United States Department of Labor
Employees' Compensation Appeals Board

E.R., Appellant	)	
and	)	**Docket No. 06-1175**
	)	**Issued: May 14, 2007**
U.S. POSTAL SERVICE, POST OFFICE, New York, NY, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 24, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 12, 2005 in which a hearing representative affirmed the denial of appellant's recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability beginning July 13, 2004 due to her April 21, 1993 employment injury.

FACTUAL HISTORY

On May 10, 1993 appellant, then a 42-year-old modified distribution clerk, filed a claim alleging that she experienced low back pain on April 21, 1993 when retrieving a parcel for a customer. The Office accepted lumbosacral strain. Appellant stopped work on April 22, 1993 and returned to a part-time light-duty position on July 24, 1995.

Appellant came under the treatment of Dr. James R. McGee, a chiropractor. In an attending physician's report dated May 5, 1993, Dr. McGee noted that she experienced low back pain on April 21, 1993 after lifting boxes at work. He noted with a check mark "yes" that appellant's condition was caused or aggravated by her employment and opined that appellant was totally disabled. In a report dated June 16, 1993, Dr. McGee noted that x-rays of the lumbar spine revealed subluxations, lateral tipping at L3 and L4 and rotatory scoliosis to the right. He diagnosed lumbosacral sprain/strain, left sciatic radiculopathy, left sacroiliac joint sprain and cervical sprain caused by the work-related incident of April 21, 1993. A magnetic resonance imaging (MRI) scan of the lumbar spine dated May 10, 1993 revealed straightening of the normal lordotic curvature and rotatory scoliosis to the right.

Thereafter, in the course of developing the claim, the Office referred appellant to a second opinion physician and also to an impartial medical examiner.

On September 10, 1996 the employing establishment offered appellant a modified limited-duty clerk position, four hours per day with a tour of duty from 8:00 a.m. to 12:00 p.m. Appellant accepted the position. It was based on physical restrictions recommended by Dr. McGee.

On August 12, 1999 the employing establishment referred appellant for a fitness-for-duty examination. In a report dated August 29, 1999, Dr. Todd M. Aordkian, a chiropractor and fitness-for-duty physician, noted a history of injury and diagnosed low back pain. He advised that appellant has reached maximum medical improvement with regard to the work injury and did not recommend any further chiropractic treatment for the back injury. Dr. Aordkian opined that appellant did not demonstrate any objective disability of the spine causally related to the work injury of April 21, 1993. He advised that appellant would be able to resume the normal duties of her occupation without restriction on a full-time basis.

Appellant submitted reports from Dr. McGee dated August 22, 2000 to August 12, 2003, who repeated the diagnoses of subluxations, chronic lumbosacral sprain/strain, radiculopathy on the left and left sacroiliac sprain. In a work capacity evaluation dated August 12, 2003, Dr. McGee noted that appellant could work four hours per day with restrictions on sitting, standing, reaching and reaching above the shoulder for two hours per day, walking for one hour per day, no twisting, squatting, kneeling, climbing or operating a vehicle, pushing and pulling up to 2 hours per day limited to 10 pounds and lifting for 1 hour per day limited to 10 pounds.

On January 23, 2004 the employing establishment offered appellant a modified clerk limited-duty position, four hours per day with a tour of duty from 12:00 a.m. to 4:00 p.m. The duties of the position consisted of general office duties including filing for 1 hour and 15 minutes, operating a fax and copy machine for 15 minutes, operating a scanner within her restrictions for 30 minutes per day and writing forms for mail where delivery was attempted for 2 hours per day. The position was subject to restrictions set forth by Dr. McGee in a report dated August 12, 2003 which provided intermittent sitting and standing not to exceed 2 hours per day, intermittent walking not to exceed 1 hour per day, may reach above the shoulder, no lifting more than 10 pounds not to exceed 4 hours per day, may not operate foot controls for repetitive

movement, may not operate a motor vehicle, requires a chair with back support and may work 4 hours per day. Appellant rejected the position but reported for duty.[1]

In a statement dated March 11, 2004, appellant indicated that she was offered a new job on January 23, 2004 which changed her tour of duty from 7:30 a.m. to 11:30 a.m. to 12:00 p.m. to 4:00 p.m. She indicated that the job was not suitable for her condition and she preferred working in the morning. On May 10, 2004 appellant noted that the job assignment of August 30, 1996 was improperly withdrawn and she was forced to take the job offer of January 23, 2004.

On July 14, 2004 appellant filed a CA-2a, claim for recurrence of disability alleging that on July 13, 2004 she experienced a recurrence of low back pain causally related to her work injury of April 21, 1993. The employing establishment advised that appellant stopped work on July 14, 2004.

