United States Department of Labor
Employees' Compensation Appeals Board

L.H., Appellant	)	
and	)	**Docket No. 08-759**
	)	**Issued: December 11, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Santa Clarita, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 17, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated March 7 and November 8, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits effective August 8, 2006; (2) whether appellant established that she had any disabling residuals after August 8, 2006; and (3) whether appellant sustained a recurrence of disability.

FACTUAL HISTORY

On August 25, 2003 appellant, then a 40-year-old letter carrier, was injured when the stool on which she was sitting broke and she fell backwards onto the floor. On November 18, 2003 the Office accepted her claim for bilateral elbow contusions, cervical strain, right shoulder

strain and lumbar strain. At the time of her injury appellant was working eight hours per day as a modified letter carrier with permanent restrictions due to a 1992 left shoulder injury.[1]

Commencing January 2004, appellant was treated by Dr. Leo Langlois, a Board-certified physiatrist, for pain management.[2] On January 27, 2004 Dr. Langlois reviewed a history of appellant's injury and her complaint of back, right leg, bilateral shoulder and neck pain. On physical examination, he noted moderate obesity, symmetric reflexes, 4/5 ratchety give away weakness and intact sensory response. Back range of motion was limited by pain and multiple painful joints, especially at the shoulders. Dr. Langlois diagnosed herniated nucleus pulposus of L5-S1; discogenic cervical and lumbar pain; chronic left shoulder pain, status post surgery; chronic right shoulder pain with magnetic resonance imaging (MRI) scan evidence of rotator cuff tear; and possible right carpal tunnel syndrome. He recommended long acting opioid therapy.

The Office referred appellant to Dr. Alice M. Martinson, a Board-certified orthopedic surgeon, for a second opinion. In a December 29, 2004 report, Dr. Martinson reviewed the history of injury and medical treatment, including the prior left shoulder injury. On physical examination, appellant demonstrated a full range of motion of the cervical spine without palpable spasm. There was no focal motor weakness in either of the upper extremities and deep tendon reflexes were described as normal. Dr. Martinson described nonanatomic areas of hypesthesia to light touch in both arms but no sensory abnormalities. With coaxing, appellant achieved a full range of overhead flexion and abduction of both shoulders with complaints of pain. She was described as demonstrating inconsistent voluntary efforts with abduction of external rotation. Dr. Martinson noted tenderness to pressure over the right acromioclavicular (AC) joint. Appellant's obesity prevented accurate palpation of certain muscles. Straight leg raising was negative bilaterally with tenderness to palpation noted in the trochanteric bursa of the right hip. Multiple MRI scan studies were reviewed which showed moderate arthritic changes to the AC joint of the right shoulder, mild tendinopathy and a minimal partial thickness tear of the supraspinatus tendon. The cervical studies showed disc bulges at C3-4, C5-6 and C6-7, with no impingement upon the cervical canal or nerve roots. The lumbar studies revealed degenerative disease at L5-S1 with a small dorsal disc bulge, but again no impingement on the lumbar canal or nerve roots. The left shoulder studies showed some mild arthritic changes in the AC joint with no evidence of a rotator cuff tear.

Dr. Martinson diagnosed right trochanteric bursitis, right AC joint arthritis, minor disc abnormalities of the cervical and lumbar spine and morbid obesity. She commented that appellant's complaints were markedly disproportionate to the findings on examination and the large consumption of narcotic analgesics started by Dr. Langlois. Dr. Martinson advised that none of the conditions found on examination of appellant were medically related to the August 25, 2003 injury or to other factors of appellant's employment. She noted that the shoulder MRI scan showed a degenerative signal change with both rotator cuffs, with the possibility of partial thickness rotator cuff tear, as well as mild amount of arthrosis of the right

[1] The Office accepted a cervical strain, left shoulder strain and left shoulder impingement. Appellant began working at modified duty for four hours a day on May 18, 2004.

[2] On June 25, 2004 the Office authorized Dr. Langlois as appellant's treating physician.

