

March 2, 1998. Appellant was released to limited-duty work on a full-time basis on July 20, 1998.

The Office accepted appellant's claim for contusion of the right leg, and cervical and lumbar strains.

On November 2, 1999 appellant filed an occupational disease claim alleging that on July 19, 1999 she first realized that her bilateral carpal tunnel syndrome was caused by factors of her federal employment. She stated that she performed certain work duties for 8 to 10 hours per day for 3½ years.

On November 9, 1999 appellant filed a claim alleging that on July 19, 1999 she sustained a recurrence of disability causally related to her February 20, 1998 employment injury. She stopped working on October 21, 1999 and she returned to work on November 1, 1999. She indicated that she continued to experience back, neck and sometimes leg pain after her original injury. She explained her current problems to her treating Board-certified family practitioner, Dr. Maria Schiaffino, who recommended that she see a neurologist, physical therapist and orthopedist. Appellant stated that her current condition was caused by the accepted employment injury because her pain was in the same areas as the original injury and that she experienced constant irritation on the right side of her neck and back, and headaches. She indicated that the more she went back to her normal duties, the intensity and problems became worse.

In support of her claims, appellant submitted a February 20, 1998 disability certificate from Dr. Caroline Mosley, Board-certified in emergency medicine, indicating that she should be off from work for two days and should not lift anything heavy for three to four days. She also submitted an x-ray report of the same date from Dr. Hal M. Frederick, a Board-certified radiologist, revealing a normal right tibia/fibula.

Martha A. Tharpe, an employing establishment human resource specialist, controverted appellant's claim in a November 4, 1999 letter on the grounds that there was a delay of more than one year and eight months before appellant alleged that her back condition occurred on February 20, 1998. Ms. Tharpe also controverted appellant's claim on the basis that she failed to submit any medical evidence establishing that her back condition was caused by the accepted employment injury and her claim contained conflicting information regarding the circumstances of the alleged recurrence which casts doubt on the validity of the claim.

On March 9, 2000 the Office received a January 28, 2000 disability certificate from a physician whose signature is illegible revealing that appellant was seen on that date and underwent physical therapy treatment. An undated disability certificate from Dr. L. Carsell whose qualifications cannot be ascertained from the record, indicated that appellant had a cervical/lumbar strain and that she would be able to return to work on January 26, 2000. Medical treatment notes covering the period June 29, 1998 through February 24, 1999 from Dr. Etiowo G. Obot, a family practitioner, indicated that appellant was treated with medication and physical therapy for a right leg sprain, cervical and lumbosacral strains and spasms. In his February 21, 2000 duty status report, Dr. Obot diagnosed myospasm/myalgia and indicated that appellant could return to work with certain physical restrictions.

By letter dated March 20, 2000, the Office advised appellant that it had received her recurrence claim and that the date of the recurrence, July 19, 2000 was the same date as her occupational disease claim for carpal tunnel syndrome. The Office further advised appellant that the recurrence claim had to be filed for the accepted condition and that she should follow the instructions for that form. The Office informed appellant about the type of evidence she needed to submit in support of her claim including, a detailed narrative report from her treating physician explaining the causal relationship between her current disability/condition and original injury.

On July 21, 2000 the Office received Dr. Obot's January 3, 10 and 21, 2000 progress notes revealing appellant's complaints of neck, shoulder and lower back pain and her difficulty with performing daily activities. He diagnosed myospasm and myalgia. The Office also received a duplicate copy of Dr. Carsell's undated disability certificate and a January 28, 2000 disability certificate from a physician whose signature is illegible. Progress notes signed by someone in Dr. Obot's practice group on January 25, 2000 indicated that appellant suffered from a headache and prescribed massage therapy and heat. Additional progress notes dated January 28, February 1, 4, 9, 18, 21, March 9 and April 4, 2000 revealed appellant's complaints of headaches, pain in the neck, shoulder and lower back, and a diagnosis of spasms from mild to moderate of the lumbar area and lumbar sprain.

In an October 26, 1999 narrative statement, appellant described the symptoms of her recurrence, explained the delay in filing her recurrence claim and requested a change of her treating physician. Based on her description of her symptoms, appellant stated that Dr. Schiaffino recommended that she seek specialized medical treatment. Beginning on September 21, 1999 she was seen by Dr. Scott M. Karlin, a Board-certified otolaryngologist, Dr. Jan L. Baxt, a Board-certified neurologist, Dr. Maurice Jove, a Board-certified orthopedic surgeon and Dr. Brian S. Vanderhoof, a Board-certified physiatrist, for her constant headaches and pain in her neck, back and right and left wrist and arm. Appellant concluded that she had been off work since October 21, 1999 and she had been instructed to return to work on November 1, 1999 with certain physical restrictions. She submitted travel records in support of her request for reimbursement of travel expenses.

