United States Department of Labor
Employees' Compensation Appeals Board

G.P., Appellant	)	
and	)	**Docket No. 06-844**
	)	**Issued: August 2, 2006**
DEPARTMENT OF ENERGY, NUCLEAR SAFETY DIVISION, Knoxville, TN, Employer	)	

Appearances:
G.P., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge

JURISDICTION

On February 28, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated November 28, 2005 which denied her claim for a recurrence. 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 a recurrence of disability beginning November 29, 2001 causally related to her May 19, 2001 employment injury.

FACTUAL HISTORY

On May 19, 2001 appellant, then a 59-year-old office manager and lead administrative assistant, filed an occupational disease claim alleging that she sustained a left frozen shoulder and synovitis of the shoulder due to repetitive activities of her job. She alleged that she first

realized the disease or illness was caused or aggravated by her employment on May 1, 2001.[1] The employing establishment advised that appellant was moved to a different division about two weeks earlier and her current supervisor would have to address any changes in her employment conditions.

In a May 24, 2001 statement, Harold J. Monroe, III, the director of operations, advised that appellant became the office manager on May 7, 2001, that her duties had not changed from her previous assignment and that he had not imposed any work restrictions. He noted that the type and amount of activity that appellant did was left up to her. The employing establishment subsequently confirmed that efforts were made to limit the extent of appellant's repetitive activities.

In a March 20, 2002 report, Dr. Wayne J. Stuart, Board-certified in family practice, opined that appellant's frozen shoulder may have been caused by her computer-related work duties (repetitive motion).

In a March 21, 2002 report, Dr. George R. Baddour, Jr., a Board-certified orthopedic surgeon and treating physician, advised that appellant underwent surgery for her frozen shoulder on April 19, 2001. He opined that a frozen shoulder could be related to minor trauma (repetitive motion) or major trauma to the shoulder. Dr. Baddour advised that appellant had worked with the employing establishment for 15 years until she retired in January 2002 secondary to pain from her frozen shoulder. He opined that "[g]iven that the patient has no other known risk factors for frozen shoulder, it is my opinion within a reasonable degree of medical certainty that [appellant's] frozen shoulder was most likely related to her work duties."

On January 7, 2004 the Office accepted that on January 7, 2001 appellant sustained a temporary aggravation of osteoarthritis of the left shoulder and adhesive capsulitis of the left shoulder, which was resolved, due to her employment duties.

In a January 23, 2004 report, Dr. Baddour noted that appellant should avoid repetitive motion activity.

In a May 19, 2004 attending physician's report, Dr. Baddour diagnosed adhesive capsulitis, (frozen shoulder) and synovitis. He checked the box "yes" in response to whether he believed the condition was caused or aggravated by an employment activity and opined that appellant was totally disabled from November 29, 2001 to "indefinitely." Dr. Baddour explained that appellant "is totally disabled from work due to her shoulder injury and she cannot perform any work that she performed in previous jobs. She cannot return to work."

On May 24, 2004 appellant filed a Form CA-7 claim for compensation for total disability for the period from November 29, 2001 to "indefinitely." The employing establishment indicated that she retired on January 3, 2002.

By letter dated July 8, 2004, the Office noted that appellant had returned to limited duty in May 2001 and continued until she stopped in November 2001. The Office advised her that her

[1] Appellant indicated that she did not stop work but continued to work with leave.

work stoppage was a recurrence and that the evidence was insufficient to establish that her recurrence was related to her original work injury or employment factors and requested that she provide additional information supporting her claim that she was incapable of working on November 2001 and continuing.

