

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

REGINA L. JEFFERSON, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Seattle, WA, Employer**

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**Docket No. 04-1173
Issued: April 21, 2005**

Appearances:

Margaret M. Boyle, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On March 23, 2004 appellant, through counsel, filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated December 24, 2003 finding that she had not established a recurrence of disability on May 17, 2001 or work-related disability from June 17 to July 19, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained a recurrence of disability on May 17, 2001 causally related to her December 12, 1998 or October 2000 work-related injuries; and (2) whether appellant was disabled for work from June 17 to July 19, 2003 was causally related to her employment.

FACTUAL HISTORY

On January 5, 1999 appellant filed a claim alleging that on December 12, 1998 she sustained low back pain while in the performance of duty. In a report dated February 24, 1999,

Dr. Richard L. Haynes, a chiropractor, stated that x-rays taken on February 15, 1999 established spinal subluxation at L3-4 and lumbar sprain and strain. On March 12, 1999 the Office accepted her claim for lumbar strain with subluxation. Appellant returned to work in a light-duty capacity, working intermittently for four to eight hours a day, until September 18, 2000 when Dr. Haynes released her to return to full duty.

On October 24, 2000 appellant filed a claim for a recurrence of disability alleging that on October 17, 2000 she could neither sit nor stand due to pain in her lower back. She also stated that it was too painful to sit or stand, becoming increasing intense during work. On that same day, Dr. Haynes placed her on total disability from October 25 to November 6, 2000 based on pain in the lower back sustained a week earlier. On January 3, 2001 Dr. Haynes released appellant to return to restricted duty based on an October 26, 2000 work-related injury. On March 20, 2001 Dr. Haynes placed appellant on total disability.

On March 27, 2001 the Office accepted appellant's claim for a lumbar sprain on October 17, 2000. On March 29, 2001 Dr. Haynes released appellant to return to regular duty with restrictions against lifting more than 35 to 40 pounds, with no extended 8-hour days. On May 21, 2001 Dr. Haynes stated that appellant sustained a subluxation and sprain on October 17, 2000 and placed her on total disability until May 30, 2001.

On May 24, 2001 a physician's assistant stated that appellant reported the onset one week prior of throbbing and burning symptoms of the right lower buttocks with intermittent tingling of the right leg. She became symptomatic while sitting and using a keyboard. In a disability certificate dated May 30, 2001, Dr. Haynes placed appellant on total disability from May 17 to 30, 2001 at which time she was released to return to light duty.

On May 31, 2001 appellant filed a claim alleging that she sustained a recurrence of disability on May 17, 2001 and remained off work from that date until May 30, 2001. The employing establishment indicated that appellant's date of injury was October 17, 2000. On June 12, 2001 appellant accepted a temporary limited-duty job assignment with a beginning date of May 31, 2001.

On June 27, 2001 Dr. Haynes released appellant to return to work for four hours a day. On July 7 and August 10, 2001 appellant filed claims for compensation covering June 30 to July 7, 2001 and from July 24 to August 10, 2001. In a duty status report dated July 30, 2001, Dr. Haynes states that appellant sustained a lumbar subluxation at L5 on May 17, 2001 and maintained her work restrictions for 30 days. On August 31, 2001 Dr. Haynes released appellant to work up to six hours a day with restrictions based on a May 17, 2001 work-related injury. On September 14, 2001 Dr. Haynes released her to return to work. Appellant resumed full duty on September 15, 2001.

On September 18, 2001 the Office referred appellant to Dr. Allen Wilson, a second opinion physician and a Board-certified orthopedic surgeon, for an opinion regarding whether appellant's diagnosed condition was causally related to her employment. The statement of accepted facts noted that the Office accepted a December 12, 1998 lumbar strain with subluxation and an October 17, 2000 lumbar sprain. The Office noted that appellant was

evaluated on May 21, 2001 by a physician's assistant under the care of a doctor and received treatment from Dr. Haynes. The Office requested Dr. Wilson's opinion regarding whether the diagnosis of lumbar strain had been established, and if so whether it was causally related to work, and whether appellant was capable of working at her position as described in the attached position description.

