

**United States Department of Labor
Employees' Compensation Appeals Board**

RITA J. GARLAND, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Byron Center, MI, Employer**

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**Docket No. 06-187
Issued: March 2, 2006**

Appearances:

*J. Leonard Schreiman, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On October 25, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' hearing representative's decision dated August 4, 2005 which affirmed an October 6, 2004 decision 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 May 15, 2004 causally related to her July 31, 2003 employment injury.

FACTUAL HISTORY

On August 18, 2003 appellant, then a 55-year-old distribution and window clerk, filed a traumatic injury claim alleging that on July 31, 2003 she fell when her chair was pulled out from under her as she was fixing a clock.¹ Appellant sustained injuries to her low back, hip and legs.

¹ The record reflects that appellant sustained an employment-related back injury in 1991. However, no further details regarding the claim are contained in the record with the exception of a few medical reports related to treatment in 1991.

Appellant did not lose any time from work; however, she returned to work with restrictions of lifting no greater than 20 pounds.

August 18, 2003 x-rays of the pelvis, sacrum and coccyx read by Dr. Henry L. VanderKolk, a Board-certified radiologist, revealed no fractures or bony abnormalities. The x-rays also revealed mild discogenic disease of the lumbar spine and moderate facet degenerative changes at L4-5.

By letter dated January 30, 2004, the Office accepted appellant's claim for lumbar strain. Appellant received appropriate compensation benefits.

In a magnetic resonance imaging (MRI) scan dated March 25, 2004, Dr. Brian C. Fedeson, a Board-certified diagnostic radiologist, noted that appellant had mild discogenic disease of the lumbar spine. He indicated that there was a potential for compression on the L4-5 nerve root; however, it did not appear to correlate well with appellant's symptom complex. Dr. Fedeson advised that there was a moderate facet degenerative change at L4-5.

The Office subsequently received several reports from appellant's treating physician, Dr. Bruce A. Langerak, Board-certified in internal medicine. In a May 14, 2004 report, Dr. Langerak diagnosed low back pain and prescribed ibuprofen. In a May 14, 2004 duty status report, Dr. Langerak diagnosed a soft tissue injury and advised that appellant could not return to work.

In reports dated June 4, 2004, Dr. Langerak advised that appellant sustained a work-related injury on July 31, 2003 which led to low back pain that had not resolved. He stated that appellant sustained a soft tissue injury and muscle/alignment strain related to her injury in July 2003 as the MRI of March 2004 only revealed degenerative changes and the physical examinations revealed only mild muscle spasm of the paravertebral muscles. Dr. Langerak requested additional physical therapy.

In a June 14, 2004 report, Dr. Stephen C. Bloom, a Board-certified physiatrist, noted seeing appellant for chronic low back pain. He reviewed appellant's history of injury and treatment, noting that she continued to work after the injury despite "significant ongoing pain." Appellant began working with a lifting restriction and she was "taken off work from May 17, 2004 because of ongoing pain." Dr. Bloom diagnosed chronic low back pain and sacroiliac pain secondary to a work-related slip and fall on July 31, 2003 with left sacroiliitis and sacroiliac joint dysfunction. He advised ruling out bilateral L5 radiculopathy and noted that appellant had "degenerative changes on her MRI scan but no herniated disc" and opined that with the "lateral foraminal stenosis at L4-5 she could have a chemical and stretch radiculopathy associated with this in addition to mechanical pain." Dr. Bloom also diagnosed hypertension and multiple allergies and advised keeping appellant off work.

A June 16, 2004 bone scan, read by Dr. Jeffrey A. Chesnut, a Board-certified diagnostic radiologist, revealed a normal bone scintigram of the thoracolumbar spine with the exception of mild degenerative changes on the right at L4-5 and within both hips.

On July 1, 2004 appellant filed a notice of recurrence of disability due to her July 31, 2003 employment injury. Appellant stopped work on May 15, 2004. She did not lose any time

from work due to the original injury, but had returned with restrictions. Appellant alleged that her condition had worsened. She also filed a CA-7 on July 1, 2004 for wage-loss compensation from May 15 to July 25, 2004.

By letter dated July 12, 2004, the Office requested that appellant submit additional evidence.