AC joint. The MRI scan of appellant's cervical spine showed miniscule annular bulges at C3-4, C5-6 and C6-7, which had no effect upon her spinal canal diameter or any of the neural foramina. Dr. Martinson opined that appellant had disability related to the accepted injury. She attributed appellant's low back and right hip complaints as a consequence of tightness of the iliotibial band, which was very common in chronically obese individuals. Dr. Martinson opined that appellant should have recovered from her accepted fall with no more than five days of total disability. She stated that appellant's primary pathology was her chronic narcotic dependence, which was fostered by Dr. Langlois and "work related to the extent it has been passively endorsed by workers' compensation funding her ongoing narcotic usage." Dr. Martinson advised that, following five days after the accepted injury, appellant could return to the work she had been performing.

Dr. Langlois continued to treat appellant and submit progress reports on her condition. On March 25, 2005 he advised that she could work six hours a day at her current restrictions.

In April 2006, the Office authorized appellant's change of treating physician to Dr. Kathryn Mason, a Board-certified family practitioner. On May 9, 2006 Dr. Mason diagnosed chronic low back pain, chronic cervical pain and chronic right shoulder pain. In a May 15, 2006 report, she noted appellant's history of injury and diagnosed pain to the cervical spine, right shoulder, low back and right wrist. Dr. Mason stated that appellant had been off work for the prior 45 days by means of urgent care visits where she repeatedly requested time off work.[3]

Dr. Martinson was requested to address whether appellant could return to work as a modified letter carrier after five days of disability. On June 6, 2006 she responded:

> "At the time of my examination, I identified no musculoskeletal pathology, which could attribute to her history of a fall due to a broken chair on August 25, 2003. It was my opinion then as it is my opinion now that whatever minor injury she might have sustained in her fall should have caused no more than five days worth of temporary total disability. Her work limitations, as I understood them at the time of the fall, were allegedly based on physical factors which preceded the fall. If she was, in fact, working eight hours a day as a modified mail carrier at the time of her August 25, 2003 injury, then she should have been capable of returning to that position after five days of temporary total disability."

On July 7, 2006 the Office proposed to terminate appellant's compensation. It found that the weight of the medical evidence was represented by Dr. Martinson's opinion, which established that her accepted conditions had resolved. The Office allowed appellant 30 days to submit additional evidence.

On July 13, 2006 appellant requested 30 to 45 days to obtain additional medical evidence in support of her claim. She submitted copies of physical therapy reports and materials previously of record.

[3] The record reflects that appellant was working eight hours a day as a modified letter carrier on the date of injury.

By decision dated August 9, 2006, the Office terminated appellant's compensation benefits effective August 8, 2006.

In a July 24, 2006 report, Dr. Mason stated that appellant had been treated by Dr. Langlois with multiple pain medications and continued with narcotic therapy. Appellant transferred her treatment to Dr. Mason, but she was not successful in weaning her from the use of narcotic medications. Dr. Mason advised that she did not initially have appellant's records from either Dr. Langlois or Dr. Martinson to review. She noted that appellant made repeated visits to the Kaiser Permanente urgent care clinic and that appellant had requested that they be authorized under her workers' compensation claim. Dr. Mason stated that she could not do so and advised that appellant's employer was able to accommodate her physical restrictions. She stated that appellant did not appear for several scheduled visits and she had no new physical examination findings to report; however, she did agree with Dr. Martinson's reports that appellant's subjective complaints were not supported by objective findings. Dr. Mason stated her understanding that appellant's benefits were to be terminated and she agreed that appellant was at maximum medical improvement. She noted that there was "an interplay on the part of the patient between her health plan benefits and her workers' compensation benefits" in obtaining narcotic medication. Dr. Mason recommended that any time off for specific work complaints be disallowed unless appellant was seen by her primary treating physician, to assure continuity in her care.

In reports dated January 4 to April 7, 2006, Dr. Langlois addressed appellant's back condition and prescribed narcotics for pain. He advised that she was permanent and stationary as of September 2005.