In a July 30, 2004 response, appellant alleged that it was "ludicrous" that she returned to limited duty in May 2001 and performed such duty until she stopped work in November 2001. She explained that she was given an increased workload when she was moved across the hall on May 8, 2001 and enclosed routing slips which she indicated supported that she supported 27 staff members as of May 15, 2001, as opposed to the 13 she supported prior to that time. Appellant alleged that her shoulder throbbed with every key stroke and she worked until November 29, 2001 because her "work was not tolerable to her shoulder or her hands." She also provided the Office with a March 3, 1997 report from Dr. Robert Ivey, a Board-certified orthopedic surgeon, who opined that, while appellant had degenerative arthritis of the carpometacarpal joint, "her work activities could clearly aggravate the pain which she is experiencing in her thumb. Appellant also submitted a June 29, 2001 email regarding an ergonomic assessment of her work environment, a copy of her April 19, 2001 operative report for an arthroscopic capsular release and complete synovectomy of the left shoulder, and an April 24, 2002 report in which Dr. Stuart opined that appellant's frozen shoulder and hand problems were "aggravated by her work duties as an administrative assistant" and that she "should not perform repetitive motion duties which make her disabled for the work that she regularly performed."

Appellant also provided the Office with several reports from Dr. Baddour. They included a May 18, 2001 report in which he opined that "the cause of frozen shoulder is frequently 'idiopathic,'" or "unknown." He explained that frozen shoulder could be related to minor trauma such as repetitive motion or major trauma. In a May 20, 2001 report, Dr. Baddour advised that appellant could do sedentary work only "with hours as tolerated by patient shoulder comfort." In a January 23, 2004 report, Dr. Baddour opined that appellant should avoid repetitive motion activity. She also provided copies of statements and reports which were previously submitted and related to her claim for an occupational disease and subsequent claim for a schedule award.

The Office also received several diagnostic reports. They included a January 6, 2001 x-ray of the left shoulder from Dr. Arthur Adams, a Board-certified diagnostic radiologist, who noted that appellant had a normal examination, and a January 26, 2001 magnetic resonance imaging (MRI) scan of the left shoulder, read by Dr. Sidney C. Roberts, a Board-certified diagnostic radiologist, which revealed degenerative changes of the acromioclavicular joint.

The Office also received numerous physical therapy records from January 19 to May 10, 2001.

Appellant also submitted several reports from Dr. Karen Rader, a Board-certified internist. She included a copy of a January 3, 1997 report in which Dr. Rader noted that appellant had degenerative changes of the cervical and lumbosacral spine and osteoarthritic changes. Dr. Rader advised that appellant should not do excessive stooping or bending, or standing or typing because of her hand problems.

By decision dated August 13, 2004, the Office denied appellant's claim for a recurrence of disability on November 29, 2001 causally related to the original injury to her left shoulder on January 7, 2001. The Office advised appellant that she had not provided any contemporaneous medical evidence to support a work stoppage on November 29, 2001 which was supported by objective findings.

On September 7, 2004 appellant requested a hearing, which was held on April 19, 2005.

By letter dated September 15, 2004, appellant requested that the Office add aggravation of hand condition or "loss of carpometacarpal joints of both thumbs" as one of her accepted conditions. She also indicated that she was not given "light duty" when she returned to work following her surgery but rather her workload increased from supporting 13 staff to 27 staff members.

In an April 15, 2005 report, Dr. Baddour noted that appellant related that she was going to take early retirement because of an increased workload. He opined that the constant repetition of motion in appellant's work at the computer led to the recurrence of her symptoms in her left shoulder following her surgery. Dr. Baddour added that "[I] believe it is unlikely that some other work or other factor caused the recurrence of the symptoms in her left shoulder."

In a letter dated May 23, 2005, the employing establishment provided comments which included a response to allegations from appellant that she had to pack and unpack 25 boxes related to the relocation of her workstation. The employing establishment advised that another office manager packed her things, which did not include heavy equipment, and would have unpacked her items; which included personal items, books and pictures. However, appellant unpacked these items herself, as she did not like how they had been packed. The employing establishment indicated that telephones were answered by the individual employees and rolled over to the office manager only if the employees were not available and that she was provided with a headset to avoid lifting the telephone. The employing establishment noted that the flap appellant alleged she had to lift and push, was a flap that contained her files and dictionaries. Furthermore, the employing establishment noted that she indicated that she had done extensive typing and computer work 10 years prior to her federal employment. It also noted that appellant had more symptoms than a single frozen shoulder, which included osteoarthritis. The employing establishment also advised that her duties were modified after she returned from surgery, indicating that her duties were reduced to "almost nothing" and noted that she was provided clerical support to do her typing, computer work and load her boxes. The employing establishment also indicated that appellant provided support to 27 employees as the second line default person when the primary support person was not available.

