

FACTUAL HISTORY

On February 14, 2003 appellant, then a 39-year-old letter carrier, filed a traumatic injury claim (Form CA-1), alleging that on that date she sustained injuries to her neck, back, chest, pelvis, wrists and knees as a result of a motor vehicle accident while in the performance of duty.² Appellant stopped work on February 14, 2003 and returned to limited duty on February 15, 2003.³

In a February 18, 2003 duty status report, Dr. Angela Walter, an occupational medicine specialist, diagnosed cervical, dorsal and lumbar strains and advised that appellant could return to work on February 18, 2003 with restrictions of no continuous lifting over 10 pounds or intermittent lifting over 20 pounds. She advised no bending, stooping or twisting or pulling and pushing. In a separate report, of February 18, 2003, Dr. Walter repeated her restrictions and added the diagnoses of contusions to the right hip and right knee.

On April 16, 2003 the Office accepted the claim for cervical, thoracic and lumbar strains and right hip and knee contusions and authorized physical therapy.

In a November 13, 2003 report, Dr. Irma D. Santiago, Board-certified in family medicine, related that appellant was “feeling worse, that she has pain between her lower scapula, along the right side of her neck, her right shoulder her right arm.” She advised that “no formal exam[ination] done today, other than observing her.” Dr. Santiago noted that appellant had a normal gait and station. She did not recommend any work restrictions and advised that appellant could return to work utilizing the restrictions imposed by her podiatrist. Dr. Santiago also indicated that appellant “did not accept her work slip as given.” In a separate form, she advised that appellant could return to work without restrictions as of November 13, 2003 and noted that appellant “refused to sign the work slip.”

The Office subsequently received several emergency room reports dated November 13, 2003, reflecting treatment for complaints of back pain on that same date.

On December 29, 2003 appellant began treatment with Dr. Frank Abbati, Board-certified in internal medicine. He noted that appellant was hit by an automobile on February 14, 2003 and diagnosed cervical and lumbar strain, contusions of the right shoulder and arm and a left ankle strain. Dr. Abbati checked the box “yes” in response to whether he believed appellant’s condition was caused or aggravated by employment activity and noted that appellant was “hit by

² The record reflects that appellant has several prior claims; File Nos. 09200494, 92037929, 092031164, 092036425 and 0920012336. Appellant also indicated that she had a nonwork-related automobile accident sometime in 2002, for which she requested light duty.

³ The record reflects that appellant also had an automobile accident in her postal vehicle on February 12, 2003. The record reflects that appellant had requested light duty on December 18, 2002. Appellant returned to full duty on November 13, 2003 and stopped work on November 15, 2003. She returned to work on December 10, 2003 and stopped again on January 5, 2004. Appellant also received treatment and had restrictions related to a nonaccepted foot condition. Appellant’s light duties involved answering telephones and miscellaneous duties within her restrictions.

car while working.” He advised that appellant was totally disabled from December 29, 2003 to the present.

Appellant filed a (Form CA-7) on January 2, 2004, claiming total disability from November 13 to December 9, 2003.

In a January 5, 2004 report, Dr. Abbati repeated his previous diagnoses, including that appellant was hit by a car on February 14, 2003. He first examined appellant on December 29, 2003 and opined that appellant was totally disabled from November 13 to December 10, 2003. Dr. Abbati checked the box “yes” in response to whether he believed appellant’s condition was caused or aggravated by an employment activity and noted that appellant was “hit by car while working.”

In a January 5, 2004 report, Dr. Andrew Clark, a podiatrist, advised that appellant could return to full duty with no restrictions. He checked the box “yes” and advised that appellant’s condition was caused or aggravated by an employment activity and advised that appellant’s pain in her left foot was caused by an automobile accident in February 2003.

In a January 21, 2004 letter, the employing establishment controverted appellant’s claim for wage loss.

By letter dated January 26, 2004, the Office advised the claimant of the additional factual and medical information necessary to establish her claim for time lost from work for the period November 13 to December 9, 2003.

The Office received several diagnostic reports including a magnetic resonance imaging (MRI) scan of the cervical spine dated January 4, 2004, which was normal. A lumbar MRI scan of the same date showed a small disc herniation at L5-S1 with indentation of the anterior epidural space but no evidence of compression of the thecal sac or neural foramina. The lumbar MRI scan also revealed evidence of disc desiccation at L5-S1.

