United States Department of Labor
Employees' Compensation Appeals Board

ELEANOR A. CRAWFORD, Appellant	)	
and	)	**Docket No. 03-2056**
	)	**Issued: February 1, 2005**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Cleveland, OH, Employer	)	

Appearances:
Eleanor A. Crawford, pro se
Thomas Giblin, Esq., for the Director

Oral Argument November 23, 2004

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On August 13, 2003 appellant filed a timely appeal of a merit decision of the Office of Workers' Compensation Programs dated July 15, 2003, which terminated her medical benefits, and merit decisions of the Office dated August 28, 2002 and June 20, 2003, which denied her wage-loss claims for intermittent dates in August and September 2001 and on and after October 3, 2001. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the wage loss and termination of the medical benefits issues in this case.[1]

[1] The Director of the Office asserted that appellant had not properly appealed the August 28, 2002 and June 20, 2003 Office decisions regarding claims for continuation of pay and wage-loss compensation. The Board's jurisdiction is limited to final decisions issued within one year of the filing of the appeal. *See* 20 C.F.R. § 501.3(d). As appellant filed her appeal on August 13, 2003 and requested review of Office decisions denying "compensation or other possibilities," the Board finds that the Office's decisions dated June 20, 2003 and August 28, 2002 are properly within its jurisdiction.

ISSUES

The issues are: (1) whether appellant is entitled to continuation of pay for wage loss during intermittent dates from August 11 through September 23, 2001 and for the period on and after October 3, 2001; and (2) whether the Office met its burden of proof to terminate appellant's medical benefits effective July 15, 2003.

FACTUAL HISTORY

On August 30, 2001 appellant, then a 42-year-old casual clerk, filed a claim alleging that she injured her back on July 30, 2001 while lifting tubs of magazines. She stopped work on July 31, 2001 and returned to work on August 8, 2001 in a limited-duty position. The Office accepted the claim for cervical strain, lumbosacral strain and bilateral trapezius strain. Appellant worked in the limited-duty position until October 2, 2001 when she was terminated for failure to maintain her schedule.

Appellant received continuation of pay for the period July 31 to August 7, 2001. She sought additional intermittent days of continuation of pay during the period August 11 to September 23, 2001. Specifically, appellant claimed that she was absent from work on the dates of August 11 and 12, September 15, 20, 21 and 23, 2001 because of her work injury.

From July 30 through September 2001, the record reflects that appellant was treated by physicians at MetroHealth Medical Center. Dr. Robert Kelly, a Board-certified family practitioner, released her to return to work on August 7, 2001 with restrictions on lifting over five pounds. On August 8, 2001 appellant accepted and worked a limited-duty position sorting magazines and letters. Medical reports through September 21, 2001 indicated that her restrictions remained the same. In a September 20, 2001 medical note, the Center for Family Medicine indicated that appellant was "off work September 20 to 22, 2001 to attend wedding of family member."

Appellant came under the care of Dr. Stephen R. Bernie, a general practitioner. In an October 3, 2001 report, he noted the history of injury and that appellant was off work until August 8, 2001 and then intermittently off work on August 11 and 12, September 15, 20, 21 and 23, 2001. A cervical strain/sprain, trapezius strain/sprain and lumbosacral strain/sprain were diagnosed. In an October 12, 2001 CA-20 attending physician's report, Dr. Bernie reiterated that appellant was disabled from July 30 through August 8, 11, 12 and September 15, 20, 21 and 23, 2001. He stated that he believed, "by history and examination," that appellant's condition resulted from the July 30, 2001 work injury.

In a November 2, 2001 letter, the employing establishment advised that their attendance records did not indicate that the claimed dates of disability were for appellant's work injury.

In a November 7, 2001 letter, the Office advised appellant that more information, in the form of a well-rationalized medical opinion clearly stating why she was totally disabled for work on the specific dates claimed, was required before continuation of pay could be authorized for the claimed dates of August 11, 12 and September 15, 20, 21 and 23, 2001.

