United States Department of Labor
Employees' Compensation Appeals Board

S.C., Appellant	)	
and	)	**Docket No. 05-1591**
	)	**Issued: August 14, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Colorado Springs, CO, Employer	)	

Appearances:
Timothy Quinn, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 25, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 19, 2005 decision which affirmed the denial of his claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability for intermittent periods beginning January 15 to May 8, 2003 due to his February 8, 2001 employment injury.

FACTUAL HISTORY

On February 8, 2001 appellant, then a 55-year-old letter carrier, slipped on an icy sidewalk and injured his left hip and back. The Office accepted a contusion of the left hip/thigh, sprain of the left wrist/hand, sprain/strain of the right rib and his claim was later accepted for lumbar strain, bilateral shoulder strain and an adjustment reaction with depression. Appellant

stopped on June 13, 2001 and returned to a light-duty position on July 1, 2002 and worked intermittently thereafter.

Initial treatment notes dated February 8 to March 5, 2001 from Dr. Jeff Wuerker, Board-certified in emergency medicine, provided a history of injury and diagnosed left hip and buttocks contusion, right chest wall strain, left wrist sprain, back strain and bilateral shoulder pain. He stated that appellant could return to work with lifting restrictions. In a report dated April 16, 2001, Dr. Cynthia J. Lund, an osteopath, noted a history of injury and diagnosed bilateral shoulder strain, myositis, left hip contusion/bursitis, lumbar strain and degenerative joint disease of the bilateral shoulders. On July 31, 2001 Dr. Lund advised that appellant could work with restrictions. Dr. Richard D. Marciniak, a Board-certified psychiatrist, noted on September 10, 2001 that appellant was treated for major depression with profound cognitive and mood disturbances. In reports dated June 6 and 27, 2002, he advised that appellant had a work injury in July 2001 which caused unremitting pain, inability to work, and financial stressors which precipitated appellant's depression. Dr. Marciniak opined that appellant's condition resolved with medication and therapy and that he could return to work on July 1, 2002 without restrictions.

Appellant came under the treatment of Dr. Katharine J. Leppard, a Board-certified physiatrist, who noted in a duty status report dated April 11, 2002 that appellant could return to work full time with various restrictions. In reports dated July 11 and September 27, 2002, she diagnosed chronic low back pain with underlying degenerative disc changes and facet arthropathy, cervical strain with intermittent pain and a complicated work situation. Dr. Leppard noted that appellant could not lift over 20 pounds and could not perform overhead work and would require the ability to sit and stand at will.

On August 22, 2002 the employing establishment offered appellant a limited-duty position, eight hours per day. The position included lifting/carrying up to 20 pounds, simple grasping for 8 hours per day, standing for 3 hours per day, walking, stooping, bending, twisting, climbing and pushing and pulling for 1 to 2 hours per day, sitting for 3 to 6 hours per day, operating a vehicle up to 6 hours per day, kneeling for 1 hour per day, carrying 1 to 2 hours per day limited to 20 pounds and no reaching above the shoulders. The duties included no "CFS [computerized forwarding system]," no record mail daily, deliver express mail as needed, deliver street mail for carriers, carrier review mail, deliver "NDCBU [neighborhood delivery and collection box unit]" up to three hours per day, with standing for three hours per day and twisting for one to two hours intermittently. Appellant accepted the position.

In an October 28, 2002 report, Dr. Leppard noted that she could not relate appellant's shoulder or hip pain to the initial injury. In reports dated October 28 and November 22, 2002, Dr. Leppard noted restrictions on lifting not to exceed 20 pounds 1 to 2 hours per day, sitting for 3 to 6 hours per day, standing for 3 hours per day, walking, climbing stairs, bending, stopping, twisting, pushing and pulling limited to 1 to 2 hours per day, kneeling 1 hour per day, simple grasping and fine manipulation 8 hours per day and avoid reaching above the shoulder.

