

related to her accepted injury.¹ The Board also determined that the Office properly denied her request to authorize surgery on her left knee, as the medical evidence did not establish that this condition was related to the September 30, 1987 injury. The facts and circumstances of the case, as set forth in the Board's prior decision, are hereby incorporated by reference.

Appellant sought reconsideration of her claim before the Office. In a December 18, 2000 report, Dr. Calvin C. Matthews, a Board-certified physiatrist, diagnosed cervical radiculopathy, carpal tunnel syndrome of the left hand; cervical and lumbar sprains with radiculopathy into the left lower extremity. On examination, he noted tenderness along the left knee with a positive McMurray sign, suggestive of internal derangement. Dr. Matthews noted that appellant was not presently working and found that she was unable to work. Appellant had no immediate prior history of any injury to her back and legs; therefore, her symptoms were causally related to the September 1987 employment injury and rendered her totally disabled. On June 12, 2002 Dr. Matthews noted little improvement in her symptoms over the prior several months.

By decision dated August 1, 2002, the Office denied modification of its February 15, 2000 decision denying the recurrence of disability claim.

On October 18, 2002 appellant requested reconsideration. She again contended that the requirements of her modified-duty position exceeded her physical limitations. Appellant also noted that her supervisor did not train her and that a coworker showed her the duties to perform. When the coworker was placed on a detail, appellant stated that she became the only person to perform work which required bending, reaching and lifting and other duties not listed in her job requirements. On July 29 and September 11, 2002 Dr. Matthews noted treatment of appellant for pain to her left knee and left shoulder. On January 6, 2003 he noted discomfort in the cervical spine, left shoulder, left elbow and left knee.

By decision dated February 3, 2003, the Office denied modification of the August 1, 2002 decision.

On June 12, 2003 appellant requested reconsideration. In a March 3, 2003 report, Dr. Matthews reviewed her medical history beginning with the work injury of September 30, 1987. He stated:

“In review of [appellant's] history, it is obvious that [she] has had an initial injury in 1987, which has progressed over time with recurrence of the symptomatology as she has described to me and has been confirmed by the treating physicians over the course of time. These findings strongly impress me as being initially related to the injury the patient sustained in 1987, which has progressed over time to the state in which she is today. It is my firm conviction that [appellant] needs to repeat studies of the above-stated areas, that she needs physical therapy, that she

¹ Docket No. 00-2584 (issued May 16, 2002). On May 29, 1999 appellant stated that an elevator at the employing establishment did not work which required additional walking, resulting in swelling of her left knee and ankle. Moving log books caused occasional back spasms, with pain to her left shoulder and fingers. She contended that constant movement in her modified-duty assignment exacerbated her injury.

in all probability will need surgical intervention, as treatment for the neck, the back and left knee symptomatology and including the left hand symptomatology.

“[Appellant] has been totally disabled secondary to the last exam[ination] of May 1999 when she discontinued work and has not to date been allowed to have additional studies or work-up to attempt a possible treatment of ongoing pain despite the findings of prior studies which have clearly defined the symptoms related to the neck, back and left knee. [She] needs treatment of these specific areas of injury and has been long awaiting the decision by the workers’ compensation program to have fair and compensable treatment of these injuries.”

Dr. Matthews stated that a restructure in appellant’s department at work required significant changes which she was required to perform. He advised that she could not perform fine motor tasks, such as removing staples or stapling, which resulted in headaches, numbness and tingling sensations throughout her neck, left arm and fingers. Subsequent reports of Dr. Matthews reiterated his opinion on total disability.

By decision dated September 15, 2003, the Office found that appellant did not establish that her modified duties had changed. It denied modification of the February 3, 2002 decision.

On November 12, 2003 appellant requested reconsideration, contending that her work assignments did not conform to her physical limitations. In an October 20, 2003 note, Dr. Matthews indicated that appellant stated that her recurrence began on May 11, 1999. Appellant also submitted job descriptions dated April 6, 1992 and January 14, 1998.

On December 19, 2003 the Office denied reconsideration, finding that the evidence was immaterial or duplicative of that previously received. The Office noted that her contention that she did not receive the job offer on January 27, 1998 was contradicted by the evidence of record as she signed a statement stating that she was aware of the job description and the job duties and physical requirements of her modified assignment.

On February 27, 2004 appellant again requested reconsideration. She reiterated that she was not given any assistance with any of the time unit duties. This increased symptoms of pain and numbness in her back and left-sided extremities. Appellant needed to perform additional walking, standing, bending, reaching, stooping and lifting when her coworker stopped working in her department. She submitted a note from the coworker, who stated that she worked an eight-hour, bided assignment in the time unit when appellant started working four hours of modified duty in January 1998. They worked together for 11 months until the coworker was given a detail, which compelled appellant to do all the essential work alone. In a January 14, 2004 note, Dr. Matthews addressed appellant’s continuing treatment. This report noted a new diagnosis of cubital tunnel syndrome.