By decision dated April 12, 2001, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on October 21, 1999 causally related to her February 20, 1998 employment injury. The Office stated that the June 29, 1998 treatment notes of Dr. Obot indicated that appellant had completely recovered from the February 20, 1998 employment injury, and thus, the medical evidence submitted did not address the relationship of the condition at the time of the alleged recurrence and the February 20, 1998 employment injury.

In a May 10, 2001 letter, appellant requested an oral hearing before an Office hearing representative. In a December 5, 2001 letter, appellant stated that she had been hospitalized twice in a week and one-half. She recently came home from the hospital on November 24, 2001 after being admitted on November 22, 2001. Appellant stated that she was on complete bed rest and incapacitated for work and other activities. She submitted hospital discharge records dated November 20 and 24, 2001 regarding symptoms related to her pregnancy. She also submitted progress notes dated October 29, 2001 from Dr. Schiaffino indicating that she had been her physician since June 30, 1999 and that she suffered from chronic intermittent pain due to injuries

sustained on February 20, 1998 which included neck and back strain that were treated by Dr. Goodman. A November 28, 2001 letter from Gwendolyn Ruff, a licensed practical nurse, on behalf of Dr. Stuart Pancer, a Board-certified obstetrician and gynecologist, revealed that appellant had been under their care for pregnancy, delivery and post-partum. Ms. Ruff stated that appellant was currently incapacitated due to delivery on November 22, 2001 and she was expected to be off from work from that date until January 22, 2002 provided there were no unforeseen complications.

By decision dated February 26, 2002, the Office hearing representative affirmed the Office's April 12, 2001 decision. The hearing representative found that none of the medical evidence of record explained why appellant was unable to continue working past October 21, 1999 or whether her inability to work was caused by her February 20, 1998 employment injury.

In a May 22, 2002 letter, appellant requested reconsideration. She resubmitted a copy of her recurrence claim form and October 26, 1999 narrative statement. She submitted the Office's letter accepting her claim for contusion of the right leg, cervical strain and lumbar strain and letter regarding her hospitalization from November 22 through 24, 2000 and disability for work. She also submitted a list of her treating physicians and medical facilities where she received treatment. A July 2, 2002 report of Dr. Obot found that appellant's current disability was a direct result of her February 20, 1998 employment injury. He stated that appellant had always been in treatment since February 24, 1998, that she never fully recovered and that she had gotten chronically worse over time. Dr. Obot provided a list, as well as the treatment notes, of appellant's treating physicians and the dates she received medical care. He stated that appellant appeared to be recovering, but now had chronic effects of her on-the-job injury. As stated in a June 26, 2000 letter, Dr. Obot related that due to the nature of appellant's injuries, she was at an increased risk of recurrent, as well as, chronic cervical strain, lower back muscle pain and spasm primarily on her right side which was where the problems began as a result of her February 20, 1998 employment injury. Dr. Schiaffino's January 28, 2002 progress notes indicated that appellant still suffered from chronic pain in her back and neck, and carpal tunnel syndrome. Dr. Obot submitted a duplicate copy of Dr. Schiaffino's October 29, 2001 progress notes and hospital discharge records. In another treatment note of the same date, Dr. Schiaffino stated that appellant was evaluated for her chronic headaches and back pain due to her previous work injury and she was unable to work. Dr. Schiaffino's June 7, 2002 form report revealed that appellant suffered from severe migraines worsened by cervical osteoarthritis and periodic absences due to pregnancy, right carpal tunnel syndrome which had worsened by returning to work, and back and neck injuries resulting from work and that had also worsened. The report indicated that appellant's disability began on June 26, 2001 and it would continue for a lifetime. Appellant's leave records were also submitted.

On August 12, 2002 the Office issued a decision denying appellant's request for modification based on a merit review of her claim. The Office found that the evidence submitted by appellant did not contain a rationalized medical opinion explaining why she was unable to work from October 21, 1999 and whether her inability to work was caused by her accepted employment injuries.

By letter dated August 11, 2003, appellant, through her attorney, requested reconsideration. Appellant submitted a duplicate copy of her October 26, 1999 narrative

statement. She also submitted Dr. Schiaffino's August 11, 2003 report. In this report, Dr. Schiaffino provided a history of appellant's February 20, 1998 employment injury. She noted her awareness of appellant's filing of a recurrence claim and that she had not worked since September 1999. She reviewed appellant's October 26, 1999 narrative statement noting appellant's problems which included constant headaches one or two times per week, neck and back pain, stiffness and irritation, pain in her right and left wrist and thumb, and swelling. Based on her continued treatment and medical examination of appellant, Dr. Schiaffino opined that appellant suffered a recurrence of her accepted employment injuries. She further opined that appellant's inability to work beginning in September 1999 was caused by a recurrence of her February 20, 1998 right leg contusion and cervical and lumbar strains. She stated that her opinions were based on her findings that appellant's original 1998 soft injury only resulted in back pain and in 1999 she had a recurrence, then she was released to return to work and later in 1999 she was diagnosed with bilateral carpal tunnel syndrome. Appellant's back and neck strain pain returned and was aggravated by migraines. She concluded that appellant was disabled from September through November 1999 as a result of a recurrence of her February 20, 1998 employment injuries. Appellant further concluded that appellant remained disabled through the date of her report from a combination of recurrent cervical strain, bilateral carpal tunnel syndrome and headaches.