On July 15, 2004 Dr. McGee noted that appellant was initially injured at work on April 21, 1993 and had a recurrence of her back injury on July 13, 2004. Appellant reported that while working at the customer service window she was bending and reaching when she sustained a recurrence of injury. Dr. McGee indicated that appellant presented on July 13, 2004 with persistent low back pain with pain radiating into the left leg which was constant and sharp in nature. He indicated that x-rays of the lumber spine revealed decreased disc space at L4-5 consistent with subluxation complexes which were directly related to her work injury. Dr. McGee diagnosed lumbar vertebrae subluxation and lumbosacral sprain/strain, disc derangement and radiculopathy which were sustained in the recurrent accident at work on July 15, 2004. In an attending physician's report dated August 18, 2004, Dr. McGee diagnosed recurrence of injury on July 15, 2004. He noted that appellant reported that on July 13, 2004 she was performing her duties at the customer service window which included bending and reaching and reinjured her back. Dr. McGee noted that the original work injury on April 21, 1993, diagnosed lumbar sprain and strain and noted with a check mark "yes" that appellant's condition was caused or aggravated by a work activity. He opined that appellant was totally disabled as of July 15, 2004.

By letter dated August 6, 2004, the Office advised appellant that further evidence was needed to establish her claim for recurrence of disability. It requested a physician's opinion addressing the causal relationship between her current disability and the original injury.

In a letter dated August 8, 2004, appellant indicated that in December 2003 she was assigned new duties and was responsible for lifting and scanning packages from deep mail tubs. She indicated that the parcels were heavy and awkward and handling them caused her to experience back pain. Appellant informed her manager that the bending and lifting of packages affected her condition and the manager advised that she no longer qualified for the job offer of

[1] On February 18, 2004 the Office referred appellant to Dr. Normal M. Heyman, a Board-certified orthopedic surgeon, for a second opinion evaluation. In reports dated March 11 and August 9, 2004, Dr. Heyman diagnosed lumbosacral sprain and strain resolved, lumbar syndrome with subjective complaints and decreased conditioning with decreased range of motion. He opined that appellant's accepted lumbosacral strain and sprain had resolved and that the work restrictions were attributed to conditions not accepted by the Office, including decreased conditioning, poor insight and poor motivation.

August 30, 1996. On January 23, 2004 appellant indicated that she was offered a position with a change in shift to 12:00 p.m. to 4:00 p.m. She was informed by the employing establishment that her shift was changed to accommodate a manager whose tour of duty started at 10:30 a.m. On May 25, 2004 appellant was offered and accepted a change in position to the customer service window with a shift from 8:00 a.m. to 12:00 p.m. She stated that she could not perform duties such as standing, walking, lifting, pushing, pulling and bending. Appellant indicated that she stopped work on July 14, 2004 due to a worsening of her back condition and filed a recurrence of disability claim. She submitted an employing establishment request for temporary schedule change for personal convenience dated May 24 and June 9, 2004 which was signed by appellant's supervisor.

In a decision dated September 8, 2004, the Office denied appellant's claim on the grounds that the evidence did not establish a change in the nature or extent of her work-related disability or the nature and extent of her light-duty position.

Appellant requested an oral hearing which was held on June 29, 2005. She submitted reports from Dr. McGee dated August 30, 2004 to August 2, 2005. Dr. McGee noted a history of injury and recurrence of disability on July 14, 2004. Appellant advised him that, while working the customer service window she was bending and reaching when she sustained a recurrence of injury causing severe back pain. Dr. McGee diagnosed lumbar vertebrae subluxation, lumbosacral sprain/strain, disc derangement and radiculopathy sustained in the recurrent incident at work on July 14, 2004. He noted that appellant had been under his care since April 26, 1993 and opined that her recurrence of injury was causally related to the initial injury sustained on April 21, 1993 and appellant remained totally disabled from work.

In a decision dated September 12, 2005, the hearing representative affirmed the September 8, 2004 decision.

LEGAL PRECEDENT

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she 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 show that 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 requirements.[2]

Causal relationship is a medical issue,[3] and the medical evidence required to establish a causal relationship is rationalized medical evidence. 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

[2] *Terry R. Hedman*, 38 ECAB 222 (1986). *See* 20 C.F.R. § 10.5(x) for the definition of a recurrence of disability.

[3] *Mary J. Briggs*, 37 ECAB 578 (1986).

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.[4]

ANALYSIS

After her injury of April 21, 1993, appellant returned to a limited-duty position as a modified distribution clerk. In the instant case, she has not submitted sufficient evidence to support 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 beginning July 13, 2004.

