United States Department of Labor
Employees' Compensation Appeals Board

PATRICIA I. GOZALO, Appellant	)	
and	)	**Docket No. 05-1431**
	)	**Issued: June 6, 2006**
U.S. POSTAL SERVICE, MERRIFIELD POSTAL & DELIVERY CENTER, Merrifield, VA, Employer	)	

Appearances:
Douglas E. Sapp, Esq., for the appellant
Elizabeth Goldberg, Esq., for the Director

Oral Argument March 7, 2006

DECISION AND ORDER

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

JURISDICTION

On June 27, 2005 appellant filed an appeal from a March 28, 2005 decision of the Office of Workers' Compensation Programs, which denied that she sustained a recurrence of disability on September 7, 2000. 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's absence from work on September 7, 2000 was caused by a recurrence of disability causally related to her employment injury. On appeal, appellant contends that she sustained a consequential injury because she had been hurt at physical therapy and that the employing establishment improperly withdrew her limited-duty job.

FACTUAL HISTORY

On October 29, 1997 appellant, then a 33-year-old mail processor, filed a traumatic injury claim alleging that she sustained injury to both forearms in the performance of her federal duties.

On March 7, 1998 she filed an occupational disease claim for bilateral carpal tunnel syndrome that was accepted by the Office as employment related on April 8, 1998. She underwent surgical releases on May 22 and August 24, 1998 on the right and left respectively. She returned to work on November 24, 1998 with a 30-pound lifting restriction. In an April 1, 1999 decision, the Office determined that her actual earnings fairly and reasonably met or exceeded the wages earned on the date of injury.

Appellant came under the care of Dr. Kim S. Yang, a Board-certified neurologist, who provided additional restrictions to appellant's physical activity. On March 17, 1999 and March 9, 2000, appellant accepted limited-duty job offers within the restrictions provided by Dr. Yang. Appellant then came under the care of Dr. John W. Cochran, Board-certified in internal medicine and neurology.

On September 13, 2000 appellant filed a recurrence claim, alleging that on September 7, 2000 she stopped work because of pain in her hands, arms, shoulders, neck and upper part of her back. She returned to her modified-duty position on September 8, 2000 and submitted a note from a physical therapist who stated that, following treatment on September 8, 2000, appellant experienced a headache and discomfort in her neck and upper quadrant. By letter dated October 17, 2000, the Office informed appellant of the evidence needed to support her claim, including a narrative medical report with a physician's opinion supporting causal relationship between the claimed recurrence and her accepted injury.

In a decision dated April 24, 2001, the Office denied the recurrence of disability claim, finding the medical evidence was insufficient to establish that the claimed recurrence was related to her accepted injuries. On May 8, 2001 appellant requested reconsideration, noting that the employing establishment had ended her limited-duty job on May 1, 2001. She again requested reconsideration on April 8 and October 5, 2002 and December 13, 2004. With each request she submitted additional medical evidence. By decisions dated August 8, 2001, July 12, 2002, December 17, 2003 and March 28, 2005, the Office denied modification of the prior decisions.

The medical evidence consists primarily of reports from Dr. Cochran dating from September 15, 2000 to February 1, 2005. In a September 15, 2000 treatment note, he reported that appellant had intermittent pain in her neck and arms, which was improving. Beginning January 2001, the physician noted that appellant had been under his care since August 1999 for a work-related carpal tunnel syndrome, that she had complaints of persistent arm and neck pain and advised that this condition was employment related. In reports dated September 5 and October 29, 2001, Dr. Cochran advised that on September 7, 2000 appellant had a recurrence of neck and arm pain "directly related to the original injury." On February 26, 2002 he reported that appellant had a recurrence of pain following physical therapy on September 7, 2000 which, he opined, was related to her preexisting bilateral carpal tunnel syndrome. On September 30, 2002 he diagnosed "upper extremity and paresthesias ? etiology." In an October 17, 2003 report, Dr. James R. Howe, a Board-certified neurosurgeon and associate of Dr. Cochran, noted appellant's complaints of neck and right hand pain with numbness and tingling. He provided examination findings and advised that appellant needed surgery on her right wrist. On March 4, 2004 Dr. Cochran reported a history of bilateral carpal tunnel syndrome with associated neck pain since 1997. He stated that "apparently she was having therapy to her neck and this caused additional pain" and then took the day off work. He advised that appellant had not recovered

from her bilateral carpal tunnel syndrome with associated neck pain and opined that "indeed her symptoms are as a result of the injury that she sustained in 1997."

A February 15, 2001 electromyographic (EMG) study of the upper extremities was reported by Dr. Simon Fishman, a Board-certified neurologist, as normal. On February 23, 2001 Dr. Cochran reported that an evoked potential study of the median nerve was normal and he interpreted a September 16, 2002 nerve conduction study as showing no abnormality. In a report dated September 11, 2003, Dr. Eric B. Sklar, a Board-certified neurologist, noted EMG findings of mild median neuropathy.

LEGAL PRECEDENT

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.[1] This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[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 light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either 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.[3]

When an injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to a claimant's own intentional misconduct.[4] The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.[5]

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[1] 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB ____ (Docket No. 04-887, issued September 27, 2004).

