United States Department of Labor
Employees' Compensation Appeals Board

ESTELA DE LA O, Appellant	)	
and	)	**Docket No. 04-412**
	)	**Issued: September 2, 2004**
DEPARTMENT OF DEFENSE, DEFENSE FINANCE & ACCOUNTING SERVICE, San Diego, CA, Employer	)	

Appearances:
Estela De La O, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 4, 2003 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated August 21, 2003, which rejected her claim for compensation for the period June 2 to 13, 2003, on the grounds that her shoulder contusion had resolved and September 23, 2003, which denied modification of the August 21, 2003 decision. 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 was partially disabled for the period June 2 to 13, 2003 causally related to her accepted employment-related left shoulder contusion.

FACTUAL HISTORY

On February 27, 2003 appellant, then a 57-year-old accounting technician, filed a traumatic injury claim alleging that on that day as she was coming around a corner, a coworker bumped into her and she fell on a cement floor injuring her left side. She alleged that she injured her left hip and left leg and she stopped work on the date of injury.

By report dated March 3, 2003, Dr. J. Rochelle Parker, a preventive medicine physician, noted the history of injury on February 27, 2003 and appellant's complaints of left back and shoulder pain. She diagnosed post-traumatic headache syndrome in June 2000 and a lumbosacral strain with probable fibromyalgia in August 1992, made permanent and stationary as of November 1993. Dr. Parker noted that appellant was mildly tender to palpation over her left anterior deltoid and indicated that this was a work-related injury. She noted that appellant did have a history of fibromyalgia and left lower back pain, greater than right lower back pain, which was preexisting and which might have exacerbated her current problems. Dr. Parker indicated that appellant was to be off work for three days and then return to light duty with continuing permanent and stationary restrictions starting on March 4, 2003.

By report dated March 13, 2003, Dr. Parker diagnosed a resolved contusion of the shoulder, back pain essentially unchanged and left thigh pain. She recommended that appellant continue light duty by limiting her workday to four hours per day from March 13 to 20, 2003. Starting March 21 to April 3, 2003, appellant was to continue with permanent and stationary restrictions.

On April 3, 2003 Dr. Parker noted that appellant had a contusion of the left shoulder with a history of fibromyalgia, worsened since her last visit, improved back pain and lower extremity pain, probably secondary to fibromyalgia. On April 28, 2003 Dr. Parker recommended that appellant continue with permanent and stationary duty. She indicated that appellant had reached maximum medical improvement.

On April 28, 2003 Dr. Parker indicated that appellant's contusion of the shoulder had resolved, that her back pain had also resolved and that her lower extremity pain which was probably secondary to fibromyalgia was somewhat improved. She indicated that appellant was released to return to work without restrictions on April 28, 2003.

Appellant also submitted medical records predating her date of injury. By Form CA-7, appellant claimed compensation for two hours per day for the period June 2 through 13, 2003. By letter dated June 26, 2003, the Office advised her that her claim could not be considered without supporting medical evidence establishing her disability for the claimed period.

Appellant submitted a July 2, 2003 report from Dr. William McCarberg, a physician practicing in pain management, who noted that the low back pain aspect of her fibromyalgia had been present since 1992. He noted that on examination, appellant had 16 out of 18 tender points which supported the diagnosis of fibromyalgia and that she had decreased range of motion of her lumbosacral spine with pain in the L5-S1 region. He noted that she had normal reflexes, strength

and sensation, with a negative straight leg raising, but with tenderness of the upper right neck which radiated into the right arm with range of motion of the neck. Dr. McCarberg noted that on May 7, 2003 appellant complained of pain at a level of 5 out of 10 and opined that she had fibromyalgia syndrome. He opined that work-related physical stress could aggravate fibromyalgia symptoms, increasing pain and morning stiffness, but decreasing sleep and quality of life. Dr. McCarberg stated that it was his impression that appellant had fibromyalgia syndrome that was aggravated by work-related stress, both physical as well as emotional.

In a July 9, 2003 letter, the Office advised appellant that the medical evidence received was insufficient to support her claim.

On July 23, 2003 appellant provided a July 16, 2003 supplemental statement in which she claimed that, when she was knocked down onto the cement floor on February 27, 2003, she also injured her shoulder and back, but was in so much pain that she could not think straight when she completed the CA-1 form.

On July 25, 2003 the Office accepted that appellant had sustained a left shoulder contusion on February 27, 2003.

Appellant submitted an August 11, 2003 form report from Dr. Parker, which noted that she was unable to work on August 11, 2003 but could return to limited-duty working four hours a day on August 12, 2003. She indicated that appellant was treated for hip and low back pain and could not perform bending, squatting or twisting.

By decision dated August 21, 2003, the Office rejected appellant's claim for compensation for the period June 2 to 13, 2003, finding that her accepted shoulder contusion had resolved as of March 13, 2003. It advised her, however, that she could file a new claim for occupational disease as Dr. McCarberg had attributed an aggravation of her fibromyalgia condition to both work-related emotional and physical stresses but not to the February 27, 2003 injury.

