

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

CARLA M. AICHROTH, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Huntingdon Valley, PA, Employer**

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**Docket No. 04-1318
Issued: November 29, 2004**

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On April 19, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated April 15, 2004, denying modification of a January 21, 2003 decision that denied her claim for a recurrence of disability on July 27, 2002. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this recurrence case.

ISSUE

The issue is whether appellant had a recurrence of disability on July 27, 2002 causally related to her December 18, 2000 employment injury.

FACTUAL HISTORY

This case was previously before the Board.¹ By decision dated February 12, 2004, the Board affirmed a January 21, 2003 Office decision denying appellant's claim for a recurrence of

¹ Docket No. 04-181 (issued February 12, 2004).

disability on July 27, 2002. The facts and history of the case are herein incorporated by reference.²

In an August 6, 2002 prescription form, Dr. Michael F. Avallone, appellant's attending Board-certified osteopathic family practitioner, diagnosed a cervical sprain and strain and a cervical disc bulge. In a form report dated January 7, 2003, Dr. Avallone diagnosed a cervical sprain and strain and a cervical disc bulge. He indicated by checking the block marked "yes" that the conditions were work related.

In a narrative report dated February 10, 2003, Dr. Avallone stated that appellant was diagnosed with a cervical and thoracic sprain and strain and right trapezius myositis as a result of her December 18, 2000 employment injury that occurred when she lifted a heavy tray of magazines. He stated that appellant was treated conservatively and showed improvement over the course of treatment. Prior to her discharge back to work, she was asked to obtain a magnetic resonance imaging (MRI) scan of the cervical and thoracic spine to determine whether there was any muscle or disc damage to the spine. Dr. Avallone indicated that appellant returned to work and attempted to work through her discomfort for 15 months but finally realized that the pain was not going to improve without additional medical treatment. He stated:

"[The] MRI [scan] finally obtained when [appellant] started treatment again, did indeed show disc bulges in the spine, which are most probably a result of her initial injury[, e]specially since it is well documented that she had radicular pain components in all her evaluations during her first course of treatment.

"I am therefore again stating that the treatment provided for [appellant] from July 2002 until the present is directly related to the initial injury of December 18, 2002. Her radicular pain will always be present due to the disc bulge. Her limitations will remain in effect indefinitely...."

The record also contains numerous physical therapy notes.

On March 6, 2004 appellant requested reconsideration. She asked that the Office review the medical evidence submitted since its January 21, 2003 merit decision.

By decision dated April 15, 2004, the Office denied modification of its January 21, 2003 decision.

LEGAL PRECEDENT

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and

² On December 18, 2000 appellant, then a 37-year-old mail carrier, filed a traumatic injury claim alleging that she injured her right shoulder while lifting a tray of mail. The Office accepted her claim for cervical and thoracic strains. Appellant returned to full-time regular duty on March 14, 2001. She did not seek medical care again until July 9, 2002. On August 2, 2002 appellant filed a claim alleging that she had a recurrence of disability on July 27, 2002.

probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.³ 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 the employment injury and supports that conclusion with sound medical rationale.⁴ Moreover, the physician's conclusion must be supported by sound medical reasoning.⁵ Where no such rationale is present, medical evidence is of diminished probative value.⁶

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁷ In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.⁸ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁹

ANALYSIS

The record shows that appellant returned to full-time regular work on March 14, 2001. She did not seek medical care again until July 9, 2002. The medical record in this case lacks a well-reasoned narrative from appellant's physician relating her claimed recurrence on July 27, 2002 to her December 18, 2000 employment injury.

In an August 6, 2002 treatment prescription form and January 7, 2003 form report, Dr. Avallone, appellant's attending Board-certified osteopathic family practitioner, diagnosed a cervical sprain and strain and a cervical disc bulge. In the January 7, 2003 report, he indicated by checking the block marked "yes" that the conditions were work related. The Board has held that an opinion on causal relationship which consists only of checking "yes" to a form report question on whether the claimant's disability was related to the history given is of little probative value.¹⁰ Without any explanation or rationale, such a report has little probative value and is

³ *Ricky S. Storms*, 52 ECAB 349 (2001); *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

⁴ Section 10.104(b)(2) of the Code of Federal Regulations provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a detailed medical report. 20 C.F.R. § 10.104(b)(2). See also *Lourdes Davila*, 45 ECAB 139 (1993); *Mary S. Brock*, 40 ECAB 461 (1989).

⁵ *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁶ *Michael Stockert*, 39 ECAB 1186 (1988).

⁷ *Ricky S. Storms*, *supra* note 3.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Debra S. King*, 44 ECAB 203 (1992); *Donald W. Long*, 41 ECAB 142 (1989).

insufficient to establish causal relationship.¹¹ Further, Dr. Avallone did not mention the date of July 27, 2002, the date that appellant claimed to have sustained her recurrence. Additionally, a disc bulge is not an accepted condition in this case and Dr. Avallone provided insufficient medical rationale explaining how this condition was causally related to appellant's December 18, 2000 employment-related back conditions. Due to these deficiencies, these reports are not sufficient to establish that appellant sustained a recurrence of disability on July 27, 2002 causally related to her December 18, 2000 employment injury.

In a narrative report dated February 10, 2003, Dr. Avallone opined that appellant's back problem was related to her December 18, 2000 employment injury. However, he provided insufficient medical rationale in support of his opinion, indicating only that disc bulges revealed in a 2002 MRI scan were "most probably" a result of the December 18, 2000 employment injury because appellant had radicular pain during her initial treatment. Thorough medical rationale regarding causal relationship is particularly important in this case due to the fact that appellant returned to regular work on March 14, 2001, 16 months before her claimed recurrence in July 2002, and she apparently did not seek medical treatment between March 2001 and July 2002. Dr. Avallone did not provide sufficient explanation as to why he believed the disc bulge was related to the accepted December 18, 2000 employment injury. Therefore, this evidence fails to support that appellant sustained a recurrence of disability beginning July 27, 2002 attributable to her December 18, 2000 employment injury.

The Board notes that appellant submitted numerous physical therapy notes. However, medical evidence from a physical therapist does not constitute probative medical evidence under the Federal Employees' Compensation Act.¹² Physical therapists are not physicians under the Act and are not qualified to provide the necessary medical evidence to met appellant's burden of proof.¹³

¹¹ *Id.*

¹² As defined by the Act in 5 U.S.C. § 8101(2), "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law."

¹³ *Jane A. White*, 34 ECAB 515 (1983).

CONCLUSION

For the reasons stated above, the Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability or a medical condition beginning July 27, 2002 causally related to her accepted December 18, 2000 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 15, 2004 is affirmed.

Issued: November 29, 2004
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member