United States Department of Labor
Employees' Compensation Appeals Board

MARCIA E. McMAHON, Appellant	)	
and	)	**Docket No. 05-54**
	)	**Issued: May 5, 2005**
DEPARTMENT OF THE AIR FORCE, FAMILY SUPPORT, CDC Brunssum, Netherlands, Employer	)	

Appearances:
Alan J. Shapiro, 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
DAVID S. GERSON, Alternate Member

JURISDICTION

On October 4, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated December 22, 2003 and September 7, 2004 wherein the Office denied appellant's claim for recurrence of disability. 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 sustained any disability on or after June 14, 2001 causally related to her May 12, 1999 employment injury.

FACTUAL HISTORY

On November 22, 1999 appellant, then a 47-year-old education technician, filed a traumatic injury claim alleging that, on May 2, 1999, while trying to contain a child having a temper tantrum, she twisted the right side of her shoulder, neck and elbow. On February 1, 2000 appellant's claim was accepted for back strain, neck strain and right shoulder strain.

Appellant received treatment in Germany from Dr. Mary G. Durbin, a Board-certified family practitioner, who released appellant to light work as of March 1, 2000. In an attending physician's report dated May 2, 2000, Dr. Durbin indicated that appellant sustained a strain which was caused by her employment activity of May 12, 1999, that she was totally disabled from May 31, 1999 until March 3, 2000 after which she was partially disabled and that appellant was able to resume her regular work on April 17, 2000. She indicated that, although appellant could do full-time light-duty work, she could not perform heavy lifting or pulling.

On May 12, 2000 appellant moved back to the United States from the Netherlands. Appellant worked at Crabtree and Evelyn from March 15, 2001 until July 18, 2001 as a sales clerk.

Appellant first saw Dr. H. Martin Wrigley, a Board-certified internist on January 16, 2001 for her yearly mammogram. In a July 12, 2002 attending physician's report, Dr. Wrigley indicated that appellant had a mild cervical disease with arm pain which he attributed to appellant's employment activities. In a report dated July 26, 2002, Dr. Wrigley indicated that appellant had a work injury on May 12, 1999 when she had her right arm pulled by a child while attempting to break up a dispute, and that, since this injury, she has been diagnosed with cervical disc disease. He further noted that appellant continued to have neck stiffness, occasional neuropathy and mildly reduced range of motion.

On August 13, 2002 appellant filed a claim alleging a recurrence of her May 12, 1999 injury on June 14, 2001, with work stoppage on July 18, 2001. She explained that the recurrence happened when she was doing her job of lifting boxes, stocking shelves and leaning over the computer. Appellant indicated that she sustained the "same strain and trauma on neck and arm."

By letter dated February 5, 2003, the Office requested that appellant submit further information with regard to her claim for recurrence.

In a March 4, 2003 medical report, Dr. Wrigley noted that appellant's diagnosis was chronic cervical disc disease with radiculopathy. He noted, "Her present condition does affect her work status, but should not prevent her from employment."

By decision dated December 2, 2003, the Office denied appellant's claim for recurrence as the medical evidence did not demonstrate that appellant's condition was related to her original work injury.

On December 22, 2003 appellant, through her attorney, requested an oral hearing.

On April 23, 2004 Dr. Wrigley indicated that appellant originally injured her right arm at work and was unable to return to work. He indicated that he began to see appellant after she returned to the United States. Dr. Wrigley noted that appellant's functional capacity test concluded that appellant demonstrated the ability to perform a sedentary physical job, with greater strength for pushing and pulling. He noted that her greatest limitation would be using her arms for reaching and that she should change her position occasionally to keep cervical pain to a minimum. Dr. Wrigley also noted that overhead work should be limited.

At the hearing held on June 24, 2004, appellant testified that she returned to part-time work in March 2000 doing administrative duties and that she never returned to full-time work. Appellant alleged that she stopped work in March 2001 because of a recurrence of her 1999 employment injury. Appellant acknowledged that, if she had not left Germany, she would still be working four hours a day, but that she removed herself from that job. In March 2001 appellant began working part time at Crabtree and Evelyn as a clerk. Appellant noted that she sustained serious injuries in her January 1995 motor vehicle accident including concussion, whiplash, broken ribs and internal hemorrhaging, but that this predated her work injury. She stated that her primary reason for her inability to work was her severe neck problem.

In a report dated August 24, 2004, Dr. Wrigley indicated that appellant had been under his care since January 16, 2001. He noted that it was his professional opinion that since appellant has been his patient she is fully capable to perform duties expected of her in the workplace.

By decision dated September 7, 2004, the hearing representative affirmed the Office's denial of appellant's claim.

LEGAL PRECEDENT

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.[1] 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.[2] Moreover, the physician's conclusion must be supported by sound medical reasoning.[3]

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[4] 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.[5] While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be

[1] *Robert H. St. Onge*, 43 ECAB 1169 (1992).

[2] Section 10.104 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. The physician's report should include the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, and work limitations or restrictions and the prognosis. 20 C.F.R. § 10.104.

[3] *See Robert H. St. Onge, supra* note 1.

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

[5] For the importance of bridging information in establishing a claim for recurrence of disability, *see Robert H. St. Onge, supra* note 1; *Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Richard McBride*, 37 ECAB 748 (1986).

speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[6]

ANALYSIS

In the instant case, the Office accepted that as a result of appellant's May 12, 1999 employment injury, appellant had sustained back strain, neck strain and right shoulder strain. The record indicates that, after the injury, appellant stopped work. Appellant returned to part-time limited-duty work in March 2000, and in a medical report dated May 2, 2000, Dr. Durbin, appellant's treating physician, indicated that appellant could return to full-time limited-duty work. However, appellant elected to return to the United States on May 12, 2000. Appellant did not work until March 15, 2001 when she worked as a part-time clerk for Crabtree and Evelyn. Appellant stopped this work on July, 18, 2001 and this is the date appellant noted in her claim for work stoppage.

Appellant's claim that she sustained a recurrence of the employment injury is not persuasive. Appellant voluntarily left her limited-duty position when she returned to the United States on May 12, 2000. There is no record that she saw a physician with regard to her employment-related injury in the United States until July 12, 2002. She initially saw Dr. Wrigley for her annual mammogram. Dr. Wrigley fails to give a well-rationalized opinion linking appellant's condition to her May 2, 1999 employment injury as he essentially repeated appellant's version of what occurred. None of his reports contains a detailed discussion of appellant's work injury. Finally, appellant alleged a recurrence of injury on June 14, 2001 with work stoppage on July 18, 2001. The Board notes that at that time appellant was working as a clerk at Crabtree and Evelyn, and was lifting boxes, stocking shelves and doing other manual labor. A "recurrence of disability" means the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[7] The evidence does not establish that her condition after July 18, 2001 was due to the accepted injury; thus the Board finds that appellant has not met her burden of proof to establish a recurrence of disability causally related to the May 12, 1999 employment injury.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained any disability on or after June 14, 2001 causally related to her May 12, 1999 employment injury.

[6] *See Rickey S. Storms*, 52 ECAB 349 (2001); *Morris Scanlon*, 11 ECAB 384, 385 (1960).

[7] 20 C.F.R. § 10.5(x) (2002).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 7, 2004 and December 22, 2003 are hereby affirmed.

Issued: May 5, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member