In a November 9, 2001 letter, Dr. Bernie stated that it was reasonable to assume that appellant was disabled to work at her job on August 11 and 12, September 15 and 23 as well as September 20 and 21, 2001 in view of the fact that when she was seen on October 3, 2001 she had signs of muscle spasms and weakness which would have prevented her from working. He additionally stated that the muscle relaxant prescribed in the emergency room would have caused drowsiness preventing her from being around machinery and driving a car. Dr. Bernie further opined that, although it was not medically necessary to attend a wedding, there were no physical constraints compared to her working duties.

On December 13, 2001 appellant filed a CA-7 claim for wage-loss compensation for the period November 18, 2001 to January 2, 2002. This was later changed to reflect wage loss after October 2, 2001, the date appellant was terminated from her restricted duties.

By decision dated January 7, 2002, the Office denied appellant's claim for continuation of pay for wage loss for the dates August 11 and 12, September 15, 20, 21 and 23, 2001 on the grounds that the medical evidence did not support total disability from her limited-duty position during the dates claimed.

With respect to appellant's claim for wage-loss benefits after October 2, 2001, the Office, in a letter dated January 7, 2002, requested that she provide additional factual and medical information.

Also by letter dated January 7, 2002, the Office advised appellant that she was being referred for a second opinion evaluation to determine if she had continuing residuals from the July 30, 2001 work injury.

In a January 21, 2002 letter, appellant requested a review of the written record with respect to the January 7, 2002 decision denying her claim for continuation of pay.

In a February 6, 2002 report, Dr. Bernie advised that appellant's job duties after she returned to work on August 8, 2001 had aggravated her condition and caused a relapse. He opined that she was only able to perform sedentary work. Medical progress reports from Dr. Shu Que Huang dated December 3 and 21, 2001 documented the treatment appellant received.[2]

On February 15, 2002 appellant was examined by an Office referral physician, Dr. Alan H. Wilde, a Board-certified orthopedic surgeon. He reviewed the medical evidence, detailed his clinical and test findings, and diagnosed acute lumbosacral strain. Dr. Wilde opined that there were no remaining residuals from the injury to appellant's lumbosacral spine, that she no longer required care for that condition and that she could continue under her previous work restrictions. He further opined that appellant's neck complaints were not the result of the July 30, 2001 work injury as by her own admission, such complaints did not start until four to six weeks after the injury.

[2] Dr. Huang's credentials are not of record.

By decision dated June 4, 2002, an Office hearing representative affirmed the denial of appellant's claim for continuation of pay for wage loss on the six intermittent dates claimed over the period August 11 through September 23, 2001.

On August 27, 2002 the Office requested that Dr. Wilde clarify his February 15, 2002 report and address appellant's accepted condition of bilateral trapezius sprain.

By decision dated August 28, 2002, the Office denied appellant's claim for wage-loss compensation for the period beginning October 3, 2001 as the evidence did not show a causal relationship between the claimed disability and the July 30, 2001 injury.

In an October 4, 2002 report, Dr. Wilde clarified that the pain appellant was having in her trapezius muscles was referred pain from her cervical spine and that, in his examination, he did not find any ongoing residuals with her shoulders. He thus, opined that appellant had no ongoing problems with her trapezius muscles and that there were no remaining residuals of the lumbosacral sprain.

On October 16, 2002 the Office requested that appellant's treating physician, Dr. Kelly, report on her status and respond to Dr. Wilde's February 15, 2002 report. In an October 25, 2002 report, Dr. Kelly advised that appellant had degenerative disc disease of the lumbar spine and intervertebral disc disorder with myelopathy caused or precipitated by the July 30, 2001 work injury. He disagreed with Dr. Wilde and requested a magnetic resonance imaging (MRI) scan. In a January 10, 2003 report, Dr. Kelly noted that a recent MRI scan showed degenerative changes in multiple facet joints consistent with arthritis of the lumbar spine. He opined that appellant's degenerative arthritis of the lumbar spine facet joints was aggravated by the July 30, 2001 work injury.