In a July 2, 2004 attending physician's report, Dr. Langerak noted the history of injury and checked a box "yes" in response to whether the condition was caused or aggravated by the employment injury. He noted the MRI scan findings which included moderate facet degenerative changes and mild discogenic disease of the lumbar spine. Dr. Langerak diagnosed chronic low back pain, advised that appellant's period of disability began on May 17, 2004 and recommended that appellant continue off work. He also referred appellant to Dr. Bloom. Dr. Langerak continued to treat appellant and recommend that appellant remain off work.

In reports dated July 21, 2004, Dr. Bloom advised that appellant stopped work due to a worsening of her medical condition which was employment related. He diagnosed sacroiliac dysfunction with sacroiliitis and associated lumbosacral myofascial pain syndrome. Dr. Bloom noted that there was no evidence of lumbosacral radiculopathy, focal sciatic mononeuropathy, focal mononeuropathy, or peripheral neuropathy. He explained that the objective findings included range of motion deficits and somatic dysfunction through the lumbosacral and sacroiliac joints, which had worsened and progressed to the point that she could no longer perform the duties of her job.² Dr. Bloom continued to submit reports and recommended that appellant stay off work.

By decision dated October 6, 2004, the Office denied appellant's claim for a recurrence of disability on or after May 15, 2004.

On October 14, 2004 appellant requested a hearing, which was held on March 2, 2005. Appellant submitted a statement describing her injury and the deterioration of her condition with photographs of her duty station at the employing establishment. She submitted statements from co-workers describing her symptoms. The Office also received copies of previously received medical reports and records related to a prior claim.

Dr. Bloom advised that appellant could not return to work. In an October 20, 2004 report, Dr. Bloom stated, "[t]o my knowledge, the injury is definitely associated with the event [appellant] described at work in July 2003." In a December 8, 2004 attending physician's report, Dr. Bloom diagnosed chronic sacroiliitis, and checked a box "yes" regarding whether appellant believed the injury was caused or aggravated by her employment. He also added "yes, injury occurred at work." In a December 15, 2004 report, Dr. Bloom advised that appellant was seen for chronic low back pain with chronic sacroiliitis, lumbosacral degenerative joint disease (DJD), hypertension and lumbosacral myofascial pain syndrome and advised that appellant should not work for six weeks and return for reevaluation.

² The Office also received a July 21, 2004 diagnostic report from Dr. Stephen J. Andriese, Board-certified in physical medicine and rehabilitation, who provided sacroiliac injections.

Appellant filed several CA-7 claims for compensation from June 18, 2004 to April 8, 2005.³

In a January 31, 2005 report, Dr. Bloom advised that appellant worked from July 31, 2003 to May 14, 2004, “which aggravated the pain significantly requiring her to be taken off work. Appellant’s ongoing diagnoses includes chronic lumbosacral myofascial pain syndrome with chronic sacroiliitis as a result of these work-related injuries.” Dr. Bloom opined that there was a direct relationship between the injury described at work and her chronic diagnoses which had “affected her ability to perform her job.”

In a March 1, 2005 report, Dr. Bloom stated that appellant was under his care and “suffering from chronic pain syndrome including chronic myofascial pain and sacroiliitis in relationship to a work caused injury.” He opined that appellant’s “chronic pain syndrome and degenerative disc disease were aggravated by work activities that she was carrying out while on a restricted duty job.” Dr. Bloom explained that appellant “was having difficulty handling that job and other employees had to assist her.” He noted that he had reviewed appellant’s job description dated January 19, 2004 and advised that was when she had a 20-pound lifting restriction. Dr. Bloom explained that appellant’s pain was exacerbated despite the restriction. He opined that it was his “medical opinion that this is an aggravation of her original injury that was caused by her ongoing light-duty work. This opinion is based not only on the subjective symptomatology that [appellant] presents with, which is very consistent with this type of sacroiliitis, myofascial pain and exacerbation of DJD, but also subjective findings on her examination including sacral torsions, objective range of motion deficits and myofascial findings including dermatographia and trigger points.”

By decision dated August 4, 2005, the Office hearing representative affirmed the October 6, 2004 decision. He found that appellant had failed to submit sufficient medical evidence to support a recurrence after May 14, 2004 as causally related to the accepted employment injury.

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. This term also means an 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 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.⁴

³ Appellant also filed an occupational disease claim for chronic sacroiliitis commencing on May 14, 2004. However, the Office did not issue a final decision and therefore the Board does not have jurisdiction over the matter. *See* 20 C.F.R. § 501.2(c).

⁴ 20 C.F.R. § 10.5(x).