On January 15, 2003 the employing establishment offered appellant a limited-duty position, eight hours per day. The physical requirements of the position included lifting/carrying up to 20 pounds for 1 to 2 hours per day, simple grasping and fine manipulation for 8 hours per

day, standing for 3 hours per day, walking, stooping, bending, twisting, climbing and pushing and pulling for 1 to 2 hours per day, sitting for 3 to 6 hours per day, no restrictions on operating a vehicle for 3 to 6 hours per day, kneeling for 1 hour per day, carrying 1 to 2 hours per day not to exceed 20 pounds and no reaching or work above the shoulders. The duties included casing routes with a pedestal to avoid reaching over the shoulder, deliver park and loop not to exceed 1 to 2 hours intermittently and 30-minute intervals, deliver curb side not to exceed 1 to 2 hours per day, deliver mail to "NBU" from vehicle by twisting the seat, deliver "NBU" with total standing not to exceed 3 hours, separate mail as needed for carriers new to routes, perform carrier review mail, CFS no record mail, deliver express mail as needed, maintain "AVUS." The job offer further noted that the restrictions as defined were not to be exceeded. Appellant refused the job offer.

Appellant submitted a report from Dr. G. Thomas Morgan, a Board-certified physiatrist and colleague of Dr. Leppard, dated February 7, 2003. He renewed the work restrictions prescribed by Dr. Leppard in November 2002.

On March 2, 2003 the Office referred appellant for a second opinion to Dr. Robert Kleinman, a Board-certified psychiatrist, to determine whether appellant had a work-related psychological condition. In a report dated April 29, 2003, he diagnosed adjustment reaction with depression, resolved. Dr. Kleinman indicated that appellant's adjustment reaction was due to his work-related injury and opined that appellant's psychiatric condition had resolved and that he could work without restriction.

Appellant began treatment with Dr. Jack L. Rook, a Board-certified physiatrist, who in a March 20, 2003 report, noted a history of injury and diagnosed chronic low back pain, chronic mid-back pain, chronic neck pain, upper extremity paresthesias, bilateral shoulder pain and sleep disturbance. He stated that magnetic resonance imaging (MRI) scans revealed a disc bulge at L5-S1, mild disc bulges at C3-4 and C5-6, and a disc bulge at T7-8. Dr. Rook noted that appellant had low back, left leg, and shoulder pain. He recommended a surgical evaluation and additional testing. In a duty status report dated April 7, 2003, Dr. Rook noted that appellant could return to work full time subject to various restrictions and on May 9, 2003 renewed those restrictions and also provided that appellant could not lift above waist level, he could not have satchel straps over either shoulder and he could not case mail. On May 23, 2003 Dr. Rook noted that appellant could work full time with restrictions on lifting of no more than 20 pounds 1 to 2 hours per day, sitting for 3 to 6 hours per day, standing for 3 hours per day, walking, twisting, bending, stooping, twisting, pushing and pulling, lifting, squatting, kneeling, and climbing limited to 1 to 2 hours per day, reaching for 2 hours per day, no reaching above the shoulder, repetitive movements of the wrist and elbow for 8 hours per day. He noted that restrictions would apply for 6 to 12 months.

On April 4, 2003 the Office referred appellant for a second opinion to Dr. Glen D. Kelley, a Board-certified physiatrist, to determine if he had residuals of his work injury. In an April 22, 2003 report, he noted appellant's history and noted that appellant's lumbar strain, bilateral shoulder strain and rotator cuff strain were work related. However, the cervical strain and underlying degenerative joint disease of the shoulders were unrelated to his job. The major limiting factor for appellant was the left joint strain and rotator cuff tendinitis that was caused by the work injury. Dr. Kelley stated that appellant could return to work subject to permanent

restrictions on sitting and reaching for 4 hours per day, walking, standing and reaching above the shoulder for 2 hours per day, twisting for 2 hours intermittently, pushing and pulling for 4 hours not to exceed 30 pounds, lifting for 8 hours not to exceed 8 pounds and lifting for 1 hour not to exceed 30 pounds, squatting, kneeling and climbing were occasional up to 1 hour and breaks for 10 minutes every 2 hours.

