

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

_____)
D.M., Appellant)

and)

**U.S. POSTAL SERVICE, SOUTHERN)
MARYLAND PROCESSING & DISTRIBUTION)
CENTER, Capital Heights, MD, Employer**)
_____)

Docket No. 09-845

Issued: January 19, 2010

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 February 10, 2009 appellant filed a timely appeal of the January 12, 2009 merit decision of the Office of Workers' Compensation Programs denying her claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that she sustained a recurrence of disability on August 17, 2007 causally related to her March 3, 1998 employment injury.

FACTUAL HISTORY

On May 6, 1998 appellant, then a 40-year-old clerk, filed a traumatic injury claim alleging that she sustained a cervical strain in the performance of duty on March 3, 1998 when she was hit in the head by a shelf. The Office accepted her claim for contusion to the face, scalp and neck and a neck sprain.

Dr. Stuart J. Goodman, an attending physician, supported appellant's disability for work due to persistent headaches. On August 10, 1998 he stated that she sustained significant blunt head trauma and cervical strain and was disabled due to persistent headaches. On September 3, 1998 Dr. Goodman diagnosed chronic musculoskeletal-related headaches secondary to appellant's May 3, 1998 work injury, which were aggravated by her work environment. He diagnosed closed head trauma, cervical sprain and musculoskeletal headaches. On June 16, 1999 appellant stated that she experienced severe headaches and pressure due to her employment injury. The Office authorized compensation for intermittent periods of disability from 1999 through 2003. Dr. Goodman submitted reports every few months from 1998 through 2006.

The Office requested additional evidence on August 30, 2005 regarding appellant's temporary work stoppage on October 30, 2003. Dr. Goodman completed a narrative report on September 13, 2005 and described her history of injury. He noted that he examined appellant on a regular basis due to exacerbations of her chronic problem. Dr. Goodman stated that she experienced occasions during which her headaches and neck pain would suddenly become very severe and render her disabled for work. He noted that appellant's disability generally lasted for two to three days and that she was then able to return to her light-duty work. Dr. Goodman stated, "Having this chronic condition makes her prone to these exacerbations by even an innocent move on her part."

The record contains short reports from Dr. Goodman dated throughout 2006 and on January 31, April 25, May 23, June 27 and August 1, 2007 diagnosing chronic post-traumatic headaches and pain syndrome with noise intolerance. Dr. Goodman submitted a note dated August 20, 2007 and stated that he examined appellant on "an urgent basis on August 17, 2007." He stated that she called on August 16, 2007 and was tearful and in severe distress. Dr. Goodman found that appellant was in distress from a headache with tenderness and spasm of the cervical spine. He diagnosed a recurrence of post-traumatic migraine headaches with a musculoskeletal component and noise intolerance. Dr. Goodman advised that appellant was totally disabled. On August 29, 2007 he stated that she was much improved but unable to return to work. Dr. Goodman noted that after August 20, 2007 appellant had remained in bed for several days.

Appellant filed a claim for compensation and requested wage-loss compensation from August 17 to September 11, 2007. In a letter dated September 26, 2007, the Office requested additional medical evidence regarding her claimed disability. It requested that Dr. Goodman provide objective findings and medical reasoning to establish that appellant's chronic headaches and noise intolerance was due to her May 3, 1998 employment injury. The Office allowed 30 days for a response.

On October 16, 2007 Dr. Goodman noted appellant's history of injury and diagnosed post-traumatic musculoskeletal headaches and noise intolerance. He stated, "These are chronic permanent problems. It is quite common for there not be to any localizing neurological findings or positive diagnostic testing." Dr. Goodman opined that appellant's problems were due to her accepted employment injury of May 3, 1998 and that there were occasions in which there was an exacerbation of her symptoms causing her to be out of work for a time.

On October 31, 2007 Dr. Goodman diagnosed chronic post-traumatic headaches, pain and noise intolerances. In reports dated October 16 and November 16, 2007, he noted that he had treated appellant since May 6, 1998 due to her March 3, 1998 employment injury. Dr. Goodman stated that she experienced an acute exacerbation of her post-traumatic migraine headaches and a new medication had allowed her to return to full-time light-duty work. He diagnosed closed head trauma with post-traumatic musculoskeletal and vascular (migraine) headaches and noise intolerance. On November 29, 2007 Dr. Goodman noted that appellant had returned to full-time work.