By decision dated July 29, 2004, the Office denied modification of the December 19, 2003 decision.

Appellant requested reconsideration on September 27, 2004 and submitted a description of her work duties. She submitted the August 30, 2004 statement by another coworker, who noted that on occasion appellant walked to the copier to make copies, a distance of some 50 to 60 feet. On August 11, 2004 Dr. Matthews listed appellant's complaints of persistent pain. He opined that she remained disabled secondary to an exacerbation of pain when she attempted the duties of her employment. Dr. Matthews completed a disability certificate indicating that appellant was examined on November 24, 2004 for chronic neck pain, left shoulder pain and sciatica. In subsequent medical reports, he reiterated that appellant was totally disabled.

By decision dated January 25, 2005, the Office denied appellant's request for reconsideration as the evidence was cumulative or immaterial to warrant further review.

On May 19, 2005 appellant requested reconsideration. She repeated arguments pertaining to her supervisor's work and referred to the statements of her two coworkers. Appellant argued that additional walking caused her left leg to swell and become painful. She also had to reach, kneel and bend more than before after the detail assignment of her coworker. In a September 19, 2005 report, Dr. Matthews noted that appellant's chief complaint was a persistent discomfort in the neck, left shoulder, left hand and leg.

On January 23, 2006 the Office approved appellant's request for a change of physicians. It subsequently received the March 29, 2006 report of Dr. Berton Taffet, a Board-certified orthopedic surgeon. He repeated appellant's history of injury on September 30, 1987 while lifting a very heavy sack of mail. Dr. Taffet noted his impressions as neck symptoms secondary to chronic cervical strain and cervical radiculopathy. He provided a prescription.

In a June 17, 2004 decision, the Office denied further merit review on the basis that appellant's request was untimely filed and failed to establish clear evidence of error. Appellant subsequently filed an appeal with the Board. By decision dated April 18, 2006, the Board found that appellant's request for reconsideration was timely filed. The case was returned to the Office for consideration of appellant's request under the proper legal standard.²

On remand, appellant submitted a May 10, 2006 report from Dr. George S. Naseef, III, an orthopedic surgeon, who evaluated appellant for pain to her neck, left arm and lower left back. Dr. Naseef listed his impressions as Grade 3 spondylolisthesis resulting in claudication symptoms, radiculopathy and left knee osteoarthritis with symptoms in her right acromioclavicular (AC) joint. He recommended a magnetic resonance imaging scan of appellant's cervical and lumbar spine. On June 28, 2006 Dr. Naseef stated that appellant had cervical stenosis with left-sided C6 radiculopathy and L4-5 Grade 2 spondylolisthesis resulting in claudication and radiculopathy. He recommended a left L4-5 epidural steroid injection.

In a decision dated July 7, 2006, the Office denied modification of its prior decisions. It found that the evidence was insufficient to establish that her job duties changed following the detail assignment of her coworker. Further, the medical evidence was found to be of diminished probative value on causal relationship.

² Docket No. 05-1281 (issued April 18, 2006).

On September 11, 2006 appellant requested reconsideration, reiterating that there had been a change in the nature and extent of her light-duty requirements. In a September 1, 2006 note, Dr. Matthew I. Lipp, a surgeon, stated that appellant had back and left lower extremity radiculopathy secondary to degenerative disc disease. He reviewed the work history of injuring herself on September 30, 1987 while lifting a heavy object at the employing establishment. On September 27, 2006 Dr. Naseef indicated that appellant had left sided C6 radiculopathy and an L4-5 Grade 2 spondylolisthesis resulting in claudication and left-sided L5 radiculopathy. In a December 27, 2006 report, he noted that appellant continued to have Grade 2 degenerative L4-5 spondylolisthesis with left-sided radiculopathy. Dr. Naseef prescribed physical therapy.

In a decision dated February 15, 2007, the Office denied modification of the July 7, 2006 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, 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 the 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.³ This 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 employment factors and supports that conclusion with sound medical reasoning.⁴ An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's unsupported belief of causal relation.⁵

A recurrence of disability, as defined by the implementing federal regulations, 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

ANALYSIS

The Board finds that appellant has not established a recurrence of disability commencing May 14, 1999 causally related to her September, 30, 1987 injury. The record reflects that her claim was accepted by the Office for cervical, thoracic and lumbar myositis with left arm and leg radiculopathy. On January 14, 1998 appellant returned to work in a modified-duty position that involved no lifting over 10 pounds. She was limited to sitting, walking and standing for two

³ *Richard A. Neidert*, 57 ECAB ___ Docket No. 05-1330 (issued March 10, 2006); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ *Ronald A. Eldridge*, 53 ECAB 159 (2001); see *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁵ *Patricia J. Glenn*, 53 ECAB 159 (2001); *Ausberto Guzman*, 25 ECAB 362 (1974).

