

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

C.K., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia PA, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 06-1445
Issued: May 1, 2007**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 7, 2006 appellant timely appealed an August 12, 2005 merit decision of the Office of Workers' Compensation Programs denying her claim for 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 these claims.

ISSUE

The issue is whether appellant has established that she sustained a recurrence of disability on and after April 26, 2004 causally related to her accepted employment injury of November 13, 2001.

Appellant also appealed a January 30, 2006 Office decision in which an Office hearing representative denied her traumatic injury claim arising under claim No. 03-2036690 for an April 26, 2004 injury. The Board assigned this claim Docket No. 07-227.

FACTUAL HISTORY

The Office accepted that on November 13, 2001 appellant, then a 40-year-old clerk, sustained a lumbar strain when she bent to pick up tubs of mail. She did not lose any time from work following this injury, but was placed on restricted duty.²

On May 12, 2004 appellant claimed a recurrence of disability commencing April 26, 2004. She attributed her back pain to work in the automation section on a bar code machine which required pulling, bending, pushing, lifting and standing. Appellant and the employing establishment indicated that she had returned to work without limitations after the original injury. She stopped work on April 26, 2004 and did not return. Appellant elected disability retirement benefits effective September 22, 2004.

In support of her recurrence claim, appellant submitted an undated medical report from Dr. Joel H. Jaffe, a general practitioner, who advised that she was injured on the job in 1999 while engaged in repetitive activities of lifting, pushing and pulling mail. Dr. Jaffe indicated that the magnetic resonance imaging (MRI) scans taken in 1999, 2002 and 2004 showed a protruding disc and narrow spine and that appellant's condition had worsened since 1999. He diagnosed a lumbosacral bulging disc and opined that appellant was unable to fulfill her job duties due to worsening pain.

In a June 25, 2004 letter, the Office advised appellant of the additional evidence needed to establish her claim. The Office requested that she describe her work activities since returning to work in 2001 and explain why she believed she was incapable of working on April 26, 2004. Appellant was also requested to describe any changes to her work assignment. The Office noted that Dr. Jaffe's undated medical report was insufficient to establish her claim as he provided no rationale or objective findings to support that her current condition was related to her November 13, 2001 lumbar sprain. Appellant was advised to obtain a rationalized narrative report, based on the history of the original injury which described the objective findings which convinced him of the relationship between her ability to work and the accepted work conditions and why she was unable to work.

In an undated statement, appellant indicated that she was on limited duty for 11 months after she originally hurt her back. She stated that she was assigned two sit down jobs since her November 2001 injury and that her last job consisted on lifting heavy trays, reaching and pulling mail down and pushing containers of mail. Appellant denied any new injuries at work or elsewhere.

In a July 19, 2004 medical report, Dr. Jaffe reported that the original injury occurred in November 2001, when appellant was lifting a tub of mail and pulled her back and that her back had been painful ever since. He advised that a May 7, 2004 MRI scan showed a bulging disc at L4-5 with a mild right greater than left neural foraminal stenosis, disc space narrowing and desiccation of the disc at the L4-5 level and hemangiomas within the L3 and T12 vertebral bodies. After the original injury occurred in November 2001, appellant had some moderate dextroscoliosis at the thoracolumbar junction which contributed to her discomfort. Dr. Jaffe

² Appellant's restrictions were noted as no bending, no reaching, no pulling and no lifting over 15 pounds.

opined that appellant was totally disabled from any work at the employing establishment due to her pain and that such disability occurred because of her original work injury. He explained that there had been a general deterioration of appellant's condition and she was not able to do any quality work on a sustained time basis because of the recurrent chronic pain. Dr. Jaffe further stated that appellant's back pain would continue to worsen as her condition deteriorated. He opined that appellant's underlying anxiety and stress syndrome and depression occurred secondary to the job injury. A copy of the May 7, 2004 MRI scan was provided.³

By decision dated August 6, 2004, the Office denied appellant's claim for recurrence of disability on the grounds that causal relationship was not established.

On September 2, 2004 appellant requested an oral hearing which was held May 23, 2005. She testified that, after her November 13, 2001 work injury, she was on limited duty for 11 months where someone would load the mail for her and she would reach to get the magazine and key it. Appellant bid on several jobs after she was placed on limited duty. In 2003 she bid on a sit down job in the computer room where no lifting or pulling of mail was involved. Appellant stated that she worked sitting down keying and loading the mail on a ledge and would sometimes sort the mail. After approximately one year, she bid on another sit down job at the small parcel sorter machine. Appellant indicated that she worked in that position for approximately six or seven months keying and pushing small parcels until her supervisor started to pick on her. In January 2004, she bid the job on the bar code machine where she lifted trays weighing approximately 50 to 60 pounds and pushed containers of mail in addition to working the bar code machine. Appellant stated that she developed severe back pain after doing heavy lifting and moving during her work shift which began April 25, 2004 and ended April 26, 2004.

In a May 26, 2005 report, Dr. Jaffe provided a history of appellant's light-duty jobs following the November 13, 2001 injury and indicated that appellant's back problems were partially resolved until 2004 when she was given a job involving heavy lifting. He indicated that because of the job appellant had in 2004 all her "old problems came back again." Dr. Jaffe opined that appellant's "April 2004 injury was not new, but is medically and causally directly related to the injuries that she had in 2001. It [is] a reexacerbation of her old injuries."