In a March 19, 2003 letter, the Office noted that a conflict in medical opinion existed between appellant's attending physician and the second opinion specialist regarding her current level of work-related disability. The Office referred appellant, along with the medical evidence of record and a statement of accepted facts, to Dr. Robert Anschuetz, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a May 1, 2003 report, Dr. Anschuetz noted the history of injury, reviewed the medical evidence of record and presented his examination findings. He advised that the MRI scan of the lumbar spine supported that appellant had degenerative facet disease. Dr. Anschuetz stated that he expected that she experienced temporary aggravation of her preexisting facet disease in the work-related accident of July 30, 2001, but that there were no continuing residuals of the injuries. He noted that appellant's examination was complicated by some inconsistencies on the physical examination which may have resulted from some embellishment of symptoms. However, Dr. Anschuetz stated that there were no significant abnormalities or evidence of ongoing injury to either the cervical spine or to either shoulder. Thus, he opined that there were no residuals from the work injury of July 30, 2001 and that there was no need for temporary or permanent work restrictions. Dr. Anschuetz opined, however, that appellant would benefit from a period of aggressive physical therapy and work hardening since she had not worked in a long time.

In a May 9, 2003 letter, appellant requested reconsideration of the Office's June 4, 2002 decision denying her claim for continuation of pay for intermittent dates in August and September 2001. Progress reports from Dr. Bernie dated October 19 through January 21, 2001 were submitted.

In a May 14, 2003 letter, the Office requested that Dr. Anschuetz clarify why physical therapy and work hardening were recommended if he found no remaining work-related residuals. In a May 14, 2003 response, he explained that appellant's overall fitness level had diminished and he did not think it was realistic to believe that she would be able to return to a higher level of activity immediately without a period of strengthening in terms of overall muscle strength and endurance. Dr. Anschuetz opined that appellant's restriction on activity was voluntary and had persisted past the time she should have recovered from her work-related injuries.

On May 28, 2003 the Office issued a proposed notice of termination of compensation for medical benefits on the grounds that appellant no longer had residuals of her work-related injuries of July 30, 2001.

On June 16, 2003 the Office received a number of medical reports. These included a December 3, 2001 report from Dr. Huang, who provided a diagnosis of active neck and lumbar strain and unsigned medical reports from The MetroHealth System dated July 30, August 2 and 13 and November 14, 2001 and March 25, 2002, documenting appellant's treatment.

By decision dated June 20, 2003, the Office denied modification of its June 4, 2002 decision regarding appellant's request for continuation of pay for the intermitted dates claimed for the period August 11 to September 23, 2001.

By decision dated June 30, 2003, the Office terminated appellant's medical benefits effective the same date on the basis that Dr. Anschuetz's opinion was entitled to special weight as the impartial medical examiner.

On July 1, 2003 the Office received a June 20, 2003 report from Dr. Edward H. Gabelman, a Board-certified orthopedic surgeon. He obtained from appellant the history of the work injury and subsequent treatment and presented his examination findings. A sprain of the cervical, thoracic and lumbosacral spine was diagnosed along with a sprain of both shoulders. Dr. Gabelman opined that appellant continued to have difficulties and that conservative treatment was warranted. He additionally noted that appellant felt she could return to her usual duties starting at four hours per day.

By decision dated July 15, 2003, the Office vacated the June 30, 2003 decision and rereviewed the evidence of file to include Dr. Gabelman's June 20, 2003 report. The Office terminated appellant's medical benefits effective July 15, 2003 on the basis that the weight of the medical evidence was represented by Dr. Anschuetz's opinions.

On July 16, 2003 appellant filed an appeal with the Board, which was assigned Docket No. 03-1877. he Board later dismissed the appeal on procedural grounds.[3]

On August 13, 2003 appellant filed another appeal with the Board and requested an oral argument. The oral argument was scheduled for November 23, 2004. However, she did not appear for the oral argument. Therefore, the Board's review is based upon the record.

