

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

NANCY HAMLETT, Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Gilbert, AZ, Employer)

**Docket No. 04-2117
Issued: February 24, 2005**

Appearances:

*Kathi G. Hamby, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On August 27, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 25, 2003, denying modification of a December 1, 1999 decision which denied her recurrence of disability claim. 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 on appeal is whether appellant met her burden of proof to establish that she sustained a recurrence of disability commencing on February 2, 1999 causally related to an accepted August 27, 1997 employment injury.

FACTUAL HISTORY

This case has previously been on appeal before the Board.¹ In a March 24, 2003 decision, the Board found that a February 25, 2002 decision of the Office, denied appellant's

¹ Docket No. 02-1749 (issued March 24, 2003).

request for reconsideration as being untimely, but did not discuss the presumption created by the mailbox rule. The Board remanded the case for consideration of whether appellant filed a timely request for reconsideration. The facts and history contained in the prior appeal are incorporated by reference.

In a letter dated April 30, 2001, appellant, through her attorney, requested reconsideration and argued that appellant had submitted a timely request for reconsideration on November 30, 2000. Appellant's representative further argued that appellant's accepted conditions should include a diagnosis of symptomatic annular tears at L3-4 and L4-5 and asymptomatic tears at L5-S1 based on an August 9, 1999 discography and findings in a December 15, 1999 report from Dr. Thomas Grade, a Board-certified anesthesiologist. Appellant's representative contended that the Office hearing representative in the most recent merit decision improperly relied upon the opinions of Office referral physicians because their reports were not based upon the complete medical record.

In a December 15, 1999 report, Dr. Grade advised that appellant had chronic persistent pain and came in for a review of her case and her discograms. He related that appellant alleged that she was frustrated with her condition and wished to return to work but was unable to do so because of chronic pain. Dr. Grade noted that appellant had no prior history of lumbar spine pain or disability prior to the August 27, 1997 work injury. He reviewed diagnostic reports taken on August 9, 1999 and advised that the lumbar discography revealed a normal study at L2-3 and a maximally symptomatic annular disruption and discogenic pain at L4-5 and to a lesser extent at L3-4. Dr. Grade noted that at L3-4, there was a clear, central and posterior tear, which was symptomatic and that her pain was concordant in the back and left leg. He advised that the L4-5 disc revealed a broad based central posterior tear, with disc discomfort more severe at L3-4 with a reproduction of back pain and down the left leg. Regarding the L5-S1 disc, he indicated that it was abnormal as well, with a tear off to the posterolateral location to the left, noting that appellant was not symptomatic from this tear. Dr. Grade indicated that appellant had a "condition which would respond 50 percent or more of the time to intradiscal annuloplasty with thermomodulation using the oratec catheter system. (IDET)" He diagnosed symptomatic annular tears at L3-4 and L4-5, with an annular tear at L5-S1, which was not symptomatic and a normal disc at L2-3. Dr. Grade noted that appellant had radicular type features which were due to chemical radicular pain and which were probably secondary to fossa lipase A2 release or an inflammatory response. He opined that "there is no question in my mind, beyond a reasonable doubt, that the patient's pain is secondary to the incident occurring at work on August 27, 1997."

By decision dated August 25, 2003, the Office denied modification of the December 1, 1999 decision of the Office hearing representative.

LEGAL PRECEDENT

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 substantive 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 light-duty job requirements.²

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence.³ This consists of 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.⁴ The physician's opinion 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.⁵

ANALYSIS

The Office accepted that on August 27, 1997 appellant sustained a lumbosacral strain and she returned to intermittent light duty on October 8, 1997. On March 29, 1999 the Office determined that she no longer had residuals from the accepted work injury. As noted in the Board's March 24, 2003 decision, the Office based its decision upon the opinions of Dr. Michael Winer, a Board-certified orthopedic surgeon and appellant's attending physician, and Drs. Zoran Maric and Borislav Stojic, Board-certified orthopedic surgeons and Office referral physicians. The physicians concluded that appellant had no evidence of physical limitations resulting from her employment injury and that diagnostic tests showed mild disc bulging but no significant abnormality. They found that appellant was fit for regular duty with no restrictions. Appellant's physician, Dr. Winer, opined that appellant should seek a change in job description to a job less physically demanding because of her underlying degenerative disc disease. Appellant subsequently requested reconsideration and alleged that she sustained a recurrence of disability commencing on February 2, 1999. The Office requested that she provide medical evidence that would establish a causal relationship between her current conditions and her present disability.

The Board finds that appellant has not submitted sufficient reasoned medical evidence that she had disability beginning February 2, 1999 causally related to her August 27, 1997 employment injury. Appellant did not provide any medical reports, based on objective findings, which establish that there has been a change in the nature and extent of her condition such that she can no longer perform her light-duty job and also has provided no evidence to establish that there has been a change in the nature and extent of her light-duty job requirements.

The medical evidence in support of appellant's claim included a December 15, 1999 report from Dr. Grade, who advised that she came in for a reassessment and review of her case.

² *Richard E. Konnen*, 47 ECAB 388 (1996); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

³ *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

⁴ *Duane B. Harris*, 49 ECAB 170, 173 (1997).

⁵ *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

He noted that appellant had no prior history of lumbar spine pain or disability prior to the August 27, 1997 work injury. However, the record reflects that appellant filed eight separate claims, six of which were accepted by the Office and which affected the lumbar region. A physician's opinion in support of causal relationship is of diminished probative value where the opinion is based on a history of injury that is not corroborated by the contemporaneous medical history contained in the case record.⁶ Although he noted the L5-S1 disc was abnormal and that appellant had a tear off to the posterolateral location to the left, he advised that appellant was not symptomatic, although she might be in the future. The Board has held that speculative opinions are of limited probative value.⁷ Additionally, although Dr. Grade opined that appellant's pain was secondary to the August 27, 1997 employment incident, he did not provide sufficient medical rationale explaining how and why appellant's disability beginning February 2, 1999 was related to the accepted employment injury. He provided little explanation explaining how the lumber conditions he diagnosed resulted from appellant's employment injury, accepted for a strain.

Appellant's representative referred to diagnostic reports previously of record and the discograms dated August 9, 1999. However, these reports merely noted findings and do not contain a physician's opinion regarding causal relationship. Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.⁸

The Board finds that the medical reports submitted by appellant do not contain a sufficiently rationalized opinion to explain why appellant could no longer perform the duties of her light-duty position beginning February 2, 1999. As appellant has not submitted medical evidence establishing that she sustained a recurrence of disability beginning February 2, 1999 due to her accepted employment injury, she has not met her burden of proof.

CONCLUSION

The Board finds that appellant did not establish that she sustained a recurrence of disability commencing February 2, 1999 due to the August 27, 1997 employment injury.

⁶ *Caroline Thomas*, 51 ECAB 451 (2000).

⁷ *Jennifer L. Sharp*, 48 ECAB 209 (1996).

⁸ *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

ORDER

IT IS HEREBY ORDERED THAT the August 25, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 24, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member