

appellant's claim for aggravation of myalgia and myositis, aggravation of degeneration of cervical intervertebral disc and aggravation of lumbar/lumbosacral intervertebral disc. Appellant stopped work on July 23, 2004 and returned to a light-duty position on February 25, 2006.¹

In support of her claim, appellant submitted reports from Dr. Kevin V. Hacksaw, a Board-certified orthopedist, dated November 22, 2002 to March 23, 2003, who treated her for fibromyalgia. Dr. Hacksaw opined that appellant's work duties were aggravating her fibromyalgia. Appellant was also treated by Dr. Charles J. Kistler, Jr., a Board-certified orthopedist, who treated her on December 30, 2004 for a work injury which occurred on October 22, 2003. Dr. Kistler opined that appellant's repetitive work duties included lifting and carrying trays and casing mail aggravated the diagnosed conditions of degenerative disc disease of the cervical and lumbar spine. He further indicated that repetitive twisting, bending and lifting caused appellant's back and fibromyalgia conditions. On July 21, 2005 Dr. Kistler diagnosed fibromyalgia of the cervical and lumbar region, herniated degenerative and bulging disc in the cervical spine, degenerative disc disease in the lumbar spine and thoracic outlet syndrome. Dr. Kistler indicated that appellant's conditions had deteriorated while working at the employing establishment and rendered her unable to return to her light-duty position since July 23, 2004. A thoracic spine x-ray dated October 22, 2003, revealed no acute osseous abnormality and degenerative disc disease at T12-L1. An electromyography (EMG) dated July 9, 2004 revealed no abnormalities. A magnetic resonance imaging (MRI) scan of the lumbar spine dated October 21, 2004 revealed degenerative disc disease at C5-6 and C6-7 with generalized bulging contour at C5-6 and a left recess and foraminal herniated disc at C6-7.

Thereafter, in the course of developing the claim, the Office referred appellant to a second opinion physician and also to an impartial medical examiner.² On November 11, 2005 appellant filed a CA-7, claim for compensation for the period beginning July 23, 2004. In a decision dated January 10, 2006, the Office denied her claim for total disability for the period beginning July 23, 2004. On February 6, 2006 appellant requested an oral hearing before an Office hearing representative.

On February 25, 2006 the employing establishment offered appellant a light-duty position as a flat sorting machine clerk, eight hours per day with a tour of duty from 4:50 a.m. to 1:00 p.m. The physical requirements of the position included lifting under 10 pounds, sitting in a straight back chair, office work as needed for a processing and distribution center position and placing damaged letters or flats into tubs or trays. The duties included rewrapping damaged letters and flats for four hours per day, ad hoc processing and distribution center position duties for eight hours per day, relief in caller/service as needed for two hours per day and hand stamping letters and verifying waste mail for two hours per day. Appellant accepted the position.

¹ Appellant filed an occupational disease claim for a lumbar sprain which she became aware of on July 31, 1998 and which the Office accepted for temporary aggravation of thoracolumbar strain, File No. 09-2012734. She filed a claim for a traumatic injury on March 29, 2006 which is currently under development, File No. 09-2076015.

² Appellant was referred to Dr. William R. Fitz, a Board-certified orthopedist and impartial medical examiner, who indicated in a December 13, 2005 report that she could work in a light-duty position with no repetitive bending, twisting or lifting activities, lifting would be limited to under 10 pounds, no overhead work and no work with arms outstretched forward for prolonged periods of time.

On May 27, 2006 appellant filed a CA-2a, recurrence of disability claim. She noted that on March 29, 2006 she experienced an aggravation and worsening of her accepted conditions when she returned to work in February 2006. Appellant noted that she performed repetitive motions which aggravated her fibromyalgia, cervical degenerative disease, bulging and herniated disc, lumbar degenerative disc disease and thoracic outlet syndrome. She indicated that at the time of her recurrence she was working a limited-duty position and stopped work on March 29, 2006. Appellant submitted an attending physician's report from Dr. Kistler dated April 20, 2006, who noted that she performed repetitive duties at work and presented with neck and low back pain and headaches. Dr. Kistler diagnosed aggravation of myalgia and myositis and aggravation of degenerative cervical and lumbar disc disease. He noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity and indicated that she experienced a recurrence on March 29, 2006. Dr. Kistler advised that appellant was totally disabled from March 29, to May 19, 2006 and partially disabled beginning May 20, 2006. On May 20, 2006 he returned appellant to work four hours per day with a gradual increase in hours. In a duty status report dated April 21, 2006, Dr. Kistler diagnosed aggravation of myalgia and myositis and cervical and lumbar discs and advised that appellant was able to return to work four hours per day on April 29, 2006 with restrictions. Also submitted was a prescription note from Dr. Kistler dated April 28, 2006, which noted that appellant could return to work on May 20, 2006 for four hours per day to be gradually increased up to eight hours per day with restrictions.

By letter dated June 1, 2006, the Office advised appellant of the type of evidence needed to establish her claim for a recurrence of disability on March 29, 2006 and particularly requested that she submit a physician's reasoned opinion addressing the relationship of her claimed recurrent disability and the original work injury.

In a decision dated July 3, 2006, the hearing representative set aside the decision dated January 10, 2006 which denied appellant's claim for total disability for the period July 24, 2004 to February 24, 2006 and remanded the case for further development.

