

ISSUE

The issue is whether appellant established that she sustained recurrences of total disability causally related to her accepted November 27, 1999 employment injury.

FACTUAL HISTORY

On July 21, 2000 appellant, then a 42-year-old mail processor, filed a traumatic injury claim, Form CA-1, alleging that on November 27, 1999 she experienced sharp pain in her lower back, stomach and leg as a result of overhead lifting, bending and twisting on the delivery bar (DB) code machine. On July 6, 2002 the Office accepted her claim for aggravation of a lumbar sprain and lumbar radiculitis.

On February 25, 2005 appellant filed an incomplete notice of recurrence,² Form CA-2a, alleging that, on January 21, 2000, the periodic bending, lifting and twisting required by her light-duty position caused pain in the same areas of her back as her original injury. On February 27, 2005 she filed similar notices of recurrence for the dates March 25 and April 19, 2000, March 30, 2001 and September 27, 2002. On February 28, 2005 appellant again filed similar notices of recurrence for the dates October 20, 2000 and November 23, 2002. She submitted documentation of leave without pay taken intermittently from December 4, 1999 to December 26, 2002.

Appellant also provided a report from Dr. Adriana Stolte, an internist, who listed the dates and nature of her treatment from December 4, 1999 to November 26, 2002. Dr. Stolte stated that appellant reported to her office for treatment of her back pain “flare-ups” that occurred on January 21, February 19, March 25, April 19 and October 20, 2000, and March 30, 2001, and September 27 and November 23, 2002. She reported that the recurrences were caused by the accumulation of appellant’s work-related duties, which resulted in tightness in the back that progressed into pain and spasms. After each recurrence she found decreased lumbar range of motion, spasms and pain on assorted lumbar orthopedic/neurological challenge tests. Dr. Stolte diagnosed displaced lumbar intravertebral discs, sciatica/neuritis, and myalgia/myositis. She stated that the recurrences were causally related to the original injury because they had a similar clinical presentation and pattern of relation to appellant’s activities. Dr. Stolte reported that, when appellant was out of work, she was out on temporary total disability, however, she did not state which periods this entailed.

On May 9, 2005 the Office requested that Dr. Stolte provide an updated work capacity evaluation. On May 11, 2005 it informed appellant that the record did not contain medical evidence supporting her claims for recurrences of disability. The Office requested a detailed narrative report addressing the periods for which appellant was claiming compensation benefits. On May 12, 2005 Dr. Stolte provided an updated work capacity evaluation, which contained a variety of time and weight restrictions and the inability to work the midnight shift. On June 27, 2005 she submitted an attending physician’s report which diagnosed displaced lumbar discs, myofascitis and mononeuritis of a lower limb. Dr. Stolte noted muscle spasms and decreased

² The section to be completed by the employing establishment was not included.

lumbar range of motion. She stated that appellant's employment caused or aggravated her condition by repetitive actions, various work positions and, at times, the amount of weight she carried. Dr. Stolte noted treating appellant extensively for her conditions from January 2000 to May 2001, February to December 2002 and December 2004 to May 2005.

By decision dated October 26, 2005, the Office denied appellant's claims of recurrence of total disability on the grounds that she had not provided medical evidence establishing the claimed periods of disability. On November 1, 2002 appellant requested an oral hearing to review the decision.

At the hearing, held March 29, 2006, appellant testified that her preinjury employment duties involved a significant amount of bending, twisting, lifting and overhead lifting. Following her injury, Dr. Stolte limited her work hours and provided work restrictions because of her sciatica and lower back pain. For approximately six months, appellant worked 20 hours per week and took leave without pay for the other hours. She then began working 32 hours per week in a light-duty position and has kept this position for several years. Since the November 27, 1999 injury, appellant has received regular massage therapy and electrostimulation from Dr. Stolte. She did not address the specific periods of disability alleged.

On April 20, 2006 the employing establishment responded to appellant's testimony. It noted that it had always accommodated her medical restrictions, including her need for fewer hours and working at her own pace.

On April 28, 2006 Dr. Stolte submitted a medical report based largely on a November 26, 2001 report that she prepared along with Dr. Joel Gainemarkin as part of appellant's original claim. She stated that appellant had a history of lower back injuries, including an injury in 1984, thoracic and lumbar sprains from 1985 to 1988, and back and leg pain from 1987 to 1989. Appellant left the workforce because of her back problems and was assigned a permanent disability rating. When she felt that her back was stable, she began working for the employing establishment. Dr. Stolte stated that appellant's course of treatment following the original injury included electrotherapy, ultrasound, massage and instructions on home care including relaxation techniques, rest, heat, movement restrictions and strengthening exercises.