On September 14, 2006 appellant filed a claim for a recurrence of total disability commencing September 5, 2006. She attributed her condition to loading parcels into containers, helping customers and checking all the carriers. Appellant stopped work on September 7, 2006.

On October 13, 2006 Dr. Robert Christopher, an orthopedic surgeon, noted the history of injury and provided findings on examination. He diagnosed degenerative disc disease at L5-S1 and impingement syndrome of the right shoulder. Dr. Christopher stated that shoulder impingement syndrome could flare up and can be related to a job incident or trauma. As appellant's job was somewhat active, it could have contributed to her condition. Dr. Christopher noted that it was difficult to determine whether her degenerative lumbar disease had been present for several years or occurred at the time of her injury. Appellant related to Dr. Christopher that she had no back pain prior to the injury. Dr. Christopher recommended a discogram.

On December 14, 2006 the Office requested that appellant provide additional information in support of her recurrence claim. Appellant was advised to submit medical evidence addressing whether her accepted conditions had worsened or that she could no longer perform the duties she was performing when she stopped work.

On January 24, 2007 appellant advised the Office that she was undergoing back surgery on January 25, 2007.

By decision dated March 7, 2007, the Office denied appellant's recurrence of disability claim, finding that she did not provide sufficient medical evidence.

On August 9, 2007 appellant requested reconsideration of the August 9, 2006 termination decision. She submitted copies of leave records and reports of Dr. Langlois previously of record.

In a June 25, 2007 report, Dr. Mason noted that appellant had decompression and fusion surgery at L5-S1 under her private insurance on January 31, 2007 to remedy spondylotic spinal stenosis at L4-S1. Following surgery, appellant's lower extremity pain resolved. Dr. Mason advised that the surgeon did not address causation in her reports and was now deceased. She reviewed the Kaiser medical records from 1997, noting two episodes of back pain prior to the August 25, 2003 injury that resolved with conservative care. Dr. Mason stated that appellant "may have had a mild preexisting condition of occasional low back pain" but her problems occurred primarily after the chair collapsed at work. For this reason, appellant's surgery and time off work should be considered as part of the 2003 injury.

In an October 11, 2007 attending physicians report, Dr. Christopher D. Hamilton, a Board-certified orthopedic surgeon, noted that appellant sustained a left shoulder injury at work on January 29, 1992. He diagnosed chronic left shoulder pain and AC joint arthritis with synovitis. Dr. Hamilton listed a checkmark "yes," that appellant's condition appeared directly related to overuse injury and she was partially disabled since June 25, 2002 and should only work within specified restrictions. On October 16, 2007 Dr. Hamilton advised that appellant was unable to work due to an October 15, 2007 surgery.

By decision dated November 8, 2007, the Office denied modification of the August 9, 2006 termination decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[4] Having determined that, an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.[5] The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[6] The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.[7] To terminate authorization for medical

[4] *Bernadine P. Taylor*, 54 ECAB 342 (2003).

[5] *Id.*

[6] *Gewin C. Hawkins*, 52 ECAB 242 (2001).

[7] *Roger G. Payne*, 55 ECAB 535 (2004).

treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.[8]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained injury when she fell on August 25, 2003. Appellant's claim was accepted for bilateral elbow contusions, cervical strain, right shoulder strain and lumbar strain. It has the burden of justifying the termination of appellant's compensation for these medical conditions.