On May 20, 2008 appellant filed a recurrence of disability claim alleging on August 17, 2007 she sustained disability causally related to her May 3, 1998 employment injury. In August 2007, she developed severe disabling headaches and was unable to work for two weeks due to the noisy environment. Appellant contended that this was a continuation but sudden worsening of her employment-related condition. Dr. Goodman submitted additional reports diagnosing chronic post-traumatic headaches and noise intolerance throughout 2008. In a note dated September 25, 2008, he stated that appellant suffered from a head trauma and experienced residual musculoskeletal headaches with a vascular/migraine component as well as chronic noise intolerance.

By decision issued January 12, 2009, the Office denied appellant's claim for recurrence finding that she had not submitted sufficient evidence including bridging medical evidence to establish that she sustained a recurrence of disability on August 17, 2007 causally related to her accepted May 3, 1998 employment injury. It noted that she did not present evidence of a precipitating factor or change in her medical condition and found that the medical evidence was not sufficient to establish a causal relationship between her diagnosed condition and her claimed period of disability.

LEGAL PRECEDENT

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he or 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. The burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concluded that the condition is causally related to the employment injury. Moreover, sound medical reasoning must support the physician's conclusion.¹

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury. In this regard, medical evidence of bridging symptoms between the recurrence of the accepted injury must support the physician's conclusion of a causal relationship. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be

¹ *Ricky S. Storms*, 52 ECAB 349 351-52 (2001).

speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.²

ANALYSIS

Appellant filed a recurrence of disability claim on May 20, 2008 alleging on August 17, 2007 that she sustained a recurrence of total disability due to her March 3, 1998 employment injury. She filed a claim for compensation and requested wage-loss compensation from August 17 to September 11, 2007.

In support of her claim, appellant submitted a series of reports from Dr. Goodman detailing her history of headaches following her March 3, 1998 employment injury through August 2007. Dr. Goodman attributed her musculoskeletal headaches to her work injury. On August 20, 2007 he stated that he examined appellant on August 17, 2007 finding that she was in distress from a headache with tenderness and spasm of the cervical spine. Dr. Goodman diagnosed a recurrence of post-traumatic migraine headaches with a musculoskeletal component and noise intolerance and found that she was totally disabled. On September 25, 2008 he stated that appellant suffered from a head trauma and experienced residual musculoskeletal headaches with a vascular/migraine component as well as chronic noise intolerance. In a report dated October 16, 2007, Dr. Goodman noted appellant's history of injury and diagnosed post-traumatic musculoskeletal headaches and noise intolerance. He stated, "These are chronic permanent problems. It is quite common for there not be to any localizing neurological findings or positive diagnostic testing." Dr. Goodman opined that appellant's problems were due to her accepted employment injury of May 3, 1998 and that there were occasions in which there was an exacerbation of her symptoms causing her to be out of work for a time. In reports dated October 16 and November 16, 2007, he stated that he had treated her since May 6, 1998 due to her March 3, 1998 employment injury. Dr. Goodman diagnosed closed head trauma with post-traumatic musculoskeletal and vascular (migraine) headaches and noise intolerance.

Dr. Goodman initially diagnosed headaches as a result of appellant's March 3, 1998 employment injury in 1998. He continued to examine and treat her for headaches at least three or four times a year from 1998 through 2007. Dr Goodman clearly attributed appellant's recurrence of disability in August 2007 to an exacerbation of her headaches. He opined that her headaches were due to her accepted employment injury and stated that her lack of neurological findings was common. These reports contain a diagnosis and an opinion that appellant's condition was caused by the accepted employment injury. While Dr. Goodman's reports are not sufficient to meet her burden of proof, the reports do raise an uncontroverted inference of causal relation between her accepted employment injury of contusion of the face, scalp and neck as well as sprain of the neck and her diagnosed post-traumatic headaches and are sufficient to require the Office to undertake further development of appellant's claim.³

On remand, the Office should refer appellant for a second opinion evaluation to determine whether her current condition is related to her accepted employment injuries. After

² *Id.*

³ *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

this and such other development as it deems necessary, the Office should issue an appropriate decision.

CONCLUSION

The Board finds that the case is not in posture for a decision. The Office should undertake additional development of the medical evidence and issue an appropriate decision.

ORDER

IT IS HEREBY ORDERED THAT January 12, 2009 decision of the Office of Workers' Compensation Programs is set aside and remanded for additional development consistent with this opinion of the Board.

Issued: January 19, 2010
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