In a July 14, 2005 response to the employing establishment, appellant indicated that she unpacked her boxes by herself, telephones rang at her desk more often than other staff members. She also alleged that she was not provided a head set until the onset of her shoulder condition in February 2001 and more often than not, it was not feasible to use. Furthermore, appellant alleged that her workstation was uncomfortable, and that no contract or clerical person was assigned to do her typing, computer work, or to load or unload boxes. Additionally, she alleged that her doctors did not relate her shoulder condition to anything other than her federal employment.

By decision dated July 18, 2005, the Office hearing representative affirmed the Office's August 13, 2004 decision. The Office hearing representative found that there was no rationalized medical evidence to support that her condition/disability commencing on November 29, 2001 was causally related to the accepted work injury.

By letter dated September 2, 2004, appellant requested reconsideration. She enclosed a report from Dr. Baddour dated August 12, 2005. In his report, Dr. Baddour opined that "I believe it is reasonable to assume that she had a reaggravation of her preexisting shoulder condition when she returned to work."

By decision dated November 28, 2005, the Office denied modification of the Office's July 18, 2005 decision. It found that the evidence did not establish that appellant was totally disabled. The Office also found that she had not provided sufficient medical documentation to establish that her alleged recurrence of disability was causally related to her work-related injuries.

LEGAL PRECEDENT

Section 10.5(x) of the Office's regulations provides that a recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[2]

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.[3]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence.[4] 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.[5] 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.[6]

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[2] 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB ___ (Docket No. 04-887, issued September 27, 2004).

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

[4] *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

[5] *Duane B. Harris*, 49 ECAB 170, 173 (1997).

[6] *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.[7]

ANALYSIS

Appellant's claim was accepted for a temporary aggravation of osteoarthritis of the left shoulder and adhesive capsulitis of the left shoulder, which was resolved as a result of the duties of appellant's federal employment. She subsequently alleged a recurrence of total disability on November 29, 2001. On July 8, 2004 the Office advised appellant of the type of medical and factual evidence needed to establish her claim for a recurrence of disability. However, she did not submit any medical reports which contained a rationalized opinion from a physician who, on the basis of a complete and accurate factual and medical history, concluded that she had a condition which was causally related to the employment injury and supported that conclusion with sound medical reasoning.[8] The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury. In this regard, medical evidence of bridging symptoms[9] between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[10]

The medical reports with respect to the period November 29, 2001 include an April 24, 2002 report in which Dr. Stuart opined that appellant's frozen shoulder and hand problems were "aggravated by her work duties as an administrative assistant" and that appellant "should not perform repetitive motion duties which make her disabled for the work that she regularly performed." However, he did not provide medical reasoning explaining how appellant's condition had worsened such that she was no longer able to perform her limited-duty work beginning November 29, 2001.

Appellant also provided several reports from Dr. Baddour dated May 18 and 20, 2001, March 21, 2002 and January 23, 2004. However, while he advised against repetitive motion activities, these reports either predated the claimed period or did not provide any opinion on the cause of appellant's claimed recurrence of disability beginning November 29, 2001. In a May 19, 2004 report, Dr. Baddour opined that appellant was totally disabled from November 29, 2001 to "indefinitely." While he checked the box "yes" in response to whether appellant's condition was caused or aggravated by an employment activity, he did not explain how appellant's condition had worsened such that she was unable to perform her limited-duty work.

[7] *Walter D. Morehead*, 31 ECAB 188 (1986).

[8] *See Helen K. Holt*, 50 ECAB 279 (1999).