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.⁵

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence.⁶ 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.⁷ 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.⁸

ANALYSIS

The Office accepted that appellant sustained a lumbar strain in the performance of duty on July 31, 2003. Appellant claimed a recurrence of disability beginning May 15, 2004. The Office advised her of the medical and factual evidence needed to establish her claim. However, appellant did not submit sufficient medical evidence to establish a recurrence of disability.

The Board notes that there is no evidence showing a change in the nature and extent of the light-duty job requirements. Although appellant alleged that she could not continue her light duties and submitted numerous witness statements about her ability to perform her job, the employing establishment indicated that her job requirements had not changed.

The Board finds that the medical evidence does not establish that the accepted July 31, 2003 employment injury caused any disability beginning May 15, 2004.

In a July 2, 2004 attending physician's report, Dr. Langerak checked a box "yes" in response to whether the condition was caused or aggravated by the employment injury. However, this is insufficient as the Board has held that an opinion on causal relationship which consists only of a physician checking "yes" on a medical form report without further explanation or rationale is of little probative value.⁹ Other reports from Dr. Langerak did not specifically support causal relationship between appellant's claimed disability and her accepted work injury.

⁵ *Richard E. Kommen*, 47 ECAB 388 (1996); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁶ *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

⁷ *Duane B. Harris*, 49 ECAB 170, 173 (1997).

⁸ *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

⁹ *Alberta S. Williamson*, 47 ECAB 569 (1996).

The Office also received several reports from Dr. Bloom that provided some support for causal relationship. However, these reports are insufficient to meet appellant's burden of proof. On December 8, 2004 Dr. Bloom diagnosed chronic sacroiliitis, and checked a box "yes" in response to whether the injury was caused or aggravated by her employment. He also added "yes, injury occurred at work." However, as noted above, the checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship. A conclusory statement that the injury "occurred at work" is insufficient explanation to support acceptance of the claimed period of disability. On June 14, 2004 Dr. Bloom advised that appellant was disabled since May 17, 2004 due to "chronic low back pain and sacroiliac pain secondary to a work-related slip and fall on July 31, 2003." He did not provide any medical rationale to explain why any such disability would be caused by the accepted injury, a lumbar strain.¹⁰ Likewise, in his October 20, 2004 report, Dr. Bloom advised that "[t]o my knowledge, the injury is definitely associated with the event appellant described at work in July of 2003." However, he did not provide adequate medical rationale to explain how her disability commencing in 2003 would be caused or aggravated by the accepted injury. Dr. Bloom did not explain the medical reasons why appellant symptoms and disability would be attributed in whole or part to the July 31, 2003 accepted lumbar strain and not to her preexisting degenerative conditions. Dr. Bloom diagnosed conditions, such as chronic sacroiliitis and chronic lumbosacral myofascial pain syndrome, not accepted by the Office. Appellant bears the burden of proof in establishing causal relationship for conditions not accepted by the Office.¹¹ In a January 31, 2005 report, Dr. Bloom stated that appellant's pain caused her to stop work and he diagnosed chronic lumbosacral myofascial pain syndrome with chronic sacroiliitis which he attributed to appellant's employment injury. However, he did not provide any medical reasoning explaining how any of these conditions were caused by the accepted lumbar strain. Dr. Bloom issued a similar conclusion on causal relationship in his March 1, 2005 report but, again, he did not provide any detailed medical reasoning to support his conclusion on causal relationship.

Other medical reports are insufficient as they do not specifically address whether appellant was disabled on or after May 15, 2004 due to the accepted employment injury. The record also contains reports from nurses and physical therapist. However, health care providers such as nurse and physical therapists are not physicians under the Federal Employees' Compensation Act. Thus, to the extent that they rendered opinions on causal relationship, these do not constitute medical evidence and have no weight or probative value.¹²

¹⁰ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

¹¹ See *Jaja K. Asaramo*, 55 ECAB ____ (Docket No. 03-1327, issued January 5, 2004) (where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury).

¹² *Jan A. White*, 34 ECAB 515, 518 (1983). See 5 U.S.C. § 8101(2). This subsection defines the term "physician." See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

As appellant did not submit sufficient evidence to establish that she sustained a recurrence of disability beginning May 15, 2004, causally related to the work injury of July 31, 2003, she did not meet her burden of proof in establishing her claim.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a recurrence of disability beginning May 15, 2004 causally related to the July 31, 2003 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 4, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 2, 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