

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

L.D., Appellant)	
)	
and)	Docket No. 08-452
)	Issued: October 17, 2008
U.S. POSTAL SERVICE, POST OFFICE,)	
Hudson, FL, Employer)	
)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Capp P. Taylor, Esq., for the appellant</i>	
<i>Office of Solicitor, for the Director</i>	

DECISION AND ORDER

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

JURISDICTION

On December 5, 2007 appellant, through counsel, filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated February 1 and August 24, 2007, which found that she did not sustain a recurrence of disability or a cervical or lumbar herniated disc causally related to the accepted employment injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established that she sustained a recurrence of disability from December 15 through 28, 2001 causally related to her July 13, 2000 employment injury; and (2) whether appellant has established that she sustained a cervical or lumbar herniated disc causally related to the July 13, 2000 employment injury.

FACTUAL HISTORY

This case has previously been before the Board. In a February 3, 2006 decision, the Board affirmed the Office's July 7, 2005 decision, finding that appellant did not sustain a

recurrence of disability from December 15 through 28, 2001 causally related to her July 13, 2000 employment injury or that she had cervical or lumbar herniated discs causally related to the accepted employment injury.¹ The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.² The facts as relevant to the present issue are set forth.

By letter dated October 26, 2006, appellant, through counsel, requested reconsideration before the Office. Counsel argued that appellant's cervical and lumbar herniated discs were causally related to the July 13, 2000 employment injury. An October 6, 2006 medical report of Dr. Paul J. Zak, a Board-certified orthopedic surgeon, reviewed a history of appellant's July 13, 2000 employment injury medical treatment and social and family background. On physical examination, he reported pain and decreased range of motion and sensory deficit regarding appellant's upper and lower extremities. Dr. Zak provided several diagnoses. Appellant sustained herniated nucleus pulposus at C5-6 and C6-7 and she was status post anterior discectomy fusion and instrumentation from C5 to C7. She also had left cervical radiculopathy, possible cervical radiculopathy, post-traumatic aggravation of degenerative disc disease of the cervical spine, chronic cervical sprain/strain and spasm of muscle in the cervical and trapezial regions. Appellant experienced left shoulder pain and rotator cuff syndrome status post left shoulder surgery. She also had lumbago, post-traumatic aggravation of degenerative disc disease of the lumbar spine, lumbar sprain/strain and pain, numbness, tingling and weakness in the lower extremity.

Dr. Zak opined that appellant sustained permanent injuries to her cervical region associated with headaches, residual left upper extremity numbness and tingling and left shoulder and lumbar spine injuries as a direct result of her July 13, 2000 employment injury. He stated that it was clear by her history and lack of documentation supporting any preexisting symptoms, that her diagnoses and symptoms related to the accepted employment injury. Dr. Zak related that appellant did not sustain an aggravation of her condition because she did not have symptoms prior to her accepted employment injury. He related that during a two-year period when appellant's symptoms worsened and no additional diagnostic studies were obtained, the herniations originally noted continued to become more prominent and actually extruded at the C6-7 level. Appellant continued to have chronic pain symptoms and changes within the spinal cord related to the large herniations that were present and undetected for an extended time period. Dr. Zak also stated that her reflexes were abnormal in her upper and lower extremities. He could not explain her lower extremity symptoms based on the results of a magnetic resonance imaging (MRI) scan. Dr. Zak concluded that appellant was unable to drive due to her pain and medication. He further concluded that she was permanently and totally disabled.

¹ Docket No. 05-1624 (issued February 3, 2006).

² On July 20, 2000 appellant, then a 42-year-old rural letter carrier, filed a traumatic injury claim alleging that on July 13, 2000 she hurt her neck, head, shoulders, ribs and hips as a result of being involved in a motor vehicle accident as she returned to the employing establishment from her route. She stopped work on July 18, 2000. The Office accepted the claim for cervical and lumbar strains. On November 9, 2001 appellant returned to full-time limited-duty work at the employing establishment. On December 14, 2001 she claimed compensation for total disability for the period December 15 through 28, 2001 due to her July 13, 2000 employment injury.

In a February 1, 2007 decision, the Office denied modification of its prior decision on the grounds that the evidence submitted by appellant failed to establish that she sustained a recurrence of disability from December 15 through 28, 2001 or that her cervical and lumbar herniated discs were causally related to the July 13, 2000 employment injury.

By letter dated July 10, 2007, appellant, through counsel, requested reconsideration. He contended that appellant sustained a change in the nature and extent of the July 13, 2000 employment-related condition. In a June 20, 2007 report, Dr. David A. Petersen, a Board-certified orthopedic surgeon, stated that he had been treating appellant's neck and low back since February 14, 2002. He was familiar with the description of her rural letter carrier position. Dr. Petersen stated that appellant had not suffered any new accidents or traumatic injuries since the July 13, 2000 employment injury. Upon her return to work as a rural letter carrier in which she was restricted from lifting more than 25 pounds, repetitively using her extremities to case mail, driving a vehicle and physically placing mail in mailboxes, appellant experienced pain and discomfort related to her employment-related spine and low back injuries. Dr. Petersen stated that appellant would not have been able to continue working as of December 15, 2001. He concluded that the ongoing repetitive movements would aggravate the already injured spine causing additional pain and discomfort.

In an August 24, 2007 decision, the Office denied modification of the February 1, 2007 decision. It found that Dr. Petersen's June 20, 2007 report failed to establish that appellant's claimed recurrence of disability or cervical and lumbar conditions were caused by the July 13, 2000 employment injuries.