The Board notes that the reports of Dr. McGee are insufficient to establish the claimed recurrence of injury. In a report dated July 15, 2004, Dr. McGee noted that appellant was initially injured at work on April 21, 1993 and experienced a recurrence of her back injury and spinal subluxation on July 13, 2004. Appellant reported that, while working the customer service window on July 13, 2004 she was bending and reaching when she sustained severe pain and disability. Under the Office's federal regulations a recurrence is defined as a spontaneous change in a medical condition without a new exposure to the work environment.[5] Appellant's description of bending and reaching on July 13, 2004 would indicate a new exposure to work factors. Dr. McGee failed to provide a rationalized opinion regarding the causal relationship of appellant's claimed recurrent low back condition. He did not adequately describe the particular change in the nature of appellant's physical condition arising from the 1995 employment injury which prevented appellant from performing her light-duty position. Furthermore, the Office never accepted that appellant sustained a work-related spinal subluxation.[6] Dr. McGee's July 15, 2004 x-ray report noted lateral tipping of L2-3 and L4, off centering at L1-4 and decreased disc space at L4-5 and L5-S1 which was consistent with subluxation complexes. He diagnosed lumbar vertebrae subluxation and lumbosacral sprain/strain, disc derangement and radiculopathy and opined that these conditions were sustained at work on July 13, 2004. However, the Board notes that there is no "bridging evidence" which would relate the lumbar vertebrae subluxation, disc derangement and radiculopathy to the accepted 1993 employment injury.[7] Dr. McGee did not address how the accepted lumbosacral strain was exacerbated by appellant's employment factors to result in a lumbar vertebrae subluxation, disc derangement and radiculopathy. The Office did not accept a lumbar subluxation, disc derangement or radiculopathy as a result of appellant's April 21, 1993 work injury.

Appellant submitted an attending physician's report from Dr. McGee dated August 18, 2004. Dr. McGee noted that she sustained a recurrence of injury on July 13, 2004.

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[4] *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[5] *See* 20 C.F.R. § 10.5(x).

[6] 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. *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[7] For the importance of bridging evidence in establishing a claim of continuing disability *see Robert H. St. Onge*, 43 ECAB 1169, 1175 (1992).

He diagnosed lumbar sprain and strain and noted with a check mark "yes" that appellant's condition was caused or aggravated by a work activity and opined that she was totally disabled from July 15, 2004. However, the Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[8] Furthermore, as a chiropractor, Dr. McGhee would not be competent to establish a diagnosis of any condition other than a spinal subluxation.[9] Reports from Dr. McGee dated August 30, 2004 to August 2, 2005, provide support for causal relationship similar to that of the reports noted above and are likewise insufficient to establish appellant's claim.

Likewise, the Board finds that there is no evidence substantiating that appellant experienced a change in the nature and extent of the light-duty requirements or was required to perform duties which exceeded her medical restrictions. Appellant submitted a report from Dr. McGee dated April 21, 2004, who noted that she worked as a modified distribution clerk since October 1, 1996 with a tour of duty from 7:30 a.m. to 11:30 a.m. Dr. McGee indicated that appellant's new modified job offer of January 23, 2004 presented several problems for appellant, including the shift change to 12:00 p.m. to 4:00 p.m. which required her to commute during rush hour and take public transportation where she is unable to find a seat. However, there is no medical evidence establishing that appellant was unable to work the afternoon shift due to residuals of her employment injury, only that she preferred the morning shift. Additionally, there is no probative evidence showing that the employing establishment changed appellant's light-duty requirements.

The record reveals that the September 10, 1996 and January 23, 2004 modified clerk positions were both limited duty, four hours per day with the same physical requirements which included intermittent sitting and standing for two hours daily, intermittent walking for one hour, reaching above the shoulder, no lifting over 10 pounds, cannot operate foot controls for repetitive movement, cannot operate a motor vehicle, work four hours per day and requires a chair with back support. The record is void of evidence indicating that there was a change in the nature and extent of the light-duty requirements or that she was required to perform duties which exceeded her medical restrictions. Rather, the record reflects that the only change in appellant's light-duty position was that she was transferred from the morning shift from 8:00 a.m. to 12:00 p.m. to the afternoon shift of 12:00 p.m. to 4: 00 p.m. Additionally, the evidence reveals that appellant was granted a temporary change in schedule on May 23, 2004 to the morning shift from 8:00 a.m. to 12:00 p.m.. There was no indication that work was not available within work restrictions necessitated by appellant's accepted lumbosacral strain.

Appellant has not met her burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements which would prohibit her from performing the light-duty position she assumed after she returned to work.

[8] *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

[9] *See supra* note 5.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability on July 13, 2004 causally related to her accepted employment-related injury on April 21, 1993.

ORDER

IT IS HEREBY ORDERED THAT the September 12, 2005 decision of the Office of Worker' Compensation Programs is affirmed.

Issued: May 14, 2007
Washington, DC

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

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

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