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

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

The Board has held that checking of a box yes that the disability was causally related to employment is insufficient without further explanation or rationale, to establish causal relationship.[11] Dr. Baddour did not offer a rationalized medical opinion as to how appellant's employment caused or aggravated her condition such that she had a recurrence of disability on November 29, 2001. In his April 15, 2005 report, he noted that appellant related that she was going to take early retirement because of an increased workload. While Dr. Baddour opined that the constant repetition of motion in appellant's work at the computer led to the recurrence of her symptoms in her left shoulder following her surgery, he did not explain what he meant by the constant repetition of motion nor did he explain how a specific activity associated with specific employment duties caused any disability beginning November 29, 2001. Although he advised that it was unlikely that some other work or other factor caused the recurrence of the symptoms in her left shoulder, he did not provide a specific opinion regarding a recurrence of disability commencing on November 29, 2001. In an August 12, 2005 report, Dr. Baddour opined that "I believe it is reasonable to assume that she had a reaggravation of her preexisting shoulder condition when she returned to work." However, he did not provide any opinion, to explain how appellant's condition had worsened such that she was no longer able to perform her limited-duty work.

The record also contains other reports which either predated or did not specifically address the cause of disability beginning November 29, 2001. However, for this reason, these reports are not relevant to the issue of appellant's disability or need for medical treatment for the period November 29, 2001 and they are consequently of no probative value.[12] Additionally, the record contains several diagnostic reports. However, these reports are insufficient because they did not address her recurrence of disability commencing on November 29, 2001. Therefore, their reports have no probative value in establishing causal relationship.[13] The record also contains numerous physical therapy reports; however, a physical therapist is not a "physician" within the meaning of section 8101(2), and cannot render a medical opinion.[14]

None of the medical reports submitted by appellant contained a rationalized opinion to explain why appellant could no longer perform the duties of her light-duty position beginning November 29, 2001, and why any such disability or continuing condition would be due to the accepted condition. As she has not submitted any medical evidence establishing that she sustained a recurrence of disability due to her accepted employment injury, she has not met her burden of proof.

The Board also notes that appellant has not shown a change in the nature and extent of the light-duty job requirements. On July 30, 2004 she alleged that she was given an increased workload until she stopped work in November 2001. In support of her claim, appellant enclosed routing slips which she indicated supported that she supported 27 staff members as of May 15,

[11] *Barbara J. Williams*, 40 ECAB 649 (1989).

[12] *See Mary L. Henninger*, 52 ECAB 408 (2001).

[13] *See Michael E. Smith*, 50 ECAB 313 (1999).

[14] *Vickey C. Randall*, 51 ECAB 357 (2000).

2001, as opposed to the 13 she supported prior to that time. She also alleged that her shoulder throbbed with every key stroke and she worked until November 29, 2001 because her "work was not tolerable to her shoulder or her hands." However, the employing establishment contradicted appellant's statement and in fact explained her duties upon her return. The employing establishment confirmed that her duties were modified after she returned from surgery. The employing establishment noted that the type and amount of activity appellant did were up to her and also indicated that her duties were reduced to "almost nothing" as it provided clerical support to do her typing and computer work and load her boxes for her. The employing establishment also indicated that appellant provided support to 27 employees as the second line default person when the primary support person was not available. The record reflects that she was in a position where she was given substantial leeway, which included that the type and amount of activity was up to her. The record also reflects that appellant stopped work at that time because she retired[15] and not because of a change in the nature of her light-duty job requirements.

Consequently, appellant has not met her burden of proof in establishing a recurrence of disability beginning November 29, 2001.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a recurrence of disability beginning November 29, 2001 causally related to the May 19, 2001 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 28, 2005 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: August 2, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

[15] *Hazelee K. Anderson*, 37 ECAB 277 (1986). In *Anderson*, the Board explained that the findings of other administrative agencies have no bearing on proceedings under the Act, which is administered by the Office and the Board. A determination made for disability retirement purposes is not determinative of the extent of physical disability or impairment for compensation purposes.