The Office terminated appellant's compensation benefits based on the opinion of Dr. Martinson. In a December 29, 2004 report, Dr. Martinson provided comprehensive review of appellant's history of injury, medical treatment and diagnostic studies. On physical examination, she noted that appellant demonstrated inconsistent voluntary efforts but no motor weakness of either upper extremity. Sensory examination was noted as revealing nonanatomic patchy areas of hypesthesia to light touch in both arms. Based on a review of multiple MRI scan reports, Dr. Martinson diagnosed right trochanteric bursitis, right AC joint arthritis, minor disc abnormalities of the cervical and lumbar spine and morbid obesity. However, she advised that none of the diagnosed conditions were causally related to appellant's August 25, 2003 employment injury. Dr. Martinson noted that the mechanism of the work injury would not produce additional new shoulder pathology and attributed appellant's low back and right hip symptoms to the tightness of the iliotibial band, a problem in chronic obese individuals. She opined that appellant would have recovered from her fall with no more than five days of total disability. Dr. Martinson found that appellant's complaints and use of narcotic analgesics were disproportionate to the objective findings on examination and the MRI scan reports pertaining to her shoulders, cervical spine and low back. She stated that appellant's iatrogenic narcotic dependency was work related to the extent workers' compensation funded her ongoing narcotic usage and that continued use would affect her ability to work. In a June 6, 2006 supplemental report, Dr. Martinson reiterated that appellant would have been able to return to her date-of-injury position after five days of temporary total disability. She concluded that there was no musculoskeletal pathology attributable to the August 25, 2003 injury.

The Board finds that the opinion of Dr. Martinson is based upon an accurate medical history and factual background. She performed a thorough examination and found that appellant's complaints were disproportionate to objective findings and the diagnostic studies of her shoulders and spine. Dr. Martinson found no ongoing musculoskeletal pathology related to the August 25, 2003 fall and attributed appellant's current conditions to degenerative disc disease and her obesity. The Board finds that her opinion is well rationalized and establishes that appellant's work-related conditions ceased.

Appellant submitted additional evidence from Dr. Langlois, who opined that her work caused or contributed to her back conditions, pain in the shoulder region and carpal tunnel syndrome. He did not provide sufficient findings on examination to support continuing disability based on the accepted injury. As to those conditions not accepted by the Office as being

[8] *Pamela K. Guesford*, 53 ECAB 726 (2002).

employment related, it is appellant's burden to provide rationalized medical evidence sufficient to establish causal relation, not the Office's burden to disprove any such relationship.[9] Dr. Langlois provided his opinion in brief medical note and did not adequately explain how her conditions were caused or aggravated by the accepted employment injury. The Board has held that medical reports unsupported by medical rationale are of limited probative value.[10]

The reports from Dr. Mason do not support appellant's claim of continuing employment-related disability. She noted that appellant resumed treatment at Kaiser after obtaining care from Dr. Langlois, who had prescribed extensive narcotic medications. Dr. Mason advised that appellant's employer was able to accommodate her physical restrictions for work; however, appellant made frequent visits to the urgent care clinic to obtain medication. She reviewed the reports of Dr. Martinson and stated that she agreed with her observation that appellant's subjective complaints were not supported by findings on examination.

The Board finds that the weight of the medical evidence establishes that appellant's accepted work-related conditions have resolved. For these reasons, the Office met its burden of proof in terminating appellant's benefits for her accepted elbow contusions and strains of the cervical and lumbar spine and right shoulder.[11]

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant.[12]

To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized 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 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.[13]

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[9] *Alice J. Tysinger*, 51 ECAB 638 (2000).

[10] *T.F.*, 58 ECAB ___ (Docket No. 06-1186, issued October 19, 2006); *George A. Rodriguez*, 57 ECAB 224 (2005).

[11] The Board notes that both Dr. Martinson and Dr. Mason commented on the narcotic medication prescribed by Dr. Langlois in treatment of appellant's accepted conditions. The Office has not adjudicated the issue of whether appellant developed chronic narcotic dependence arising from the treatment of her August 25, 2003 injury. On return of the case record it should further develop this aspect of the claim. *See S.M.*, 58 ECAB ___ (Docket No. 06-536, issued November 24, 2006).

[12] *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

[13] *See Connie Johns*, 44 ECAB 560 (1993); *James Mack*, 43 ECAB 321 (1991).