In a February 2, 2004 report, Dr. Abbati opined that appellant was under his care for cervical strain, lumbosacral strain and contusion of the right shoulder and arm and left ankle strain. Appellant was unable to return to full duties, but she was able to answer telephone calls and could return to full duty within six months. He submitted similar reports dated January 20 and 21, 2004, advising that appellant was under his care and could return to work on that same date, answering telephones only. In reports dated February 23 to March 25, 2004, Dr. Abbati repeated his previous diagnoses. He checked the box “yes” in response to whether he believed appellant’s condition was caused or aggravated by an employment activity and advised that appellant was disabled from November 14, 2003 to March 22, 2004. Dr. Abbati noted that appellant could return at that time answering telephones and mounted mail only. On March 1, 2004 Dr. Abbati indicated that he first treated appellant on December 29, 2003 after she was “hit by an automobile while at work, which caused injuries to her back, shoulder, arm and ankle.” He read appellant’s statement regarding the conditions at the employing establishment and diagnosed cervical, lumbosacral and left ankle strains and contusions of the right shoulder and arm. Dr. Abbati explained that although the x-rays taken immediately after the incident did not show the herniated disc, the MRI scan established the diagnosis. He opined that appellant’s

herniated lumbar disc was directly related to the employment injury. Dr. Abbati advised that appellant would be partially disabled until her next appointment on March 22, 2004.

The Office also received several reports from Dr. Cindy Dunne, a chiropractor, who placed appellant off work from November 13 to December 9, 2003.

On February 10, 2004 appellant filed a notice of recurrence of disability, for the period November 14 through December 9, 2003.

Appellant filed a CA-7 form, which was received by the Office on March 9, 2004 for leave without pay for the period December 30, 2003 to March 15 2004.⁴ The Office advised appellant by letter dated March 11, 2004, that her forms were not completed properly and must be sent to the employing establishment for processing.

On March 11, 2004 the Office referred appellant for a second opinion examination, together with a statement of accepted facts, a set of questions and the medical record, to Dr. Frederick J. Shiple, a Board-certified orthopedic surgeon. The Office requested that Dr. Shiple determine the nature and extent of appellant's continuing injury-related disability.

On March 22, 2004 the Office received a recurrence of disability claim for the period commencing January 5, 2004. Appellant alleged that she returned to work on December 10, 2003, through January 5, 2004, but she had not been symptom-free and she was unable to carry out her work-related activities.

In an April 1, 2004 report, Dr. David E. Szymanski, a treating physician, examined appellant and noted that the cervical spine MRI scan was normal and that the lumbar spine MRI scan showed a small disc herniation at L5-S1. He stated that this was an "incidental finding" since it did not compromise the neural foramina. Dr. Szymanski advised that "given the normal exam[ination] and normal C-spine MRI [scan]," he did not "see any reason why she cannot be gainfully employed in the future."

In an April 1, 2004 report, Dr. Shiple conducted a physical examination and noted appellant's history of injury and treatment. He reviewed a surveillance videotape in which appellant walked normally with no objective signs or evidence of cervical or lumbar discomfort or dysfunction and demonstrated a supple range of motion of the cervical and lumbar spines without restrictions. Dr. Shiple conducted a physical examination and noted that prior to the examination, appellant's movements were supple and normal; however, during the directed part of the examination her movements became "guarded." He opined that appellant was capable of returning to unrestricted work. Dr. Shiple stated that based upon his review of the case file and examination of appellant, there were no objective physical findings noted. He determined that there were no residuals of the accepted injury-related conditions, as they had resolved and that appellant was capable of returning to her date-of-injury job.

⁴ The form actually indicated December 30, 2004; however, this appears to be a typographical error.

In an April 21, 2004 memorandum, the Office requested that Dr. Shiple provide a supplemental opinion with respect to whether appellant's herniated lumbar disc was causally related to the February 14, 2003 work incident.

In an April 27, 2004 report, Dr. Abbati opined that appellant's herniated lumbar disc was directly related to the work-related accident. He also advised that appellant was partially disabled until her next appointment of May 17, 2004 and that she was able to work provided she only answered telephones and performed mounted duty only.

In a May 6, 2004 addendum, Dr. Shiple determined that he had reviewed the medical records and conducted an examination. He noted that the MRI scan of January 4, 2004 demonstrated changes at L5-S1; however, there was "no evidence of significant narrowing of the thecal sac or neural foramen." He explained that the "disc desiccation at L5-S1 which would indicate the disc change and herniation that was highly likely to have occurred on a degenerative basis." He opined that his evaluation did not reveal any positive objective physical findings "that would support a relationship between the presence of the herniated lumbar disc with the accident of February 14, 2003.

Appellant filed a CA-7 form for leave without pay for the period March 29 to April 30, 2004. She also submitted an additional CA-7 form for the period May 1 to 31, 2004.