⁶ 20 C.F.R. § 10.5(x).

hours each a day and her workday was limited to four hours. Appellant was prohibited from bending, squatting, climbing or kneeling.

Appellant alleged a recurrence of disability due to a change in the nature and extent of the light-duty job requirements. She contended that a coemployee, J.T., assisted her with her duties and when he left for another job assignment; her duties changed as she became the only person in her unit and had to exceed her physical limitations in order to perform her job. The Board finds, however, that the evidence submitted does not support her contentions. Appellant noted that she had to leave her chair to perform various duties at times during her shift and had to lift log books. The evidence of record does not substantiate that after her coworker left on detail, that she was required to exceed her physical requirements to accomplish her modified-duty job assignments. Appellant was allowed to walk for one to two hours a day and there is no evidence that she was required to exceed this restriction. Similarly, she was allowed to lift up to 10 pounds. The evidence indicates that the heaviest items appellant was required to lift were log books weighing from one to four pounds. She contended that a supervisor could not state what her duties were when she first reported to work and, due to differences in their schedules, her supervisor observed her only during calmer times. However, there is no evidence, other than appellant's allegation, to establish that she was required to go beyond her restrictions or that her job requirements changed. The statements submitted from the coworkers are not sufficient to establish a change in her job requirements. J.T. noted that when he left the unit, appellant had to work essentially alone. However, after leaving the unit, he was not present to observe appellant in the performance of her job duties. His statement appears based substantially on appellant's allegations. The other coworker, L.H., noted that after J.T. left the unit, appellant had to walk to the photocopier and make copies. However, this statement provided description of appellant's modified work activities establishing that she was working outside of her physical limitations. Based on this evidence, the record is not sufficient to establish a change in the nature and extent of appellant's modified-duty assignments prior to her May 14, 1999 recurrence claim.

Moreover, appellant has not established a change in her injury-related condition such that she was unable to perform her modified-duty job.

Dr. Matthews opined that appellant was totally disabled since his initial evaluation on December 1, 2000. As appellant listed no prior injury to her back or legs, he attributed her symptoms to her 1987 injury. Dr. Matthews advised that her condition had progressed over time to the state that she is in today. The Board notes, however, that he did not provide adequate medical rationale in support of his stated conclusion on causal relationship. Appellant alleged pain in her back and left arm after the 1987 employment injury. While the Office accepted left leg radiculopathy associated with lumbar myositis, Dr. Matthews did not explain how this injury would give rise to left knee tenderness and possible internal derangement some 13 years later. He stated that her conditions had progressed over time, citing generally that her attending physicians had treated the same symptomatology. Dr. Matthews did not address how the accepted injury would progress to cause disability on and after May 1999. He did not address the prior diagnostic studies obtained of appellant's back which did not reveal any evidence of a herniated disc. As noted, appellant has not substantiated that there was a change in the modified duties she was required to perform, a history that was accepted by the physician in his medical reports. As his opinion is not based on a full and accurate factual and medical background, the Board finds that his opinion is of reduced probative value.

The report of Dr. Taffet addressed appellant's treatment for cervical symptoms associated with a chronic strain and radiculopathy. The Board notes, however, that while noting a history of the 1987 employment injury, the physician did not provide a medical opinion relating appellant's diagnosed conditions to the accepted injury. Dr. Naseef listed his impressions of a lumbar spondylolisthesis, cervical stenosis and osteoarthritis of the left knee and AC joint. He did not clearly explain how these conditions were attributable to the employment injury in 1987. Dr. Naseef did not address how appellant's conditions would be caused or contributed to by her injury such as to cause total disability commencing in May 1999. Dr. Lipp, noted appellant's symptoms of lumbar radiculopathy which he stated was secondary to degenerative disease of the spine. He did not provide an opinion explaining how appellant's injury caused or contributed to her degenerative disease or address her disability for work. For these reasons, the reports of the examining physicians are of diminished probative value. The Board will affirm the decision of the Office denying appellant's recurrence of disability claim.

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability on or about May 14, 1999 causally related to her accepted September 30, 1987 injury.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 15, 2007 and July 7, 2006 be affirmed.

Issued: April 25, 2008
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