Appellant submitted additional reports from Dr. Rook dated May 9 to August 13, 2003. Dr. Rook noted that appellant could work subject to the restrictions previously set forth.

On May 13, 2003 the Office accepted a lumbar sprain, bilateral sprain/strain of the rotator cuff and depression (adjustment reaction) now resolved. On May 15, 2003 the employing establishment offered appellant a limited-duty position which appellant accepted.

On August 27, 2003 the Office found a conflict of medical opinion as to appellant's work limitations. Dr. Rook, appellant's physician, indicated that appellant could return to work with sitting limited to three to six hours, walking limited to one to two hours, no reaching above the shoulder, twisting and bending/stooping limited to one to two hours, operating a car for three to six hours, pushing, pulling and lifting limited to one to two hours not to exceed 20 pounds, squatting, kneeling and climbing limited to one to two hours. Dr. Kelley, an Office referral physician, provided work restrictions of sitting for four hours, reaching above the shoulder limited to two hours per day, pushing, pulling was limited to four hours not to exceed 30 pounds, lifting up to eight hours not to exceed 8 pounds and lifting one hour not to exceed 30 pounds.

Appellant submitted reports from Dr. Rook from May 9 to December 22, 2003, noting appellant's continued restrictions along with MRI scan findings of right and left shoulder. An April 30, 2003 report from Dr. Jeffrey B. Kleiner, a Board-certified orthopedist, noted diagnosed probable internal disc disruption at T7-8 and L5-S1.

On September 18, 2003 appellant filed two CA-7 forms, claim for compensation, noting he was totally disabled beginning July 11 to August 19, 2002 and intermittently from January 15 to May 18, 2003.

Appellant was referred to Dr. Yechiel Kleen, a Board-certified orthopedic surgeon, selected as the impartial medical specialist. In a report dated October 20, 2003, he reviewed the records and set forth findings on physical examination of appellant. Dr. Kleen diagnosed status post work-related injury on February 8, 2001, residual left hip, left wrist sprain, lumbar strain and bilateral shoulder strain, adjustment reaction and depression, bilateral shoulder arthritic changes unrelated to the work injury and cervical and lumbosacral degenerative changes unrelated to the work injury. He noted that appellant had reached maximum medical improvement. Dr. Kleen opined that appellant could work subject to the following restrictions sitting five to six hours per day, walking two hours per day, standing three hours per day, no reaching above the shoulders, reaching below the shoulders limited to four hours per day, twisting and bending two hours per day, driving five to six hours per day, pushing and pulling three hours per day not to exceed 30 pounds, lifting two hours per day not to exceed 20 pounds and squatting, kneeling and climbing occasionally.

On March 22, 2004 the employing establishment offered appellant a limited-duty position, eight hours per day with a tour of duty beginning at 9:00 a.m. The job was in conformance with the restrictions set forth by Dr. Kleen on October 20, 2003. On March 29, 2004 appellant accepted the position. He stopped work on May 9, 2004.

On August 19, 2004 the Office granted appellant's claim for total disability from July 12 to August 19, 2002. However, the Office denied appellant's claim for disability for the period January 15 to May 8, 2003, on the grounds that the medical evidence was insufficient to establish that he was disabled due to his work-related injury.

In an undated letter, appellant through his attorney contended that on January 15, 2003 the employing establishment offered him a new job which required him to perform duties outside his restrictions. He refused the new job and he was forced to use three hours leave per day because he could not perform certain duties of the new job. Appellant asserted that this constituted a recurrence of disability. He submitted leave summary statements which revealed that he used leave without pay for three hours per day from January 15 to February 4, 2003, eight hours per day from February 5 to 7, 2003, three hours per day from February 10 to 13, 2003, eight hours per day from February 18 to March 8, 2003, three hours per day from March 10 to March 19, 2003, eight hours per day from March 21, 2003, three hours per day from March 22 to April 19, 2003, eight hours per day from April 21 to 22, 2003 and three hours per day from April 24 to May 8, 2003.

