

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA A. BURGESSON and U.S. POSTAL SERVICE,
POST OFFICE, Kersey, PA

*Docket No. 02-619; Submitted on the Record;
Issued September 6, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained a recurrence of disability on October 22, 1998 causally related to her December 24, 1987 employment injury.

In this case, the Office of Workers' Compensation Programs accepted that on December 24, 1987 appellant, then a 45-year-old postmaster, sustained a strained right shoulder muscle, psychogenic pain disorder, cervical strain and cervical herniated nucleus pulposus as a result of picking up a 40-pound box of fruit in the performance of duty. She stopped work on June 21, 1998, returned to full-time limited duty on June 27, 1988, but stopped work again on December 17, 1998 when her light-duty work ended.

On March 11, 1998 Dr. Rosmaria Cienciva, appellant's treating Board-certified family practitioner, released her to light-duty work, four hours a day, within specific physical restrictions including, no high speed work and no exposure to dampness, heights, dust or fumes. On May 28, 1998 the employing establishment offered appellant a position as a modified postmaster, within the restrictions set forth by Dr. Cienciva. She accepted the position on May 29, 1998 and returned to limited-duty work, four hours a day on June 6, 1998.¹

On November 16, 1998 appellant filed a claim alleging that she sustained a recurrence of disability on October 22, 1998, when she stopped work due to increasing pain and symptoms.

In support of her claim for a recurrence of disability, appellant submitted numerous medical reports from her treating physicians, Dr. Cienciva and Dr. Scott A. Murray, a physiatrist, to whom appellant had been referred by Dr. Cienciva. In a progress note dated October 9, 1998,

¹ The record reveals that the modified postmaster position allowed appellant to remain primarily seated, with walking intermittently up to one-half hour a day, standing intermittently up to one hour a day and lifting 0 to 10 pounds intermittently for up to one-half hour a day. Appellant was required to only occasionally engage in minimal stooping, bending, lifting and carrying of very light objects and all work was to be performed inside in a heated or air conditioned work area.

Dr. Cienciva stated that, appellant reported that, a few days earlier on October 6, 1998 she suddenly developed a lot more pain in her back accompanied by a lot of spasm and went to the emergency room. She did not recall any specific injury, which could have caused her increased pain, x-rays performed in the emergency room revealed only a straightening of the cervical spine due to spasm. Dr. Cienciva noted that appellant had not been to work since going to the emergency room. He diagnosed chronic neck pain, acute exacerbation and released appellant to work the following Monday.

In a report dated October 14, 1998, Dr. Murray also noted appellant's reported increase in symptoms on October 6, 1998 and noted that her pain and symptoms were now down near her baseline level, although she continued to have spasms which were mildly worse than before she went to the emergency room. Dr. Murray noted that a work site evaluation had recently been performed, resulting in some good suggestions which could help appellant manage her condition. He advised appellant to continue her current work duties.

In a progress note dated October 21, 1998, Dr. Cienciva stated that appellant had come in for a recheck and was not doing well at all. She reported that her neck pain was getting worse and that she had a lot of spasm, which was resistant to medication. Dr. Cienciva further noted that appellant was unhappy with her work situation, stating: "Her work situation does n[o]t seem to be much better; they have her in the basement.² [Appellant's] job involves data entry on some things and it does n[o]t seem like there is any guidance as to what she should be doing. This has her a bit disillusioned." Dr. Cienciva further noted that on examination, appellant still had marked spasm of the trapezius muscle on the right, tenderness on palpation and good, but painful, range of motion. He diagnosed chronic neck strain with acute exacerbation and noted again that appellant did n[o]t seem to be doing well with her work situation, which seemed to be adding more spasms. Dr. Cienciva took appellant off work, stating: "I think maybe we [wi]ll just have her hold on work and see if we can get anything cleared up with this."

In a report dated October 23, 1998, Dr. Murray noted that Dr. Cienciva had taken appellant off work after she developed severe neck spasms. He stated that appellant believed that electrical stimulation used as part of her physical therapy might have caused the flare up. Dr. Murray diagnosed chronic cervical strain/sprain with underlying cervical degenerative joint disease and chronic cervical and shoulder myofascial pain syndrome, with a significant increase in pain after initiating physical therapy. Dr. Murray noted that other than decreased and guarded cervical range of motion and increased tenderness to palpation, there were no significant changes on physical examination from previous appointments. He advised appellant to follow up with Dr. Cienciva for return to work status.