In a report dated October 5, 2001, Dr. Wilson stated that he had reviewed appellant's complaints, her medical history including her December 1998 work-related lumbar spine injury, and was aware that she recently completed a program of physical therapy. He also reviewed the statement of accepted facts, noting that her condition was accepted for lumbar strain with subluxation. Dr. Wilson reported that appellant related that she had an apparent recurrence of back pain on October 17, 2000 and that she first experienced back pain on that date. However, he stated that there was no accident or specific injury on that date. He noted appellant's subjective complaints of pain. On examination, he noted soft lumbar paraspinal muscles with no hypertonicity or spasms and tenderness over the right sacroiliac region to palpation. Patellar and ankle reflexes were two plus to four plus; the lower extremities were symmetrical with no atrophy, wasting or fasciculation; lower extremity motor strength was normal although supine leg raising was restricted to 70 degrees bilaterally with hamstring tightness noted. Sensation was intact over the dermatomes of both lower extremities to light touch, pinprick, vibration and temperature. Appellant stated upon questioning that there had been no leg pain associated with her back condition. X-rays of the lumbar spine dated October 24, 2000 and December 15, 1998 were essentially normal, adding that spina bifida occulta was noted on the October 2000 x-ray. He found chronic back pain and diagnosed lumbago, and further noted low back pain "predating specifically the injury of the reported injury date of October 17, 2000." Dr. Wilson found no specific accident or injury on that date, but opined that she may have had a flare-up of chronic back pain. He also noted that appellant had no objective evidence of an aggravation, noting normal musculoskeletal and neurologic examinations. Dr. Wilson stated that appellant's subjective symptoms were not correlated with the objective findings and indicated that she could work at her position "on a more probable than not basis."

On October 31, 2001 the Office denied appellant's claim for a recurrence of disability. On November 27, 2001 appellant requested an oral hearing.

In a report dated and November 30, 2001, Dr. Maureen M. Johnson, an attending Board-certified internist, treated appellant for right flank and hip symptoms that the doctor found were precipitated by lifting, twisting and continuous sitting required by her job. Dr. Johnson diagnosed recurrent lumbar and thoracolumbar strain consistent with employment activities and a recurring iliocostal strain. She also noted underlying congenital problems which may predispose appellant to thoracic scoliosis and spina bifida occulta.

On December 19, 2001 Dr. Johnson stated that x-rays revealed spina bifida occulta and sacralization of the first sacral segment.

On February 8, 2002 Dr. Johnson treated appellant in a follow-up examination based on her October 17, 2000 injury, and found that she had a herniated nucleus pulposus at L5-S1 as revealed by a January 30, 2002 computerized tomography scan. She noted that appellant's

condition was precipitated and aggravated by her employment which seemed to worsen after sitting and performing her job functions.

On May 31, 2002 Dr. Johnson stated that appellant had recurrent right-sided low back pain with sensory problems radiating into the thigh and leg. She noted that a physical examination and x-ray revealed spina bifida occulta. Dr. Johnson reported findings on range of motion and advised that appellant was symptomatic with tight hamstrings. She reported that a CT scan revealed a herniated nucleus pulposus at L5-S1 with an S1 neural compromise, and stated that her complaints were consistent with an L4 condition.

On May 31, 2002 appellant accepted a light-duty position consistent with medical restrictions.

On June 25, 2002 Dr. Johnson stated that appellant had an acute back problem in 1998 and a relapse on October 17, 2000. Upon examination, she noted tight hamstrings, sensory and radicular conditions at L5 and across the right anterior knee into the lower leg. She again noted that CT scans revealed disc protrusion at L5-S1 with L5 neural compromise and scheduled her for more testing and a neurosurgery appointment.

On July 9, 2002 nerve conduction studies and an electromyogram evaluation were read as normal with no acute or chronic finding on the right L2 through S1 and no electrophysiologic evidence of right lower extremity muscle instability.

A hearing was held on July 11, 2002. On July 25, 2002 Dr. Haynes maintained appellant on light duty as a result of her continued lower back, hip and leg pain. In a decision dated September 23, 2002, the hearing representative affirmed the October 31, 2001 decision denying the recurrence of disability claim.

On June 18, 2003 appellant filed a claim for wage loss from June 17 to July 19, 2003, noting a date of injury of June 16, 2003. She submitted a June 18, 2003 report from Dr. Johnson who stated that appellant was doing well in therapy for an L5 herniated disc until she had "an acute exacerbation of low back pain and spasms with radicular component on June 17, 2003 after having a coughing episode at work." She noted findings and placed appellant on total disability until June 23, 2003 when she would resume her previous light duty.

In a June 23, 2003 report, Dr. Timothy M. Gilmore, a Board-certified family practitioner, and a colleague of Dr. Johnson requested authorization for chiropractic manipulation for appellant due to an exacerbation of back pain which he attributed to facet joint impaction of muscle spasm caused by a coughing episode during the prior week. On June 30, 2003 Dr. Johnson stated that appellant had a disc protrusion with episodic flare-ups of severe spasm and pain. She noted that appellant's current incident occurred on June 17, 2003 and that she would be off work from that date until July 7, 2003 at which time she would be released to return to light duty. Dr. Johnson added that appellant required ongoing chiropractor treatment.