In a decision dated May 28, 2004, the Office denied appellant's claim for compensation for the period January 15 to May 8, 2003. The Office found that the work available was within his light-duty restrictions and that the medical evidence did not show a change in the nature and the extent of the injury-related condition.

Appellant requested an oral hearing that was held on February 24, 2005. He submitted several reports from Dr. Rook dated May 20 to August 17, 2004 who stated that appellant experienced an exacerbation of back pain on May 10, 2004 and had been unable to work since that time. In reports dated November 5, 2004 to April 7, 2005, Dr. Rook advised that appellant remained totally disabled. Appellant submitted reports from Dr. Kleiner dated June 16, 2004 to February 3, 2005 who advised that he had T7-8 disc herniation and L5-S1 internal disc disruption which were work related. He opined that appellant was totally disabled from May 10, 2004. In reports dated July 14, 2004 to February 3, 2005, Dr. Kleiner advised that conservative treatment failed and recommended a multilevel lumbar spinal fusion and decompression surgery. Appellant submitted statements from several coworkers who indicated that in January 2003 he was unable to perform certain duties in his job description.

The employing establishment submitted a March 28, 2005 statement indicating that appellant was not required to twist in order to case mail. Additionally, it was noted that appellant did not have to reach above his shoulder to hold a steering wheel and twisting was not required for backing or pulling the brake. The employing establishment further indicated that appellant would not have to reach above his shoulders to work with the "NBU" equipment as it measured well below shoulder level.

In a decision dated May 19, 2005, the hearing representative affirmed the May 28, 2004 decision.

LEGAL PRECEDENT

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 he 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 requirements.[1]

Causal relationship is a medical issue,[2] 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.[3]

ANALYSIS

After his injury of February 8, 2001, appellant returned to a limited-duty position as a modified letter carrier. He claimed a recurrence of disability for intermittent hours from January 15 to May 8, 2003 based on his assertion that his light duty did not comply with his physical restrictions. However, appellant has not submitted sufficient medical evidence to support 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.

The Office reviewed the medical evidence and determined that a conflict in medical opinion existed between appellant's attending physician, Dr. Rook, and Dr. Kelley, the Office referral physician, concerning the appellant's work restrictions. Thus, the Office referred appellant to Dr. Kleen to resolve the conflict.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[4]

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[1] *Terry R. Hedman*, 38 ECAB 222 (1986). *See* 20 C.F.R. § 10.5(x) for the definition of a recurrence of disability.

[2] *Mary J. Briggs*, 37 ECAB 578 (1986).

[3] *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[4] *Aubrey Belnavis*, 37 ECAB 206 (1985).

The Board finds that, under the circumstances of this case, the opinion of Dr. Kleen is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes appellant's work restrictions. The work restrictions set forth in Dr. Kleen's report are consistent with the duties of the limited-duty position that the employing establishment made available to appellant on January 15, 2003.

Dr. Kleen's October 20, 2003 report reviewed appellant's history and noted findings on examination. He diagnosed status post work-related injury on February 8, 2001, residual left hip, left wrist sprain, lumbar strain and bilateral shoulder strain, adjustment reaction and depression, bilateral shoulder arthritic changes unrelated to the work injury and cervical and lumbosacral degenerative changes unrelated to the work injury. Dr. Kleen opined that appellant could work subject to the following restrictions sitting was limited to 5 to 6 hours per day, walking was limited to 2 hours per day, standing was limited to 3 hours per day, no reaching above the shoulders, reaching below the shoulders was limited to 4 hours per day, twisting and bending was limited to 2 hours per day, driving was limited to 5 to 6 hours per day, pushing and pulling was limited to 3 hours per day not to exceed 30 pounds, lifting not to exceed 2 hours per day or 20 pounds and squatting, kneeling and climbing occasionally.