In May 17, 2004 reports, Dr. Abbati prescribed continued restricted duties. In a May 24, 2004 report, Dr. Abbati opined that appellant was disabled from November 14, 2003 to May 17, 2004, repeated his previous diagnoses checked the box "yes" in response to whether he believed appellant's condition was caused or aggravated by an employment activity and noted that appellant "was hit by an automobile while working." He opined that appellant would resume regular duties on June 16, 2004. He completed a light duty form on May 25, 2004.

On May 28, 2004 appellant accepted a limited-duty assignment.

On June 1, 2004 the Office referred appellant, together with a statement of accepted facts and the medical record, to Dr. Robert L. Kalb, a Board-certified orthopedic surgeon, for an impartial medical evaluation to resolve the conflict in opinion between Dr. Abbati and Dr. Shiple regarding appellant's residuals and disability. The Office noted that the issue to be resolved was whether the accepted cervical strain, thoracic strain, lumbar strain and hip contusion and right knee contusion were still active and causing objective symptoms.

In a June 15, 2004 report, Dr. Kalb opined that there were neither residuals of the accepted conditions nor impairment due to the accepted injury. He indicated that appellant's right patellar tendinitis and herniated lumbar disc were not employment related. Regarding appellant's posterior tibial tendinitis, the physician opined that it was employment related; however, there were no objective findings. Dr. Kalb stated that appellant was capable of returning to her date-of-injury job.

By decision dated August 13, 2004, the Office denied appellant's claims for disability from November 15 to December 10, 2003 and January 5 to May 28, 2004. The Office based its decision upon the report of Dr. Kalb, who determined that appellant did not have any objective

residuals and that the evidence did not establish that she was totally disabled from work during the claimed time frames.

By letter dated August 30, 2004, appellant through her representative requested a hearing, which was held on July 19, 2005.⁵

In a decision dated October 31, 2005, the Office hearing representative denied appellant's claims for a recurrence of disability during the period November 13 to December 9, 2003 and January 5 to May 28, 2004. The Office hearing representative determined that the medical evidence failed to establish an objective worsening of the accepted injury-related strains and contusions contemporaneous with either period of recurrent disability. The Office hearing representative noted that Dr. Shiple found no objective residuals, opined that the accepted injury-related disability had resolved and also opined that there were no objective findings supporting a relationship between the herniated lumbar disc and the work incident of February 14, 2003. Dr. Kalb also found that appellant's herniated lumbar disc was not related to the accepted incident and that appellant could return to her date-of-injury job. The Office hearing representative affirmed the August 13, 2004 decision, as modified to reflect that the Office incorrectly based the denial upon the report of Dr. Kalb and explained that Dr. Kalb was selected to resolve a conflict on matters other than the periods of disability in the recurrence claim and did not provide any opinion in that regard.

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁶ The term "disability" means incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.⁷ The term also means the inability to work that takes place 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 for when such withdrawal occurs for reasons of misconduct, nonperformance of the job duties or a reduction-in-force.⁸

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

⁵ Prior to the hearing, the Office received progress notes from Dr. Abbati dating from December 29, 2003 to November 26, 2004. These notes were essentially duplicative of prior reports submitted by Dr. Abbati.

⁶ 20 C.F.R. § 10.5(x).

⁷ 20 C.F.R. § 10.5(f).

⁸ See 20 C.F.R. § 10.5(x).

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.⁹

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence.¹⁰ 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.¹¹ 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.¹²

ANALYSIS

Appellant's claim was accepted for cervical, thoracic and lumbar strains and right hip and knee contusions. She subsequently alleged recurrences of total disability for the periods November 13 to December 9, 2003 and January 5 to May 28, 2004. On January 26, 2004 the Office advised appellant of the type of medical and factual evidence needed to establish her claim for a recurrence of disability for these periods. However, appellant 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 appellant's disability during the aforementioned periods was causally related to the employment injury and supported that conclusion with sound medical reasoning.¹³ The Board also notes that there is no evidence showing a change in the nature and extent of the light-duty job requirements.

Appellant provided several reports dated November 13, 2003 in which Dr. Santiago advised that appellant could return to work utilizing the restrictions imposed by her podiatrist and emergency room reports dated November 13, 2003, which indicate that appellant was treated for complaints of back pain and discharged on that same date. The Board notes that these reports do not lend any support that appellant was disabled during the period November 13 to December 9, 2003, as appellant was discharged or released to work.