LEGAL PRECEDENT -- ISSUE 1

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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.³

When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that she can perform the limited-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 to show that she cannot perform such limited-duty work. 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 limited-duty job requirements.⁴

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the

³ 20 C.F.R. § 10.5(x).

⁴ *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.⁵

ANALYSIS -- ISSUE 1

The Office accepted the July 13, 2000 employment injury for cervical and lumbar strains. Appellant returned to work in a full-time limited-duty capacity on November 9, 2001. She claimed compensation for total disability for the period December 15 through 28, 2001 due to the July 13, 2000 employment injury.

Appellant submitted Dr. Zak's October 6, 2006 report. Dr. Zak provided several diagnoses including, herniated nucleus pulposus at C5-6 and C6-7. He attributed the cause of appellant's conditions to the July 13, 2000 employment injury, noting that the diagnosed conditions and her symptoms did not exist prior to the July 13, 2000 employment injury. Dr. Zak opined that she did not sustain any aggravation of her condition for the same reason. He also opined that appellant was permanently and totally disabled. However, the Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury, without sufficient rationale, is insufficient to establish causal relationship.⁶ Dr. Zak did not adequately explain how appellant's current conditions of herniated cervical and had lumbar discs resulted from the July 13, 2000 employment injury, accepted for strains. His report is of diminished probative value. Moreover, Dr. Zak did not address the period of disability or provide any explanation as to how residuals of her accepted cervical or lumbar strains caused disability for the claimed period.

Dr. Petersen's June 20, 2007 report stated that he had been treating appellant's neck and low back problems and that she had not suffered any new accidents or traumatic injuries since the July 13, 2000 employment injury. Based on his familiarity with her job duties as a rural letter carrier, he opined that her return to work in this position would have caused additional pain and discomfort and that she would not have been able to continue working as of December 15, 2001. Dr. Petersen stated that the ongoing repetitive movements performed during her light duty would have aggravated the already injured spine causing additional pain and discomfort. He did not adequately address how the accepted strains caused disability for the claimed period. Dr. Petersen appeared to implicate her light-duty work rather than a spontaneous change in her medical condition. Moreover, the record does not establish that her work exceeded her limited-duty restrictions. Dr. Petersen's opinion on causal relationship, due to a change in limited-duty requirements is of diminished probative value.⁷ The record is void of evidence establishing that there was a change in the nature and extent of the limited-duty requirements or that appellant was required to perform duties which exceeded her medical restrictions.

⁵ *James H. Botts*, 50 ECAB 265 (1999).

⁶ *Michael S. Mina*, 57 ECAB 379 (2006).

⁷ Medical conclusions based on inaccurate or incomplete histories are of diminished probative value. *Beverly R. Jones*, 55 ECAB 411 (2004).

The Board finds that appellant has not submitted sufficiently rationalized medical evidence establishing that she was totally disabled from December 15 through 28, 2001 due to her July 13, 2000 employment-related cervical and lumbar strains. She has not established a recurrence of disability from December 15 through 28, 2001 causally related to her accepted employment injury.

LEGAL PRECEDENT -- ISSUE 2

A claimant seeking benefits under the Federal Employees' Compensation Act⁸ has the burden of proof to establish the essential elements of her claim by the weight of the evidence,⁹ including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.¹⁰

The evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹¹ The claimant must submit a rationalized medical opinion that supports a causal connection between her current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.¹²

ANALYSIS -- ISSUE 2

As noted, the Office accepted that appellant sustained cervical and lumbar strains as a result of the employment-related July 13, 2000 motor vehicle accident. Appellant contends that she also sustained a herniated cervical disc at C5-6, C6-7 and a herniated lumbar disc at L4-5 and L5-S1 as a result of the accepted employment injury.

Dr. Zak opined that appellant's diagnosed conditions, including, a herniated nucleus pulposus at C5-6 and C6-7 were causally related to her July 13, 2000 employment injury. In explaining causation, he noted that her diagnoses and her symptoms did not exist prior to the July 13, 2000 employment injury. Dr. Zak did not provide adequate medical rationale in support of his stated conclusion or address how the accepted strains caused or contributed to the diagnosed cervical herniated discs.¹³ Moreover, he did not opine that appellant sustained herniated discs of the lumbar spine causally related to the July 13, 2000 employment injury.

⁸ 5 U.S.C. §§ 8101-8193.

⁹ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

¹⁰ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

¹¹ *Id.*

¹² *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

¹³ *Michael S. Mina*, *supra* note 6.

Dr. Petersen treated appellant's neck and low back conditions and opined that the duties of her rural carrier position caused additional pain and discomfort. A physician's mere diagnosis of pain, without more by way of an explanation, does not constitute a basis for payment of compensation.¹⁴ He did not specifically explain how appellant's cervical and lumbar herniated discs were caused by the accepted employment injury. Dr. Petersen did not provide any medical rationale explaining diagnostic testing to support that the discs were sustained at the time of the accepted injury.¹⁵ The Board finds that his report is insufficient to establish appellant's claim.

The Board finds that the record lacks reasoned medical opinion to support appellant's assertion that she sustained cervical and lumbar herniated discs as a result of her July 13, 2000 employment-related motor vehicle accident. Therefore, appellant has not met her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a recurrence of total disability from December 15 through 28, 2001 causally related to her July 13, 2000 employment injury. The Board further finds that appellant has failed to establish that she sustained cervical and lumbar herniated discs causally related to the July 13, 2000 employment injury.

¹⁴ *Robert Broome*, 55 ECAB 493 (2004).

¹⁵ *See Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

ORDER

IT IS HEREBY ORDERED THAT the August 24 and February 1, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 17, 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