The Board finds that the Office properly relied on Dr. Kleen's October 20, 2003 opinion in determining appellant's work-related restrictions. Dr. Kleen's opinion is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight with regard to appellant's work restrictions. He not only examined appellant, but also reviewed appellant's medical records. Dr. Kleen reported accurate medical and employment histories. His report sets forth work restrictions that are consistent with the limited-duty position that the employing establishment made available on January 15, 2003.[5] Appellant did not otherwise submit evidence supporting that the light-duty job did not remain available during the period at issue or that the requirements of that position changed during the period at issue.

Appellant contends that the job offer of January 15, 2003 violated his work restrictions and specifically noted that performing "NBU" duties required over the shoulder work, that the mail boxes were over his head and he could not perform his duties from his vehicle. The Board finds these contentions without merit. The weight of the medical evidence, noted above, supports that appellant's job duties beginning January 15, 2003 were not outside his restrictions. Also, the employing establishment advised that appellant would not have to reach above his shoulder to hold a steering wheel, twisting was not required for backing or pulling the brake, appellant would not have to reach above his shoulders to work with the "NBU" equipment as it measured well below shoulder level and appellant was not required to twist in order to case mail, rather the ergonomic way to case mail was to turn your whole body. There is no credible evidence which substantiates that appellant experienced a change in the nature and extent of the light-duty requirements or was required to perform duties which exceeded his medical

[5] As noted in the facts of the case, the physical requirements of the position offered on January 15, 2003 included lifting/carrying up to 20 pounds for one to two hours per day, simple grasping and fine manipulation for eight hours per day, standing for three hours per day, walking, stooping, bending, twisting, climbing and pushing and pulling for one to two hours per day, sitting for three to six hours per day, no restrictions on operating a vehicle for three to six hours per day, kneeling for one hour per day, carrying one to two hours per day not to exceed 20 pounds and no reaching or work above the shoulders.

restrictions. The light-duty position performed by appellant was in conformance with the medical restrictions set forth by the referee physician, Dr. Kleen.

Consequently, appellant has not established and change the nature and extent of the light-duty requirements.

Appellant also did not establish a change in the nature and extent of the injury-related condition. He continued submitting reports from Dr. Rook regarding appellant's restrictions after his examination by Dr. Kleen. However, reports from a physician who was on one side of a medical conflict that an impartial specialist resolved are, generally, insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict.[6] Dr. Rook did not specifically address appellant's disability for the period January 15 to May 8, 2003. None of Dr. Rook's reports, most contemporaneous with the claimed period of disability addressed a particular change in the nature of appellant's physical condition, arising from the employment injury, which prevented appellant from continuing in his light-duty position.[7]

Dr. Kleiner advised that appellant had T7-8 disc herniation and L5-S1 internal disc disruption which were work related and recommended a multilevel lumbar spinal fusion and decompression surgery. He did not address the cause of appellant's disability for the claimed period in 2003, nor did he note a particular change in the nature of appellant's physical condition which prevented him from performing his light-duty position. Additionally, the Board notes that there is no "bridging evidence" which would relate the T7-8 disc herniation and an L5-S1 internal disc disruption to the accepted employment injury.[8] Dr. Kleiner did not explain how the T7-8 disc herniation or an L5-S1 internal disc disruption was caused or aggravated by appellant's work duties. The Office never accepted that appellant developed T7-8 disc herniation or an L5-S1 internal disc disruption as a result of his February 8, 2001 work injury. The Board has found that vague and unrationalized medical opinions on causal relationship are of diminished value.[9] Appellant has not met his burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements which would prohibit him from performing the light-duty position offered on January 15, 2003.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability for intermittent periods of time from January 15 to May 18, 2003 causally related to his accepted employment-related injury on February 8, 2001.

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[6] *Jaja K. Asaramo*, 55 ECAB ___ (Docket No. 03-1327, issued January 5, 2004).

[7] *See Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971) (where the Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence).

[8] For the importance of bridging evidence in establishing a claim of continuing disability see *Robert H. St. Onge*, 43 ECAB 1169, 1175 (1992).

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

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 14, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board