LEGAL PRECEDENT -- ISSUE 1

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[4]

Office regulation states that a recurrence of disability includes a work stoppage caused by withdrawal of a light-duty assignment made specifically to accommodate the claimant's condition due to the work-related injury.[5] However, this withdrawal must have occurred for reasons other than misconduct or nonperformance of job duties.[6]

Office regulation provides hat an employer shall continue the regular pay of an eligible employee without a break in time for up to 45 calendar days except when the disability was not caused by a traumatic injury.[7]

ANALYSIS -- ISSUE 1

In this case, appellant returned to work in a limited-duty position on August 8, 2001 and worked in such position until she was terminated for cause on October 2, 2001. She has filed claims for continuation of pay and compensation for wage loss for six intermittent dates during the period August 11 to September 23, 2001 and for the period on and after October 3, 2001.

With respect to the six intermittent dates claimed during the period of August 11 to September 23, 2001, the Board notes that the Office is not required to authorize continuation of pay if the disability was not caused by a traumatic injury. During the period of August 11 to September 23, 2001, there is no factual evidence of disability due to a change in the nature and extent of the limited-duty job requirements, nor is there any medical evidence documenting a

[3] Docket No. 03-1877 (issued June 24, 2004).

[4] *Barry C. Peterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(1)(b) (May 1997).

[6] *Id.*

[7] 20 C.F.R. § 10.220(a).

worsening in appellant's condition. While Dr. Bernie attempted to retroactively support the periodic dates appellant took off, his reports are insufficient to support the allowance of wage loss under continuation of pay for the claimed dates. The record reflects that he first examined appellant on October 3, 2001 and opined, in a November 9, 2001 letter, that it would have been reasonable to assume that she was disabled from work on the dates claimed as she had signs of muscle spasms and weakness on her October 3, 2001 examination. Dr. Bernie, however, did not examine appellant during the period in question and he essentially relied on her self-report of disability. His opinion is speculative and insufficiently rationalized as to why appellant would have been medically unable to work at her limited-duty position during the intermittent days claimed.[8] Thus, Dr. Bernie's reports do not constitute probative evidence of appellant's inability to work on the six dates claimed for continuation of pay during the period August 11 to September 23, 2001. Additionally, the evidence indicates that, from September 20 to 22, 2001, appellant missed work to attend a wedding and not because she had disability due to a traumatic injury. Thus, the evidence does not establish that her disability was caused by a traumatic injury.

Additionally, the Board finds that appellant failed to establish that her work stoppage on October 2, 2001 was due to the employing establishment's withdrawal of her light-duty assignment or due to a change in the nature and extent of the injury-related condition. The Board has held that, when a claimant stops work for reasons unrelated to his accepted employment injury, he has no disability within the meaning of the Federal Employees' Compensation Act.[9]

There is no evidence to establish that appellant's work stoppage on October 2, 2001 was due to her physical inability to perform her assigned duties, rather than her termination for failure to maintain her schedule. Although Dr. Bernie opined, in his February 6, 2002 statement, that appellant's job duties after she returned to work on August 8, 2001 had aggravated her condition and caused a relapse, his opinion is of diminished probative value as he offered no rationale or any medical explanation as to how she was prevented from performing her limited-duty assignment or when such relapse occurred.[10] Although Dr. Kelly, in his January 10, 2003 report, opined that appellant's degenerative arthritis of the lumbar spine facet joints was aggravated by the July 30, 2001 work injury, he failed to provide an opinion on whether she was precluded from performing her limited-duty position. As such, Dr. Kelly's report is insufficient to support appellant's wage-loss claim after October 2, 2001.

For wage loss claimed after her October 2, 2001 termination, appellant has not provided sufficient evidence to establish that the employing establishment withdrew her light-duty assignment for reasons other than cause -- failure to maintain her schedule. Accordingly, she has not established entitlement to her claims for continuation of pay for wage loss during intermittent dates during the period August 11 to September 23, 2001 or from the wage loss claimed on and after October 3, 2001.