In an August 26, 2003 letter, appellant requested reconsideration and submitted a May 7, 2003 prescription note from Dr. McCarberg, who stated that she must work no more than 4 hours per day, 5 days per week for the next 60 days. He reiterated this recommendation on July 31, 2003. Appellant also submitted duplicate form reports dated March 13, April 28, July 31 and August 11, 2003.

By decision dated September 23, 2003, the Office denied modification of the August 21, 2003 decision. The Office considered the merits of the evidence and expanded its acceptance of appellant's claim to include a left lower back contusion.

LEGAL PRECEDENT

Appellant has the burden of establishing by the preponderance of the reliable, probative, and substantial evidence that her partially disabling condition was caused or aggravated by her federal employment. As part of this burden, appellant must submit rationalized medical evidence

showing a causal relationship.[1] She must submit medical opinion evidence, based on a proper factual and medical background, establishing such disability and its relationship to employment.[2]

Where an employee claims a recurrence of partial disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which she claims compensation is causally related to the accepted injury.[3] This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[4]

ANALYSIS

In this case, appellant's treating physician, Dr. Parker, found that she had sustained left back and shoulder pain and post-traumatic headache syndrome on February 27, 2003 when she was knocked down and fell on a cement floor. However, Dr. Parker had diagnosed post-traumatic headache syndrome in June 2000 and lumbosacral strain with probable fibromyalgia in August 1992, which became permanent and stationary in November 1993. She noted appellant's mild work-related symptoms but indicated that she did have a history of preexisting fibromyalgia and left lower back pain, which might have been exacerbated by her recent employment injury. Based upon her physical examination of appellant, Dr. Parker indicated that she could return to light duty with restrictions starting March 4, 2003 for four hours per day and then increase to eight hours per day on March 21, 2003. She noted that appellant's employment-related left shoulder contusion and lower back pain had resolved without residual as of April 28, 2003 and that her lower extremity pain, which she opined was unrelated to her employment injury, was somewhat improved. Dr. Parker released appellant to return to work without restrictions as of April 28, 2003. Thereafter, to establish a recurrence of partial disability for the period June 2 through 13, 2003 for two hours per day, appellant has the burden of providing rationalized medical evidence. However, no such rationalized medical evidence was submitted.

Appellant submitted a July 2, 2003 report from Dr. McCarberg, who noted that the low back pain aspect of her fibromyalgia had been present since 1992. He noted the basis for his diagnosis of fibromyalgia as the presence of trigger points. As to whether appellant's fibromyalgia syndrome was aggravated by her employment he opined only that work-related physical stress could aggravate fibromyalgia symptoms, increasing pain and morning stiffness, but decreasing sleep and quality of life. Dr. McCarberg stated that it was his impression that appellant had fibromyalgia syndrome that was aggravated by work-related stress, both physical

[1] *Bertha L. Arnold*, 38 ECAB 282 (1986); *Tracey Smith-Cashen*, 38 ECAB 568 (1987). Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue in question. *See also Donna Faye Cardwell*, 41 ECAB 730 (1990); *Lillian Cutler*, 28 ECAB 125 (1976); 20 C.F.R. § 10.115(e) and (f).

[2] *David H. Goss*, 32 ECAB 24 (1980).

[3] *John E. Blount*, 30 ECAB 1374 (1974).

[4] *Frances B. Evans*, 32 ECAB 60 (1980).

as well as emotional. He did not, however, specifically address the claimed period of disability for June 2 through 13, 2003 for two hours per day.

Appellant also submitted an August 11, 2003 form report from Dr. Parker, who noted appellant's disability that date and indicated that she could return to work for four hours per day on August 12, 2003. This report did not address appellant's condition for the period June 2 through 13, 2003 and is not probative of her disability for the period claimed.

Appellant submitted a May 7, 2003 prescription note from Dr. McCarberg, who stated that she must work no more than 4 hours per day, 5 days per week for the next 60 days.[5] However, this medical evidence had no accompanying medical opinion with rationale for the finding that appellant was partially disabled during that period. It, therefore, lacks probative value sufficient to establish her recurrence claim.

The Board concludes that the medical evidence from Dr. McCarberg is insufficient to establish appellant's recurrence claim as it lacks sufficient medical rationale for his finding that appellant was partially disabled for the period of 60 days following May 7, 2003 and able to work only 4 hours per day for 5 days per week. The medical evidence of record is insufficient to establish that appellant was partially disabled for two hours per day for the period June 2 to 13, 2003. Therefore, she has failed to establish her recurrence claim.

CONCLUSION

The Board finds that, appellant failed to submit sufficient rationalized medical opinion evidence that established a recurrence of partial disability during the period June 2 through 13, 2003. She has failed to meet her burden of proof.

[5] Appellant also submitted multiple duplicate form reports dating from March through August 2003, which were previously considered by the Office.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 23 and August 21, 2003 are affirmed.

Issued: September 2, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member