By decision dated August 12, 2005, an Office hearing representative affirmed the denial of appellant's recurrence claim.⁴ The Office hearing representative noted that Dr. Jaffe's reports supported a new injury claim as a result of appellant's lifting during her work shift between April 25 and 26, 2004.

³ Appellant also submitted medical evidence pertaining to a right middle digit contusion sustained on April 28, 2004.

⁴ The hearing representative noted that, although appellant's hearing testimony included a reference to a back injury at work occurring in November 1999, she did not file a workers' compensation claim for such an injury.

LEGAL PRECEDENT

As used in the Federal Employees' Compensation Act,⁵ the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁶ A recurrence of disability is defined by Office regulations as an inability to work, caused by a spontaneous change in a medical condition resulting from a previous injury or illness without an intervening injury or new exposure to the work factors that caused the original injury or illness.⁷ If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken, and an appropriate new claim should be filed.⁸

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.⁹ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.¹⁰ An award of compensation may not be made on the basis of surmise, conjecture or speculation or on an appellant's unsupported belief of causal relation.¹¹

While 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, neither can such an opinion 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 that such a relationship must be supported with affirmative evidence, explained by medical rationale and be based on a complete and accurate medical and factual background of the claimant.¹² Medical conclusions unsupported by medical rationale are of diminished probative value and are insufficient to establish causal relation.¹³

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Prince E. Wallace*, 52 ECAB 357 (2001).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997); *Donald T. Pippin*, 54 ECAB 631 (2003).

⁸ *Id.*

⁹ *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

¹⁰ *See Nicolea Bruso*, 33 ECAB 1138 (1982).

¹¹ *Ausberto Guzman*, 25 ECAB 362 (1974).

¹² *Conard Hightower*, 54 ECAB 796 (2003).

¹³ *See Cecelia M. Corley*, 56 ECAB ____ (Docket No. 05-324, issued August 16, 2005).

ANALYSIS

The Office accepted that appellant sustained a lumbar strain on November 13, 2001. On May 12, 2004 appellant filed a claim for a recurrence of disability for back pain commencing April 26, 2004 while working a bar code machine assignment. The record is devoid of any evidence that appellant had any medical restrictions or limitations at that time. Appellant attributed her back pain and symptoms to the accepted condition of November 13, 2001 and to the heavy lifting and pushing involved in her bar code machine assignment.

Appellant attributed her recurrence of disability to new work factors beginning January 2004 when she accepted the job on the bar code machine which involved activities such as heavy lifting and moving heavy containers of mail. Her assertions indicate that she is claiming a new injury based on these exposures not a spontaneous recurrence of disability.

In support of her claim of a recurrence of disability, due to the November 2001 work injury, appellant submitted reports from Dr. Jaffe who first stated that appellant was injured on the job in 1999 and that MRI scans taken in 1999, 2002 and 2004 show a protruding disc and narrow spine. The record, however, does not contain a workers' compensation claim for a back injury in November 1999. Since no workers' compensation claim was filed for an alleged work injury in 1999, any back condition prior to November 13, 2001, the date of the accepted work injury, cannot be determined to be an employment-related condition, but rather a preexisting condition. Although Dr. Jaffe indicated in his July 19, 2004 and May 26, 2005 reports that appellant's current disability and back condition are causally related to the November 13, 2001 injury, his opinion did not address her back condition which preexisted the November 13, 2001 injury and the effect, if any, the November 13, 2001 injury had on appellant's preexisting back condition.

Furthermore, the record indicates that, while appellant required physical restrictions following her November 13, 2001 work injury, there is no evidence that she had any restrictions after May 15, 2002, the date that she last sought medical treatment for her back before the claimed April 26, 2004 recurrence. The record reflects that appellant bid on and worked different positions without limitations and performed her duties without any known difficulty. Although Dr. Jaffe opined that her disability beginning April 26, 2004 was a reexacerbation of her old injuries, he failed to provide sufficient medical rationale to explain how the November 13, 2001 injury caused her disability beginning April 26, 2004. Thus, his medical reports are of diminished probative value as his medical conclusions contain insufficient medical rationale¹⁴ and are based on an incomplete medical history.¹⁵ There is no further relevant medical evidence of record.

Although appellant was advised by the Office's June 25, 2004 letter of the necessity of providing a rationalized report from her physician explaining how and why the accepted condition would cause the claimed recurrence of disability, she did not submit such evidence. Thus, she did not meet her burden of proof to establish that she sustained a recurrence of total disability commencing April 26, 2004 as alleged.

¹⁴ See *id.*

¹⁵ See *John W. Montoya*, 54 ECAB 306 (2003); *Shirley R. Haywood*, 48 ECAB 404 (1997).

CONCLUSION

The Board finds that appellant failed to establish that she sustained a recurrence of disability on or about April 26, 2004 causally related to her accepted employment injury of November 13, 2001.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated August 12, 2005 is affirmed.

Issued: May 1, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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