United States Department of Labor
Employees' Compensation Appeals Board

M.S., Appellant	)	
and	)	**Docket No. 07-116**
	)	**Issued: April 16, 2007**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Milwaukee, WI, Employer	)	

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 17, 2006 appellant filed a timely appeal from an August 10, 2006 merit decision of the Office of Workers' Compensation Programs finding that she did not establish a recurrence of disability.[1] 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 has established that she sustained a recurrence of disability on September 27, 2004 causally related to her accepted employment injury.

[1] The record also contains a schedule award decision dated June 1, 2006. Appellant has not appealed this decision and therefore it is not before the Board.

FACTUAL HISTORY

On March 20, 2002 appellant, then a 43-year-old nursing assistant, filed an occupational disease claim alleging that she sustained a herniated disc at L4-5 and stenosis at L3-4 causally related to factors of her federal employment. She stopped work on December 28, 2001. The Office accepted the claim for a herniated disc at L4-5 and an aggravation of spinal stenosis at L3-4. The Office authorized a May 13, 2002 laminectomy at L4-5 and posterior lumbar interbody fusion at L4-5 with pedicule screws. Appellant received compensation on the periodic rolls beginning June 30, 2002.

On June 27, 2004 appellant returned to work as a security clerk.[2] She filed a notice of recurrence of disability on September 27, 2004 due to her employment injury. Appellant related that she experienced increased back and leg pain while sitting at her desk and that she had a "loss of bowel and bladder control that day when climbing the stairs" at home. She sought treatment at the emergency room. Appellant noted that her back and leg pain had worsened since she returned to work.

In an unsigned report dated November 17, 2004, Dr. James P. Hollowell, a Board-certified neurosurgeon, described appellant's history of an employment injury and an L4-5 lumbar fusion. After surgery appellant sustained severe edema of the legs, bowel and bladder problems and increased low back and bilateral leg pain. Dr. Hollowell stated, "Her symptoms seem[ed] to wax and wane over the years until September 28, 2004 when she was walking up the stairs at work and she completely lost her bowel and bladder in large quantities, it happened twice that day to her." He recommended objective studies.

A November 23, 2004 magnetic resonance imaging (MRI) scan study of the cervical spine showed a herniated disc at C4-5 and a disc bulge at C5-6 both of which contacted but did not compress the cord. At C5 a "small sclerotic metastasis" could not be excluded. A November 23, 2004 MRI scan study of the lumbar spine showed severe bilateral facet hypertrophy at L3-4 causing "moderate central canal stenosis but no definite compromise of the cauda equine" and "moderate foraminal narrowing bilaterally without definite root compromise."

In an unsigned progress report dated December 1, 2004, Dr. Hollowell opined that the results of the diagnostic studies did not support appellant's complaints. He recommended that she seek treatment from a primary care physician.

By decision dated February 14, 2005, the Office found that appellant failed to establish that she sustained an employment-related recurrence of disability on September 28, 2004. On April 10, 2005 appellant requested reconsideration. She stated that, "even though the cauda equine is not being compressed at this time, it had been and did cause nerve damage causing bowel, bladder and sexual dysfunction." Appellant submitted a January 18, 2002 MRI scan study which showed "high grade central canal stenosis because of the diffuse dis[c] bulging." She also noted that she had epidural blocks which could increase bowel and bladder incontinence.

[2] In a report dated March 28, 2004, Dr. Stephen E. Robbins, a Board-certified orthopedic surgeon and impartial medical examiner, found that she could work full time with restrictions.

On February 3, 2005 Dr. Adegboyega H. Lawal, a Board-certified anesthesiologist, discussed appellant's history of a December 2001 work injury and subsequent back surgery in May 2002. Appellant had urinary incontinence after her surgery and currently complained of neck and right upper extremity pain. Dr. Lawal diagnosed chronic low back and bilateral lower extremity pain, post lumbar laminectomy syndrome, chronic urinary incontinence and pitting pedal edema of unknown etiology. He recommended cervical epidural injections.

In an unsigned progress report dated February 9, 2005, Dr. Hollowell discussed appellant's complaints of neck and shoulder pain on the right side. He recommended that she continue pain management with Dr. Lawal.[3]

By decision dated August 26, 2005, the Office denied modification of its February 14, 2005 decision. The Office found that the record contained no medical evidence showing that appellant was disabled from work beginning September 27, 2004.

In a progress report dated June 8, 2005, received by the Office on November 9, 2005, Dr. Lawal diagnosed chronic low back and lower extremity pain, post lumbar laminectomy syndrome, renal incontinence, edema, a disc herniation at C4-5 and a disc bulge at C5-6. He listed findings on examination recommended continued medication. On November 3, 2005 Dr. Lawal submitted a similar report and recommended a lumbar epidural injection.

On November 25, 2005 Dr. Paula S. Benes, a Board-certified physiatrist, noted appellant's history of an employment injury and surgery in May 2002. She diagnosed "[l]ow back pain with laminectomy syndrome with problems that include continued pain and weakness." Dr. Benes opined that appellant could work in a sedentary environment lifting no more than 10 pounds with frequent position changes. She recommended an electromyogram (EMG). In an accompanying impairment evaluation, Dr. Benes diagnosed low back pain with laminectomy syndrome and fibrosis at L4-5, lumbar radicular symptoms, deconditioning, right shoulder pain, bowel, bladder and sexual dysfunction and gait instability. She opined that appellant could work in a light-duty capacity with restrictions.[4]

In a progress report dated January 3, 2006, Dr. Benes diagnosed lumbar laminectomy syndrome, balance problems likely due to difficulty bending and guarding, and deconditining due to pain. She recommended a functional capacity evaluation (FCE) to determine work restrictions.