By decision dated October 14, 2003, the Office again denied appellant's request for modification based on a merit review of her claim. The Office found that Dr. Schiaffino's August 11, 2003 report did not provide any medical rationale explaining how or why the alleged recurrence was caused by the February 20, 1998 employment injury.

LEGAL PRECEDENT

When an employee who is disabled from the job she held is injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability and that she cannot perform the light-duty position. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.¹

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her recurrence of disability and her February 20, 1998 employment injury.² This burden includes the necessity of furnishing 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.³

¹ *Terry R. Hedman*, 38 ECAB 222 (1986).

² *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139, 142 (1993); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

³ *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

ANALYSIS

In this case, appellant has neither shown a change in the nature and extent of her injury-related conditions or a change in the nature and extent of the limited-duty requirements. The record shows that, following the February 20, 1998 employment-related contusion of the right leg, and cervical and lumbar strains, appellant returned to work in a limited-duty capacity. Appellant has not alleged that there was a change in the nature of her limited-duty requirements such that she was unable to perform her position. Rather, she has alleged a recurrence of disability commencing October 21, 1999.

The relevant medical evidence of record includes Dr. Carsell's undated disability certificate revealing that appellant had a cervical/lumbar strain and that she would be able to return to work on January 26, 2000. His disability certificate is insufficient to establish appellant's burden because it failed to address whether appellant's cervical and lumbar conditions and resultant disability for work were caused by the February 20, 1998 employment injury.⁴

Dr. Obot's January 3, 10 and 21, 2000 progress notes and February 21, 2000 duty status report finding that appellant had myospasm/myalgia and that she could return to work with certain physical restrictions did not address whether appellant's conditions and disability for work were causally related to her accepted employment injury.

Dr. Obot opined in his July 2, 2002 medical report that appellant's current disability was a direct result of her February 20, 1998 employment injury. He stated that, due to the nature of appellant's injuries, she was at an increased risk of recurrent, as well as, chronic cervical strain, lower back muscle pain and spasm primarily on her right side which was where the problems began as a result of her February 20, 1998 employment injury. Although Dr. Obot suggested that appellant was at an increased risk of recurrent and chronic cervical and lumbar conditions, he has not provided sufficient medical rationale to support such a conclusion, and thus, his report is of limited probative value on the issue of whether appellant sustained a recurrence of disability due to the accepted cervical and lumbar strains.

Similarly, Dr. Schiaffino's progress notes and medical reports do not contain sufficient medical rationale to support her opinion that appellant's current medical conditions and disability are causally related to the February 20, 1998 employment injury. In her October 29, 2001 progress notes, Dr. Schiaffino found that appellant's chronic pain and headaches were caused by the February 20, 1998 employment injury and that appellant was disabled for work. Her January 28, 2002 progress notes revealed that appellant's chronic pain in her back and neck, and carpal tunnel syndrome were caused by the accepted February 20, 1998 employment injuries. In her June 7, 2002 form report, Dr. Schiaffino indicated that appellant's work-related back and neck injuries had worsened and that her disability began on June 26, 2001 and would continue for a lifetime. Dr. Schiaffino, however, failed to provide any medical rationale in the above noted progress notes and medical report to support her opinion that appellant's current medical conditions and disability were caused by the February 20, 1998 employment injury.

⁴ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

On August 11, 2003 Dr. Schiaffino reported that appellant was disabled from September through November 1999 due to a recurrence of her February 20, 1998 employment injuries and that she remained disabled due to the recurrent cervical strain, bilateral carpal tunnel syndrome and headaches. She explained that appellant only had back pain in 1998 and in 1999 she sustained a recurrence. She stated that appellant was released to return to work and later in 1999 she was diagnosed with bilateral carpal tunnel syndrome. She noted that appellant's back and neck strain returned and they were aggravated by migraines. Although Dr. Schiaffino opined that appellant was totally disabled, she did not explain how appellant's current back problems were caused by the February 20, 1998 employment injury. Moreover, the Office did not accept that appellant had bilateral carpal tunnel syndrome or migraines as a result of the February 20, 1998 employment injury.

Lastly, progress notes covering the period January 25 through April 4, 2000 revealed that appellant suffered from headaches, pain in her neck, shoulder and lower back, mild to moderate spasms in the lumbar area and a lumbar sprain. However, they do not address whether appellant's current conditions and any resultant disability were caused by the accepted employment injury.

As appellant has not submitted rationalized medical evidence supporting a causal relationship between her accepted February 20, 1998 employment injury and a recurrence of disability on October 21, 1999, 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 disability on October 21, 1999 causally related to her February 20, 1998 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 14, 2003 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: May 19, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member