On July 3, 2003 Dr. Haynes stated that appellant sustained a work-related lumbosacral sprain and would be able to return to light duty on July 15, 2003. He also placed her on total disability from July 1 to 15, 2003.

On July 9, 2003 Dr. Johnson provided a follow-up report placing appellant on total disability on June 16 and 17, 2003 and partial disability from June 18 to July 19, 2003. She noted her referral to Dr. Haynes.

In a report of a telephone call dated July 31, 2003, the Office stated that appellant called for a status update. Appellant related that she was on light duty and was sitting in her supervisor's office when she injured her back due to a coughing fit. The Office advised her that, since the onset of disability was caused by an identifiable incident, it did not meet the criteria of recurrence of disability. The Office advised appellant to file a claim for a new injury. Appellant asked the Office to send her a development letter for the claim for wage loss.

By letter dated July 31, 2003, the Office advised appellant to submit additional information regarding her claim for a recurrence of disability. In a report dated August 5, 2003, Dr. Johnson diagnosed appellant with a lumbosacral radicular problem related to disc protrusion, noting that she had returned to half-time work on August 2, 2003 as per her chiropractor's assessment. In a report dated September 17, 2003, Dr. Johnson stated that appellant's December 1998 work-related injury "led to the relapsing symptoms of recurring spasm and functional limitations over the intervening years." She added that: "no additional injury, either personally or within her work ... could have caused this problem."

On September 23, 2003 appellant requested reconsideration of the September 23, 2002 hearing representative's decision.

By decision dated December 24, 2003, the Office denied modification of the September 23, 2002 decision.

By decision dated December 24, 2003, the Office also denied appellant's claim for wage-loss compensation from June 17 to July 19, 2003.

LEGAL PRECEDENT -- ISSUE 1

When an employee who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, 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

¹ *Ralph C. Spivey*, 53 ECAB 248 (2001), *Terry R. Hedman*, 38 ECAB 222 (1986).

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.²

ANALYSIS -- ISSUE 1

The Office accepted appellant's claims for a lumbar strain with subluxation on December 12, 1998 and a lumbar sprain on October 17, 2000. Appellant returned to light duty after the October 2000 injury and subsequently filed a claim alleging that on May 17, 2001 she sustained a recurrence of disability due to the December 12, 1998 employment-related injury. Appellant was off work from May 17 to 30, 2001.

The medical evidence in support of her claim consists of several reports from Dr. Haynes, a treating chiropractor, who noted her condition on various dates but did not provide any opinion in support of the causal relationship between her claim and her disability on or after May 17, 2001. In a July 30, 2001 report, Dr. Haynes noted by checking a box "yes" that appellant's lumbar subluxation was causally related to the May 17, 2001 work-related injury. As noted, appellant did not file a claim for an injury sustained on May 17, 2001. This opinion is based on an erroneous history. To the extent that this can be construed as supporting causal relationship for the claimed recurrence, the Board has held that, when a physician's opinion supporting causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish a causal relationship.³ The Board finds that Dr. Haynes' reports are insufficient because they do not specifically address the claimed recurrent period with a rationalized opinion on causal relationship.

In an October 5, 2001 report, Dr. Wilson noted appellant's history and her subjective complaints of pain. He found an essentially normal muscle examination, normal reflexes, symmetrical extremities, normal sensations, and normal reactions to pinprick, vibration and temperature. Dr. Wilson noted tight hamstrings but added that appellant related no leg pain associated with her back condition. He indicated that the October 24, 2000 and December 15, 1998 lumbar spine x-rays were essentially normal and her subjective complaints were not supported by objective findings. He stated that she could return to work at her normal position as an automated mark-up clerk. At the time of the evaluation, appellant had returned to full-time duty as a mark-up clerk effective September 15, 2001. This medical evidence does not support that the accepted employment injury caused a recurrence of disability commencing May 17, 2001. As the medical evidence does not provide sufficient support that appellant had a

² *Allen C. Hundley*, 53 ECAB 551 (2002).

³ *Gary J. Watling*, 52 ECAB 2878 (2000).

work-related disability beginning May 17, 2001, the Office properly denied her claim for a recurrence of disability.