ANALYSIS -- ISSUE 2

Appellant has not established that she has any continuing residuals of her accepted elbow contusions or strains of the spine and right shoulder. After the termination of her compensation benefits, she submitted additional reports from Drs. Mason and Langlois. Dr. Langlois provided treatment records briefly commenting on appellant's back condition and prescribing medication for pain. He noted that appellant was considered permanent and stationary, but did not fully address whether she was disabled due to residuals of her accepted conditions. The record establishes that appellant underwent back surgery and Dr. Mason addressed the decompression and fusion at L5-S1, noting that appellant's lower extremity pain resolved. However, she did not address how appellant's need for back surgery arose as from residuals of the accepted lumbar strain. Dr. Mason noted that the surgeon did not address the issue of causal relationship and was deceased. She reviewed prior records of treatment at Kaiser and commented that appellant may have had some mild preexisting low back pain. However, Dr. Mason did not provide a rationalized medical opinion explaining how the accepted lumbar strain arising from the November 25, 2003 injury caused or contributed to the L5-S1 surgery in 2007. The opinion of her is speculative on the issue of causal relationship.[14]

Dr. Christopher noted the history of injury and diagnosed degenerative disc disease at L5-S1 and right shoulder impingement syndrome. He advised that the shoulder impingement syndrome could be related to appellant's employment as her job was somewhat active or, in the alternative, it could be related to trauma. Dr. Christopher stated that appellant's degenerative disc disease might have been preexisting or due to her injury as she had no back pain prior to the accident. His opinion on causal relationship is speculative. Dr. Christopher indicated that appellant's back and shoulder conditions could have arisen from either the employment injury or other processes. He did not provide an opinion of sufficient certainty to establish that these conditions arose from the November 25, 2003 injury. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[15] The report from Dr. Hamilton addressed appellant's left shoulder condition which is not a condition arising from the injury accepted in this claim.

Appellant has not submitted a sufficient medical opinion to establish that the August 25, 2003 injury caused disabling residuals of her accepted conditions after August 8, 2006.

LEGAL PRECEDENT -- ISSUE 3

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 resulted from a previous injury or illness without an intervening injury or a new exposure to the work environment.[16]

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[14] *See Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical report not containing ration on causal relationship are entitled to little provide value).

[15] *Ricky S. Storms*, 52 ECAB 349 (2001).

[16] 20 C.F.R. § 10.5(x).

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.[17] This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.[18] Moreover, the physician's conclusion must be supported by sound medical reasoning.[19]

ANALYSIS -- ISSUE 3

The Office accepted appellant's claim for bilateral elbow contusion, cervical strain, right shoulder strain and lumbar strain. On June 19, 2006 appellant accepted a modified carrier position with restrictions.[20] On August 8, 2006 it terminated appellant's compensation based on the opinion of Dr. Mason, an Office referral physician. On September 14, 2006 appellant filed a claim for recurrence of total disability commencing September 5, 2006.

Appellant attributed her disability to loading parcels into containers, helping customers and checking the carriers. The Board notes that, at the time of the claimed recurrence of disability, she was working a modified carrier position. Rather, than alleging a spontaneous recurrence of disability, appellant identified new employment exposures as the cause of her disability commencing September 5, 2006. The Board notes that these new exposures to conditions at work would constitute a claim for a new injury rather than a spontaneous recurrence of disability. Moreover, appellant did not submit any medical evidence to the record to establish that her disability commencing that date arose out of the injury of November 25, 2003. As noted, appellant has the burden of proof to establish a recurrence of disability by submitting medical evidence from a physician addressing how her disability is causally related to the accepted employment injury. She has not met her burden of proof in establishing a recurrence of disability.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate benefits effective August 8, 2006. Appellant failed to establish that she had any continuing disability after August 8, 2006 due to her accepted employment conditions. She has not met her burden of proof in establishing a recurrence of disability commencing September 5, 2006.

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[17] *Robert H. St. Onge*, 43 ECAB 1169 (1992).

[18] Section 10.104(a)-(b) of the Code of Federal Regulations provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a detailed medical report. The physician's report should include the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions and the prognosis. 20 C.F.R. § 10.104.

[19] *See Robert H. St. Onge*, *supra* note 17.

[20] *See* footnote 3 for a description of the modified job duties and restrictions.

ORDER

IT IS HEREBY ORDERED THAT the November 8 and March 7, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 11, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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