Appellant also submitted various reports from Dr. Abbati. They included reports dated December 29, 2003, January 5, February 23, March 1, 3, 4, 25 and May 24, 2004. In these reports, he opined that appellant was totally disabled from December 29, 2003 to the present and checked the box "yes" in response to whether he believed appellant's condition was caused or aggravated by an employment activity and noted that appellant was "hit by car while working." Dr. Abbati's reports, however, are of little probative value as the Board has held that the

⁹ *Richard E. Konnen*, 47 ECAB 388 (1996); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

¹⁰ *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

¹¹ *Duane B. Harris*, 49 ECAB 170, 173 (1997).

¹² *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

¹³ *See Helen K. Holt*, 50 ECAB 279 (1999).

checking of a box “yes” on a form report, without additional explanation or rationale, is insufficient to establish causal relationship.¹⁴ Additionally, he did not explain how appellant’s condition had worsened such that she was no longer able to perform her limited-duty work during this time frame.¹⁵ Furthermore, as he did not examine appellant until December 29, 2003, his report is also of limited probative value. Generally, findings on examination are needed to justify a physician’s opinion that an employee is disabled for work.¹⁶

In his reports dated January 20, 21, February 2, March 1 and April 27, 2004, Dr. Abbati opined that appellant was partially disabled and unable to return to full duties; however, he advised that she was able to answer telephone calls and could return to full duty within six months. Additionally, in his May 17, 2004 reports, Dr. Abbati advised that appellant could perform restricted duties for up to eight hours per day. These reports do not lend any support that appellant was disabled such that she could not perform her light-duty position as the physician advised that appellant could answer telephones. He did not indicate that appellant was totally disabled during the time frame that appellant was seeking compensation for a recurrence of disability.

The record also contains an April 1, 2004 report, in which Dr. Szymanski, noted that “given the normal exam[ination] and normal C-spine MRI [scan],” he did not “see any reason why she cannot be gainfully employed in the future.” This report does not lend any support for appellant’s claim for a recurrence of disability during the aforementioned periods. On January 5, 2004 appellant’s podiatrist, Dr. Clark, advised that appellant could return to full duty with no restrictions.

Dr. Shiple, the second opinion physician, provided an April 1, 2004 report, in which he conducted an examination and determined that there were no residuals of the accepted injury-related conditions, as they had resolved and that appellant was capable of returning to unrestricted work. He noted that no objective physical findings were noted. In his May 6, 2004 addendum, he opined that there were no objective physical findings to support a herniated lumbar disc related to the February 14, 2003 employment incident. Furthermore, Dr. Kalb, who was selected to resolve a conflict regarding whether appellant’s accepted cervical strain, thoracic strain, lumbar strain and hip contusion and right knee contusion were still active and causing objective symptoms, opined in his June 15, 2004 report that appellant did not have any objective findings and indicated that she could return to work. While he was not an impartial medical examiner regarding the specified periods of disability at issue before the Board, his report was rendered near the end date of one of the claimed periods and it supports that appellant had no objective findings and that she could return to unrestricted duties.

The record also contains reports which either predated or postdated appellant’s alleged recurrences of disability from November 13 to December 9, 2003 and January 5 to May 28, 2004

¹⁴ *Calvin E. King*, 51 ECAB 394 (2000).

¹⁵ *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship).

¹⁶ *See Dean E. Pierce*, 40 ECAB 1249 (1989); *Paul D. Weiss*, 36 ECAB 720 (1985).

and which do not render an opinion on causal relationship during the claimed period. Thus, these reports do not establish appellant's claim for a recurrence of disability. Likewise, appellant submitted reports of diagnostic testing; however, none of these addressed whether her claimed recurrence of disability for the aforementioned period was causally related to her employment injury. Thus, these reports are insufficient to establish appellant's claim. Appellant's treating chiropractor also submitted reports supporting her claim of a recurrence of disability. However, she did not diagnose a subluxation as demonstrated by x-ray to exist. Therefore, her reports were of no probative medical value.¹⁷

Consequently, appellant did not meet her burden of proof to establish a recurrence of disability for the claimed periods.

CONCLUSION

The Board finds that appellant failed to provide rationalized medical evidence establishing that her claimed recurrence of disability for the period November 13 to December 9, 2003 and January 5 to May 28, 2004 was causally related to her February 14, 2003 employment injury. Therefore, the Office properly denied her claim for compensation.

ORDER

IT IS HEREBY ORDERD THAT the decision of the Office of Workers' Compensation Programs dated October 31, 2005 is affirmed.

Issued: June 19, 2006
Washington, DC

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

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

¹⁷ See *Carmen Gould*, 50 ECAB 504 (1999).