LEGAL PRECEDENT -- ISSUE 2

A claimant, for each period of disability claimed, has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he or she is disabled for work as a result of the employment injury. Whether a particular injury causes an employee to be disabled for employment, and the duration of that disability, are medical issues which must be established, probative and substantial evidence.⁴

To establish a causal relationship between the claimed condition, and any attendant disability, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁵ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

ANALYSIS -- ISSUE 2

The Office denied appellant's claim for wage loss from June 17 to July 19, 2003, Dr. Johnson, a treating physician, related in a report dated June 18, 2003, that appellant sustained an exacerbation of low back pain and spasms on June 17, 2003 "after having a coughing episode at work." The Board notes, however, that appellant's coughing is not the type of intervening independent cause described in the Board precedent and the possibility that appellant's coughing exacerbated her back condition would not exclude the possibility that her disability on and after June 17, 2003, the date of her coughing episode, was due to a natural, progressive worsening of her accepted employment injury.⁷ However, Dr. Johnson did not provide a rationalized medical opinion explaining the relationship between appellant's coughing episode or any other work-related condition to her disability. She noted that appellant's sensory symptoms were subjective only, that her reflexes were intact, that there was no clonus present and that straight leg raising did not aggravate her back condition.

⁴ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁵ See 20 C.F.R. § 10.110(a); *Betty J. Smith*, 54 ECAB ____ (Docket No. 02-149, issued October 29, 2002).

⁶ *Joan F. Burke*, 54 ECAB ____ (Docket No. 01-39, issued February 14, 2003).

⁷ See *Robert W. Meeson*, 44 ECAB 834, 838-40 (1993) (finding that the claimant's reinjury of his back in a nonwork-related automobile accident constituted an independent intervening nonindustrial cause of his claimed disability); *John R. Knox*, 42 ECAB 193, 196-99 (1990) (finding that the claimant's reinjury of his left knee in a nonwork-related basketball game constituted an independent intervening cause attributable to his own intentional conduct).

On June 30 and August 5, 2003 Dr. Johnson attributed appellant's June 17, 2003 spasms and pain to a herniated disc pulposus or disc protrusion at L5-S1. However, she did not explain the relationship between the diagnosed condition and the employment injuries accepted by the Office. Dr. Johnson did not explain how the injuries caused or aggravated the diagnosed condition or contributed to disability for the claimed period. Medical opinions that are speculative or equivocal in character have little probative value.⁸

In a July 9, 2003 form report, Dr. Johnson noted by checking a box "yes" that appellant's lumbosacral spasm and limited motion were causally related to the October 17, 2000 work-related injury. However, the issue is whether appellant's disability from June 17 to July 19, 2003 was causally related to her accepted injuries. It is also noted that the physician placed appellant on partial disability on June 16, 2003, one day prior to the June 17, 2003 coughing episode. The Board finds that Dr. Johnson did not provide a rationalized medical opinion establishing that the incident on June 17, 2003 contributed to appellant's low back condition. The Board has held that medical reports not containing rationale on causal relation are entitled to diminished probative value.⁹

On September 17, 2003 Dr. Johnson stated that appellant's December 1998 work-related injury was the cause of relapsing symptoms and recurring pain, but that there was no additional injury that would have caused her current condition. The report made no reference to a disability from work on or after June 17, 2003, and, as such, the report has limited probative value.¹⁰

Dr. Haynes noted that appellant was off work from July 1 to 15, 2003 but did not diagnose a condition in support of her claim of total disability. Although he had earlier diagnosed subluxation by x-rays and is therefore considered a physician, his July 3, 2003 reports make no diagnosis or opinion on disability for the claimed period of June 17 to July 19, 2003. His reports are therefore of diminished probative value on this aspect of the case.

In a June 23, 2003 report, Dr. Gilmore noted appellant's back pain but did not provide a rationalized medical opinion establishing a causal relationship between the pain and her accepted injuries.¹¹ He did not address disability for the period claimed. The Board has found that a conclusory statement without supporting rationale is of little probative value and is insufficient to discharge appellant's burden of proof.¹²

⁸ *Kathy A. Kelley*, 55 ECAB ____ (Docket No. 03-1660, issued January 5, 2004); *Michael R. Shaffer*, 55 ECAB ____ (Docket No. 04-233, issued March 12, 2004).

⁹ *Jimmie H. Duckett*, 52 ECAB 332 (2001).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Marilyn D. Polk*, 44 ECAB 673 (1993).

CONCLUSION

Appellant has failed to provide rationalized medical evidence establishing that she sustained a recurrence of disability on May 17, 2001 or that she was disabled from June 17 to July 19, 2003 due to her accepted conditions.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 24, 2003 be affirmed.

Issued: April 21, 2005
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member