

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

K.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Romulus, MI, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 08-857
Issued: September 15, 2008**

Appearances:

*Ray L. Bohnenstiehl, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 29, 2008 appellant, through her attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated August 9 and October 17, 2007 denying her claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant established that she sustained a recurrence of disability on June 4, 2007 causally related to her accepted employment injury of October 27, 2006.

FACTUAL HISTORY

On October 27, 2006 appellant, then a 26-year-old clerk, sustained a head injury when a shelf fell onto the top of her head while she was trying to cut strapping from tubs. By letter dated November 13, 2006, the Office accepted her claim for a contusion of the head, cervical sprain and lumbar sprain. In a November 7, 2006 medical report, appellant's treating physician, Dr. Muzaffar K. Awan, listed his impressions as post-traumatic cervicogenic cephalgia, cervical

sprain, L5 sprain with radiculitis left and possible disc herniation. He gave appellant a work disability note from October 28 through November 28, 2006 but indicated that she could return to work on November 29, 2006.

In a note dated April 17, 2007, Dr. Michael P. Draplin, appellant's chiropractor, indicated that appellant could no longer drive after 6:00 pm. He diagnosed severe and traumatic cervical, thoracic, lumbar sprain with myositis.

On June 4, 2007 appellant filed a claim alleging a recurrence of disability causally related to the October 27, 2006 employment injury commencing on June 4, 2007. She alleged that as she was going about her normal daily activities the pain started up again along with dizziness and headaches.

In a June 1, 2007 report, Dr. Shawn P. Nelson, a chiropractor, indicated that appellant was still under his care for injuries sustained on October 27, 2006. He noted that appellant was examined in his office on October 28, 2006 and x-rays were obtained on that date. X-rays of the cervical spine demonstrated a complete loss of the normal cervical curve which was consistent with neck injuries, severe misalignments of the second and fourth cervical vertebrae causing cervical subluxation at those levels, and severe rotations and subluxations at the T3, T4 and T5 levels. Appellant was treated with corrective manipulation to the cervical, thoracic and lumbar spine. Dr. Nelson noted that further treatment was indicated and advised that appellant was unable to perform her normal occupational duties from October 28 through December 1, 2006 but could return to work without restrictions on December 2, 2006. Appellant submitted treatment notes from her chiropractor dated June 5 to July 17, 2007.

In disability certificates dated June 5 and July 10, 2007, Dr. Draplin indicated that appellant was disabled from June 5 to August 5, 2007 due to cervical, thoracic, lumbar segmental dysfunction.

In a statement dated July 10, 2007, appellant noted that when she returned to work on February 2, 2006 she was never given a light-duty assignment. When she got to work on June 4, 2007 she was making labels and taking them back and forth when she became dizzy and experienced pain in her lower back. Appellant noted that it was the pain she has had everyday since her injury.

By decision dated August 9, 2007, the Office denied appellant's claim for a recurrence of disability as of June 4, 2007.

By letter dated August 22, 2007, the Office referred appellant to Dr. Emmanuel N. Obianwu, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated September 6, 2007, Dr. Obianwu noted normal examination of the cervical, thoracic and lumbar spines and resolved soft tissue injuries of the cervical, thoracic and lumbar spines. He found no evidence of a subluxation of the spine.

Appellant submitted additional chiropractic notes on July 16, 17 and 31, 2007.

By letter received on October 17, 2007, appellant requested reconsideration, contending that an Office claims examiner was disrespectful and had closed her file before she recovered from her injury.

Appellant submitted a September 25, 2007 report from Dr. Draplin, who stated that appellant was still under his care for the injuries she received on October 27, 2006. Dr. Draplin noted that x-rays of the cervical, thoracic and lumbar spines revealed subluxations. Appellant was still being treated with corrective manipulation to the cervical, thoracic and lumbar spines, and had experienced a severe exacerbation of her condition again and was taken off work from June 4 to August 5, 2007.

In a decision dated November 6, 2007, the Office denied modification of the August 9, 2007 decision.

LEGAL PRECEDENT

Section 10.5(x) of the Office's regulation provides, in pertinent part:

“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.”¹

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.² This burden 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 the employment injury and supports that conclusion with sound medical reasoning.³ An award of compensation may not be made on the basis of surmise, conjecture or speculation or on an appellant's unsupported belief of causal relation.⁴

ANALYSIS

The Office accepted that appellant had a contusion of the head, cervical sprain and lumbar sprain as a result of the October 27, 2006 work injury. Appellant returned to her regular work shortly after November 29, 2006. She contends that she sustained a recurrence of disability on or about June 4, 2007.

¹ 20 C.F.R. § 10.5(x).

² *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

³ *See Nicolea Brusco*, 33 ECAB 1138 (1982).

⁴ *Ausberto Guzman*, 25 ECAB 362 (1974).

The Board finds that appellant has not submitted sufficient medical evidence to establish that she had a recurrence of disability on June 4, 2007 related to her October 27, 2006 injury. Dr. Nelson's report of June 1, 2007 indicated that appellant was still undergoing treatment with cervical manipulation to the cervical, thoracic and lumbar spine. However, he noted that appellant was able to return to work on December 2, 2006. As Dr. Nelson's opinion predates the date of the alleged recurrence of June 4, 2007, it is not relevant to the period of disability denied. Dr. Obianwu's opinion of August 22, 2007 advised that appellant's soft tissue injuries had resolved. Therefore this report does not support a recurrence of disability. Appellant contends that the employing establishment ignored her driving restrictions and that this caused an exacerbation of her condition. There is no medical evidence to support her allegation that driving for her employment caused an exacerbation of her accepted condition.

The only medical evidence that addresses the issue of recurrence of disability is the September 25, 2007 report of Dr. Draplin, who noted that appellant sustained a severe exacerbation of her condition and was taken off work from June 4 through August 5, 2007. However, Dr. Draplin's brief note does not constitute rationalized medical opinion in that he failed to provide any explanation to support that her disability commencing June 4, 2007 was due to her October 27, 2006 injury. In order to be considered rationalized, the opinion of a physician must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the claimant's specific employment factors.⁵ Without a rationalized opinion on the issue of causal relationship, the reports of Dr. Draplin are of diminished probative value. The Board finds that appellant has failed to submit rationalized medical evidence in support of her claim for a recurrence of disability.

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability on June 4, 2007 causally related to her accepted employment injury of October 27, 2006.

⁵ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 6 and August 9, 2007 are affirmed.

Issued: September 15, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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