[8] *See Brian E. Flescher*, 40 ECAB 532 (1989).

[9] *John W. Normand*, 39 ECAB 1378 (1988). The implementing regulations of the Act define disability as "the incapacity, because of employment injury, to earn the wages the employee was receiving at the time of injury." 20 C.F.R. § 10.5(f) (1999).

[10] *Albert C. Brown*, 52 ECAB 152 (2000).

LEGAL PRECEDENT -- ISSUE 2

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[11] After it has determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[12] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which would require further medical treatment.[13]

ANALYSIS -- ISSUE 2

The Office properly determined that a conflict of medical opinion existed based on the opinions of Dr. Wilde, for the Office and Dr. Kelly, for appellant, regarding whether appellant had residuals of her employment injury. Therefore, the Office correctly referred appellant to an impartial medical examiner.[14]

In his May 1, 2003 report, Dr. Anschuetz, the impartial medical examiner, concluded that although appellant had degenerative facet disease, the injury of July 30, 2001 only temporarily aggravated this preexisting condition as there were no significant abnormalities or evidence of ongoing injury to either the cervical spine or to either shoulder. He noted that appellant appeared to be embellishing her symptoms and he found no basis on which to attribute any continuing residuals to the work injury of July 30, 2001. In his supplemental report of May 14, 2003, Dr. Anschuetz clarified his reason for recommending physical therapy and work hardening was due to appellant's inactivity since the injury and his belief that her voluntary restrictions on activity persisted past the time she should have recovered from the work-related injuries. He did not indicate that the employment injury necessitated any continuing treatment.

[11] *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[12] *Mary A. Lowe*, 52 ECAB 223 (2001).

[13] *Id., Leonard M. Burger*, 51 ECAB 369 (2000).

[14] The Act provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

The Board finds that the Office properly relied on the impartial medical examiner's reports of May 1 and 14, 2003 in determining that appellant no longer had an employment-related disability. Dr. Anschuetz's opinion is sufficiently well rationalized and based upon a proper factual background. He examined appellant, reviewed her medical records and reported accurate medical and employment histories. Accordingly, the Office properly accorded special weight to the impartial medical examiner's findings.[15]

Although appellant provided a number of medical reports and treatment notes from 2001 and 2002, these reports did not address her current medical condition and, thus, were of reduced probative value and insufficient to outweigh or create a conflict with Dr. Anschuetz's medical opinions. She also submitted Dr. Gabelman's June 20, 2003 report in which he opined that appellant had a sprain of the cervical, thoracic and lumbosacral spine along with a sprain of both shoulders and that she continued to have difficulties as a result of the July 30, 2001 work injury. The Board notes, however, that Dr. Gabelman did not explain or provide medical rationale supporting his conclusion. He did not offer any medical rationale for how his diagnoses relate to the July 30, 2001 injury, nearly two years later, or discuss the impact of appellant's preexisting degenerative disc disease and how it related to her work-related injury. As his report offers no medical explanation for her ongoing conditions, it is of diminished probative value and is insufficient to show how appellant's current conditions were caused, precipitated, accelerated or aggravated by the accepted work injuries.[16] Therefore, Dr. Gabelman's report is insufficient to overcome the weight of the impartial medical specialist's reports or to create a new conflict of medical opinion.[17]

CONCLUSION

The Board finds that appellant has not established that she is entitled to compensation or continuation of pay for wage loss during intermittent dates from August 11 through September 23, 2001 or for compensation for the period on and after October 3, 2001. The Board also finds that the Office met its burden of proof to terminate appellant's medical benefits on July 15, 2003.

[15] In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

[16] *See Ricky S. Storms*, 52 ECAB 349 (2001).

[17] *Michael Hughes*, 52 ECAB 387 (2001).

ORDER

IT IS HEREBY ORDERED THAT the July 15 and June 20, 2003 and August 28, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 1, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member