant case, appellant alleged that her disability from March 23 to July 28, 2001, was causally related to her accepted back strain. However, the medical evidence is insufficient

[4] The dates of the notes are illegible.

[5] *Leon Thomas*, 52 ECAB 202 (2001).

[6] *Alfredo Rodriguez*, 47 ECAB 437 (1996).

[7] *Id.*

to establish that the claimed period of disability was caused or aggravated by the accepted employment injury.[8]

The record contains a number of objective studies including January 3 and November 5, 2001, MRI scans and a myelogram and CT scan dated July 5, 2003. These reports, however, do not offer any opinion with respect to causal relation or regarding appellant's ability to work and medical evidence, which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[9] In a May 17, 2001 report, Dr. Walek opined that appellant suffered from advanced chronic reactive airways disease, with exacerbations of asthma, a condition, which has not been accepted by the Office as employment related. While Dr. Walek advised that appellant should avoid exposure to irritants, he did not offer any opinion with respect to appellant's accepted condition, lumbar strain. Furthermore, he offered no opinion regarding her ability to work from March 23 to July 28, 2001. Appellant also offered treatment notes and an operative report from Dr. Cantu dating from November 14, 2001 to March 20, 2002. He too offered no opinion regarding appellant's ability to work for the time frame from March 23 to July 28, 2001, due to the accepted lumbar strain. The Board, therefore, finds that these reports are insufficient to establish a work-related disability because they did not attempt to explain the relationship between the claimed period of disability beginning March 23, 2001 and the June 28, 1997 work injury. Medical reports not containing rationale on causal relationship are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.[10] Appellant thus did not submit any medical evidence to establish that she was disabled from March 23 to July 28, 2001, as a result of the accepted employment injury.

CONCLUSION

The Board finds that appellant has not established that her disability from March 23 to July 28, 2001, was causally related to the June 28, 1997 employment injury.

[8] Although appellant was on light duty, the Office did not treat this as a recurrence claim. *See Gus N. Rodes*, 46 ECAB 518 (1995).

[9] *Michael E. Smith*, 50 ECAB 313 (1999).

[10] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 29 and June 4, 2003 are affirmed.

Issued: March 10, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member