[2] *Id.*

[3] *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Robert Kirby*, 51 ECAB 474 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

[4] *Susanne W. Underwood* (*Randall L. Underwood*), 53 ECAB 139 (2001).

[5] *Id.*

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[6] 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.[7] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[8]

In assessing medical evidence, the number of physicians supporting one position or another is not controlling. The weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[9]

ANALYSIS

The issue is whether appellant's absence from work on September 7, 2000, when she stated that she was injured while undergoing physical therapy,[10] was caused by the accepted conditions of bilateral carpal tunnel syndrome. The Board finds that appellant did not submit medical evidence sufficient to meet her burden of proof.

The note from the physical therapist dated September 8, 2000 does not constitute competent medical evidence as a physical therapist is not a "physician" within the meaning of section 8101(2) of the Federal Employees' Compensation Act and cannot render a medical opinion. In order to constitute competent medical opinion evidence, the medical evidence submitted must be signed by a qualified physician.[11] While the September 7, 2000 incident may have occurred, appellant did not seek medical treatment on that date and, in a treatment note dated September 15, 2000, Dr. Cochran merely noted appellant's complaint of intermittent pain in her neck and arms, which he advised was improving. He did not obtain a history of any injury

[6] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[7] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[8] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[9] *Anna M. Delaney*, 53 ECAB 384 (2002).

[10] The issue of whether the employing establishment improperly withdrew appellant's limited duty on May 1, 2001 is not before the Board as the Office has not issued a final decision on this issue. The Board's jurisdiction is limited to consider and decide appeals from final decisions of the Office issued within one year prior to the filing of the appeal. 20 C.F.R. § 501.2(c); *Patricia J. Glenn*, 53 ECAB 159 (2001).

[11] 5 U.S.C. § 8101(2); *see Vickey C. Randall*, 51 ECAB 357 (2000).

that occurred during physical therapy and provided no opinion regarding appellant's ability to work. He advised on September 5 and October 29, 2001 that appellant sustained a recurrence of neck and arm pain "directly related to the original injury" again without reference to a physical therapy injury. In a February 26, 2002 report, Dr. Cochran explained that this occurred while she was undergoing physical therapy. Dr. Cochran also stated in a March 4, 2004 report that "apparently" she was having therapy to her neck, which caused additional pain and advised that her neck pain was caused by her carpal tunnel syndrome.

The medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, but it cannot be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[12]

Dr. Cochran provided a very general statement that appellant's recurrent neck and arm pain were directly related to her accepted bilateral carpal tunnel syndrome. He provided no explanation as to why symptoms of carpal tunnel to the wrist could cause cervical symptoms. He did not opine that appellant's condition was caused by physical therapy until February 2002, 17 months after the fact.[13] Dr. Cochran provided no explanation regarding how appellant's carpal tunnel syndrome caused her neck and arm pain other than to say it apparently occurred during physical therapy.[14]

The Office has not accepted that appellant sustained a neck condition under this claim. Injuries and disability sustained while undergoing prescribed medical treatment can be accepted as a consequence of the employment injury.[15] An employee, however, has the burden of establishing that any specific condition for which compensation is claimed is causally related to the employment injury.[16] This includes the requirement to submit sufficient medical evidence to show that the new injury is the direct and natural result of the compensable primary injury.[17] The medical record in this case is insufficient to establish that appellant's neck condition is a consequence of her accepted carpal tunnel syndrome. Dr. Cochran provided insufficient rationalized explanation supporting causal relationship. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical

[12] *Patricia J. Glenn, supra* note 10.

[13] *See generally Juanita Pitts*, 56 ECAB ___ (Docket No. 04-1527, issued October 28, 2004).

[14] Furthermore, appellant had normal EMG and nerve conduction studies on February 15, 2001 and September 16, 2002 and the September 11, 2003 study demonstrated only mild median neuropathy. A March 17, 2000 EMG conducted by Dr. Cochran was also unremarkable.

[15] *See Carlos A. Marrero*, 50 ECAB 117 (1998).

[16] *William F. Gay*, 50 ECAB 276 (1999).

[17] *See Raymond A. Nester*, 50 ECAB 173 (1998).

opinion is of diminished probative value.[18] While Dr. Cochran opined that appellant's neck condition was caused by the accepted injury, he did not provide an explanation of the specific mechanism of how appellant's neck pain was a consequence of her accepted carpal tunnel syndrome. His reports are therefore insufficient to establish that appellant sustained a consequential neck injury.[19]

Under the Act, the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Act.[20] Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.[21] Dr. Cochran did not provide an opinion regarding appellant's ability to work on September 7, 2000 in any of his reports. They are therefore insufficient to establish that her absence from work that day was caused by the employment injuries.[22]

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that her absence from work on September 7, 2000 was causally related to her federal employment.[23]

[18] *Thaddeus J. Spevack*, 53 ECAB 474 (2002).

[19] *See Raymond A. Nester*, *supra* note 17.

[20] *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[21] *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[22] *Leslie C. Moore*, *supra* note 7.

[23] The Board notes that appellant submitted additional evidence subsequent to the Office's March 28, 2005 decision. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence which was before the Office at the time of its final decision. 5 U.S.C. § 501.2(c); *Conard Hightower*, 54 ECAB 796 (2003).

ORDER

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

Issued: June 6, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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