Quoting from her 2001 report, Dr. Stolte opined that appellant's subjective complaints and objective clinical findings were causally related to the November 27, 1999 employment injury. She stated that appellant had a significant and permanent loss of function to the lumbar spine and that her injury had aggravated her preexisting condition. Dr. Stolte stated that, because of the severity and extent of the soft tissue and ligament damage, appellant would develop scar tissue, which would make lumbar joints unstable and stiff. These changes would further reduce her range of motion and lead to recurring symptoms, pain and disability. Dr. Stolte noted that it was common to see recurrence and exacerbation for no apparent reasons in cases like appellant's because of the structural weakening of the spinal column. She opined that these recurrences would be more prevalent at times of stress, fatigue or emotional upset. Dr. Stolte stated that appellant was initially released from care on December 26, 2000 because she had reached maximum medical benefit from treatment, but that she continued to return for treatment when her symptoms flared up. She stated that appellant's permanent light-duty status and 32-hour

workweek were appropriate. Dr. Stolte did not provide any additional information about specific periods of disability.

By decision dated June 8, 2006, the Office hearing representative affirmed the October 26, 2005 decision. She found that appellant had not established that the claimed recurrences were causally related to the original work injury. The hearing representative stated that Dr. Stolte's reports did not establish that the recurrences were the result of the original injury rather than intervening work factors.

LEGAL PRECEDENT

The Office's regulation defines a recurrence of disability as an employee's inability to work, following a return to work, caused by a spontaneous change in a medical condition that resulted from a previous injury or illness without an intervening injury or new exposure. 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.³

When claiming recurrence of disability, an employee who was given a light-duty position to accommodate the effects of an employment injury has the burden of establishing that she cannot perform the light-duty tasks. This must be shown by the weight of the reliable, probative and substantial evidence. As part of the burden, the employee must show either 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.⁴

ANALYSIS

Appellant sustained an injury on November 27, 1999 that was accepted by the Office for aggravation of lumbar sprain and aggravation of lumbar radiculitis. She alleged that she sustained recurrences of this injury on January 21, March 25, April 19 and October 20, 2000, March 30, 2001 and September 27 and November 23, 2002. Appellant stated that these recurrences of disability were related to the periodic lifting, bending and twisting required by her light-duty position.

The Board notes that appellant has not established a recurrence of disability because she did not allege or demonstrate that the changes in her condition were spontaneous. For a change to be spontaneous, it cannot be the result of any intervening employment factors. Appellant stated on the CA-2a forms that she sustained recurrences of disability because of the requirement that she periodically bend, lift and twist. Dr. Stolte stated on February 3, 2005 that appellant experienced several "flare-ups" of back pain between January 21, 2000 and November 23, 2002 as a result of the accumulation of her work-related activities. These activities, including

³ See 20 C.F.R. § 10.5(x).

⁴ *Richard A. Neidert*, 57 ECAB __ (Docket No. 05-1330, issued March 10, 2006); *Terry R. Hedman*, 38 ECAB 222 (1986).

bending, twisting and lifting are intervening causes. Because they constitute new exposure, her changed condition on each of the days claimed would be considered new injuries. The Board finds that appellant did not establish that the changes in her condition were spontaneous.

The Board further finds that appellant has not provided rationalized medical evidence establishing the recurrences of disability claimed or explaining their causal relationship with the November 27, 1999 employment injury.

On February 3, 2005 Dr. Stolte stated that the alleged recurrences of total disability were causally related to the accepted injury because they had a similar clinical presentation and pattern of relationship to appellant's activities. In other words, her opinion was based on the fact that appellant had the same symptoms as her initial injury when she did activities of the sort that caused her initial injury. The Board notes that this opinion relates appellant's disability to ongoing employment activities rather than the original injury. However, Dr. Stolte did not explain how she determined that the original injury, rather than the ongoing employment activities, caused the alleged recurrences. The Board finds that her February 3, 2005 opinion is not sufficient to establish that the initial injury was the cause of the alleged recurrences.

On April 28, 2006 Dr. Stolte quoted a portion of her November 2001 report in which she stated that the severity of the damage to appellant's soft tissue and ligament would lead to the formation of nonelastic scar tissue that would make her joints stiff and unstable. She stated that this structural weakening of the spinal column would further reduce appellant's range of motion and lead to recurring symptoms and pain. Dr. Stolte opined that these recurrences, which might occur for no apparent reason, would be more prevalent at times of stress, fatigue or emotional upset. Though she provided a medical explanation of how appellant's original injury could cause later recurrences, she did not link it adequately to the specific alleged instances of recurrence. In her February 2005 report, Dr. Stolte listed the dates of treatment associated with appellant's "flare-ups" and stated generally that after these incidents she found decreased lumbar range of motion, spasms and pain. However, she did not provide evidence of how these "flare-ups" changed appellant's condition to the point that she was unable to perform her light-duty position.

The Board finds that, in the absence of rationalized relevant medical evidence, appellant has not met her burden of proof to establish the alleged recurrences of total disability.

CONCLUSION

The Board finds that appellant has not established that she sustained recurrences of total disability causally related to her accepted November 27, 1999 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs' hearing representative dated June 8, 2006 is affirmed.

Issued: May 9, 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