In a decision dated July 11, 2006, the Office denied appellant's claim for a recurrence of disability commencing March 29, 2006.

By letter dated July 14, 2006, appellant requested an oral hearing which was held on January 9, 2007. She submitted a duty status report from Dr. Hacksaw dated March 28, 2003 and a certificate for light-duty work dated December 5, 2003 which noted that appellant could work eight hours per day, five days a week subject to restrictions. In an undated statement appellant provided additional information regarding a claim filed in May 1998 which was accepted for a temporary aggravation of thoracolumbar sprain and strain, File No. 09-2012734.³

The employing establishment submitted a notice of removal for improper conduct dated January 22, 2004, notice of 10-day suspension for unsatisfactory attendance dated May 6, 2004,

³ By letter dated September 6, 2006, the Office referred appellant's case record to Dr. Pietro Seni, a Board-certified orthopedist, for a supplemental second opinion report in accordance with the remand instructions from the Office in its decision dated July 3, 2006. Dr. Seni opined that appellant did not develop a permanent aggravation to substantiate her claimed period of disability from July 23, 2004 to February 25, 2006.

an extended absence letter dated September 22, 2005 and a notice of a 5-day suspension for improper conduct. Also submitted was a letter from the employing establishment indicating that appellant could not perform the flat sorter machine operator position and was accommodated for nonwork-related conditions by being offered a position in the registry room.

In a decision dated December 5, 2006, the Office denied appellant's claim for recurrent disability for the period July 23, 2004 to February 24, 2006. Appellant requested an oral hearing before an Office hearing representative.

In a decision dated March 29, 2007, the hearing representative affirmed the Office's decision dated July 11, 2006 which determined that appellant failed to establish that her claimed recurrence of disability on or after March 29, 2006 was causally related to accepted employment factors.

In a decision dated April 16, 2007, the hearing representative set aside the Office decision dated December 5, 2006 and remanded the claim for further development. She noted that the factual evidence required further development with respect to appellant's work status and physical requirements of appellant's jobs for the period November 21, 2002 to July 23, 2004. The hearing representative instructed the Office to prepare a revised statement of accepted facts to be sent to Dr. Seni for a supplemental report addressing whether appellant became totally disabled due to a worsening of her employment-related conditions beginning July 23, 2004 to February 25, 2006.

LEGAL PRECEDENT

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 he 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.⁴

Causal relationship is a medical issue,⁵ 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 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.⁶

⁴ *Terry R. Hedman*, 38 ECAB 222 (1986). See 20 C.F.R. § 10.5(x) for the definition of a recurrence of disability.

⁵ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁶ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS

The Office accepted appellant's claim for aggravation of myalgia and myositis, aggravation of degeneration of cervical intervertebral disc and aggravation of lumbar/lumbosacral intervertebral disc. Appellant returned to a light-duty position on February 25, 2006 as a flat sorting machine clerk. She stopped work on March 29, 2006 and filed a claim for a recurrence of disability alleging that she performed repetitive motions which aggravated the diagnosed fibromyalgia, cervical degenerative disease, bulging and herniated disc, lumbar degenerative disc disease and thoracic outlet syndrome. In the instant case, appellant 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.

Appellant submitted a duty status report from Dr. Hacksaw dated March 28, 2003 and a certificate for light-duty work dated December 5, 2003; however, this evidence is of no value in establishing the claimed recurrence of disability as the reports and statement were previously considered by the Office when it accepted appellant's claim and adds nothing new with respect to her claimed recurrent disability beginning March 29, 2006.

Appellant submitted an attending physician's report from Dr. Kistler dated April 20, 2006, who noted that she performed repetitive duties at work and presented with neck and low back pain and headaches. He diagnosed aggravation of myalgia and myositis and aggravation of degenerative cervical and lumbar disc disease. Dr. Kistler noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity and that she experienced a recurrence on March 29, 2006 and was totally disabled from March 29 to May 19, 2006 and partially disabled beginning May 20, 2006. 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.⁷

Appellant also submitted a duty status report from Dr. Kistler dated April 21, 2006, who diagnosed aggravation of myalgia and myositis and cervical and lumbar discs and advised that she was able to return to work four hours per day on April 29, 2006 with restrictions. In a prescription note dated April 28, 2006, Dr. Kistler indicated that appellant could return to work on May 20, 2006 for four hours per day and gradually increase to eight hours per day with restrictions. However, none of his reports most contemporaneous with the claimed recurrence note a specific date of a recurrence of disability nor did he note a particular change in the nature of appellant's physical condition, arising from the employment injury which prevented her from

⁷ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

performing her light-duty position.⁸ The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.⁹

Likewise, the Board finds that there is no credible evidence which substantiates 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. The light-duty position performed by appellant was in conformance with the medical restrictions set forth by the referee physician and the record is void of evidence which would indicate 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.

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.¹⁰

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability on March 29, 2006.

⁸ See *Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971) (where the Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence).

⁹ See *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

¹⁰ The Board notes that the Office decision dated April 16, 2007 is not before the Board in the present appeal. The matter addressed in that decision is in an interlocutory posture as the Office has remanded the matter for further development. See 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the March 29, 2007 decision of the Office of Worker' Compensation Programs is affirmed.

Issued: January 29, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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