On July 21, 2006 appellant requested reconsideration. She submitted the results of an FCE and a report dated June 28, 2006 from Dr. Shekhar A. Dagam, a neurosurgeon, who stated:

> "It is my understanding that [appellant] sustained a work injury resulting in the need for a spinal fusion of L4-5. She has continued to have low back pain and bilateral lower extremity radiculopathy.

[3] Dr. Lawal treated appellant on March 18, 2005 with an epidural steroid injection at C5-6.

[4] By decision dated June 1, 2006, the Office granted appellant a schedule award for a three percent impairment of each lower extremity.

"Magnetic resonance imaging demonstrates bilateral foraminal narrowing and disc disease at L3-4. There is a known phenomenon in which a lumbar fusion will cause increased stress at the adjacent disc levels. This increased stress can cause disc degeneration and stenosis which is the case for [appellant]. Therefore her current symptomatology is directly related to her original work injury regarding low back pain and radiculopathy."

By decision dated August 10, 2006, the Office denied modification of its August 26, 2005 decision.

LEGAL PRECEDENT

Where 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 substantial 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 injury-related condition or a change in the nature and extent of the light-duty job requirements.[5]

Office regulations provide 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.[6] 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.[7]

ANALYSIS

The Office accepted that appellant sustained a herniated disc at L4-5 and an aggravation of spinal stenosis at L3-4 due to factors of her federal employment. On May 13, 2002 she underwent a laminectomy at L4-5 and posterior lumbar interbody fusion at L4-5. Appellant returned to work as a security clerk on June 27, 2004. On September 27, 2004 she stopped work and filed a notice of recurrence of disability beginning that date due to her accepted employment injury.

Appellant has not alleged a change in the nature and extent of her light-duty job requirements. Instead, she attributed her recurrence of disability to a change in the nature and

[5] *Jackie D. West*, 54 ECAB 158 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

[6] 20 C.F.R. § 10.5(x).

[7] *Id*.

extent of her employment-related condition. Appellant must thus provide medical evidence establishing that she was disabled due to a worsening of her herniated disc at L4-5 and aggravation of spinal stenosis at L3-4.[8]

Appellant submitted unsigned reports dated November 17 and December 1, 2004 and February 9, 2005 from Dr. Hollowell. It is well established, however, that to constitute competent medical opinion evidence the medical evidence submitted must be signed by a qualified physician. The Board has held that unsigned reports and reports lacking proper identification cannot be considered probative evidence in support of a claim.[9]

In a report dated February 3, 2005, Dr. Lawal noted appellant's history of an employment injury and her complaints of urinary incontinence subsequent to back surgery in May 2002. He diagnosed chronic low back and bilateral lower extremity pain, post lumbar laminectomy syndrome, chronic urinary incontinence and pitting pedal edema of unknown etiology. In reports dated March 10, June 8 and November 3, 2005, Dr. Lawal listed findings on examination and discussed pain management. He did not, however, address the cause of the diagnosed conditions in any of his reports. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[10] Additionally, Dr. Lawal did not address the relevant issue of whether appellant was disabled from work beginning September 27, 2004.[11]

Dr. Benes, in a report dated November 25, 2005, discussed appellant's history, an employment injury and her May 2002 surgery. She diagnosed low back pain with laminectomy syndrome and fibrosis at L4-5, lumbar radicular symptoms, deconditioning, right shoulder pain, bowel, bladder and sexual dysfunction and gait instability. Dr. Benes opined that appellant could work with restrictions. In a progress report dated January 3, 2006, she diagnosed lumbar laminectomy syndrome, balance problems likely due to difficulty bending and guarding and deconditining due to pain. As Dr. Benes did not address the cause of the diagnosed conditions or whether appellant was disabled from her position as a security clerk beginning September 27, 2004, her reports are of little probative value.[12]

In a report dated June 28, 2006, Dr. Dagam noted that appellant required a fusion at L4-5 due to an employment injury. He discussed her complaints of continued low back pain and bilateral radiculopathy. Dr. Dagam noted that an MRI scan study showed bilateral foraminal narrowing due to her lumbar fusion which caused "increased stress at the adjacent disc levels. He attributed appellant's symptoms to her employment injury. Dr. Dagam, however, did not

[8] *See Jackie D. West, supra* note 5.

[9] *D.D.*, 57 ECAB ___ (Docket No. 06-1315, issued September 14, 2006); *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572 (1988).

[10] *Conrad Hightower*, 54 ECAB 796 (2003).

[11] *Carol A. Lyles*, 57 ECAB ___ (Docket No. 05-1492, issued December 13, 2005) (whether a particular injury caused an employee disability from employment is a medical issue which must be resolved by competent medical evidence).

[12] *See Conrad Hightower*, *supra* note 10; *Carol A. Lyles*, *supra* note 11.

address the relevant issue of whether appellant was disabled from her position as security clerk beginning September 27, 2004. Whether a particular injury causes an employee to be disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of the probative and reliable medical evidence.[13]

An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is causal relationship between her claimed condition and her employment.[14] To establish causal relationship, she must submit a physician's report in which the physician reviews the employment factors identified as causing her condition and, taking these factors into consideration as well as findings upon examination, state whether the employment injury caused or aggravated the diagnosed conditions and present medical rationale in support of his or her opinion.[15] Appellant failed to submit such evidence in this case and, therefore, has failed to discharge her burden of proof to establish that she sustained an employment-related recurrence of disability.

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability on September 27, 2004 causally related to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 10, 2006 is affirmed.

Issued: April 16, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[13] *Amelia S. Jefferson*, 57 ECAB ___ (Docket No. 04-568, issued October 26, 2005).

[14] *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

[15] *Calvin E. King*, 51 ECAB 394 (2000).