In a report dated November 6, 1998, Dr. Murray noted that, Dr. Cienciva had taken appellant off work permanently. He stated that his own examination showed no significant change from the previous examination. Dr. Murray suggested that one strategy for returning

² On August 31, 1998 appellant reported to Dr. Murray that her basement office was damp and cool, but that the employing establishment was working in getting her a dehumidifier and a fan. Dr. Murray advised appellant to continue her current work duties. On September 4, 1998 appellant reported to Dr. Cienciva that her basement office was damp and cold. She noted that appellant confirmed that she had a dehumidifier and a heater, but did not otherwise comment on appellant's work conditions.

appellant to productive employment would be to allow her to perform computer activities at home. He stated: “[Appellant’s] current work environment was made exclusively for her to work in the basement of the employing establishment. She was in isolation and I believe that contributed to [her] inability to tolerate her work activities. If [appellant] worked with at least one other person, this may have made her work activities more tolerable. If she could work at home, then she would also have a greater chance of succeeding.”

The record also contains a fitness-for-duty examination performed on January 27, 1999, at the request of the employing establishment. In his report, Dr. Kelly Agnew, an orthopedic surgeon, noted that appellant reported doing laundry, grocery shopping, cooking and light cleaning. He further observed her walking and sitting normally during his examination. Dr. Agnew diagnosed history of injury on the work site in 1987 consistent with strain, cervical degenerative disease on multiple imaging studies, mild spinal stenosis by imaging studies and a history of nonanatomic findings with complaints of symptoms out of proportion to the objective findings, suggestive of symptom magnification. The physician further stated that the degenerative findings, including bony hypertrophy and some disc bulging resulting in minimal spinal stenosis were consistent with appellant’s age and not posttraumatic. Dr. Agnew concluded that there was no reason appellant could not work in her modified postmaster position full time.

In a report dated February 2, 1999, Dr. Cienciva noted that appellant’s condition was unchanged and stated that the spinal stenosis and degenerative bony overgrowth at C5-6 and C6-7 could be bringing on a lot of her problems.

On March 23, 1999 the Office requested that Dr. Cienciva submit a complete rationalized report explaining her opinion that appellant could no longer perform her light-duty job, four hours a day, due to her accepted employment injuries. In a response dated April 9, 1999, Dr. Cienciva stated:

“Please note that in October 1998, [appellant] had an exacerbation of her neck pain requiring her to go to the emergency room on October 6, 1998. At that time [she] required an injection of Demerol and Phenergan. [Appellant] was not sure really what had exacerbated the problem. [She] was seen in follow[-]up on the ninth of October for recheck and as advised to rest and return to work the following Monday. [Appellant] did return to work but did not do so well. [She] had persistence of pain and spasm. In addition, the environment she was working under, being isolated in the basement of the [employing establishment], having no guidance as to what she should be doing, also had made her disillusioned. I felt that she could not return to that work environment or to work the job that was given there. It is my opinion that [appellant] most probably will never be able to return to her regular job.

“As per Dr. Murray’s office report, appellant had seen Dr. Thaker in the past for injections, which did not work. There is a possibility of acupuncture as a modality to try to help relieve the pain and we will be trying, at some time in the future, to get this set up. The other strategy that Dr. Murray mentions is the place of appellant’s work, I think working in the basement really is not conducive for

her, especially being isolated. The possibility of her getting back to a light-duty job or shorter hours might be something in the future, if we can get some of this discomfort under control, if appellant is not isolated and a possibility also comes to mind if she can do her work at home.”

In addition, appellant submitted several more form reports and progress notes from Dr. Cienciva, however, these reports contain no discussion of her October 22, 1998 recurrence.

On May 7, 1999 at the request of the Office, appellant was examined by Dr. Herbert L. Kunkle, a second opinion physician and Board-certified orthopedic surgeon. In his report of the same date, Dr. Kunkle stated that he had examined appellant and reviewed a June 25, 1998 magnetic resonance imaging (MRI) scan, which showed a small bulging disc at C5-6 and degenerative changes with bony overgrowth bilaterally at the neural foramen and spinal stenosis in this area. In addition, the C5-6 and C6-7 disc spaces showed some mild spinal stenosis and there was a slight disc bulge at C3-4. Dr. Kunkle noted that none of these problems seemed to be compressing the spinal cord or nerve roots and that the MRI report contained annotation that these findings were unchanged since her previous MRI on February 13, 1996. Dr. Kunkle further stated that appellant’s underlying arthritis and spinal stenosis of the cervical spine were unrelated to her work injury and that he had no objective findings to support any ongoing problems from her injury. He noted that she had ongoing pain, possibly from a pain syndrome and that even though he had no objective criteria to explain her pain, he was trying to accommodate appellant with her work capacity. Dr. Kunkle concluded that appellant could perform light-duty work, however, as she had not worked in almost five years, he would start her on four hours a day and move on from there.

In a decision dated April 6, 2000, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on or around October 22, 1998 causally related to her December 24, 1987 employment injury.

On May 14, 2000 appellant requested an oral hearing.

In an October 5, 2000 decision, an Office hearing representative denied appellant’s request for an oral hearing as untimely.

On April 5, 2001 appellant, through her counsel, requested reconsideration of the Office’s decision denying her claim for a recurrence of disability. In support of her request, appellant submitted additional medical evidence, as well as photographs of her work station, which she asserted showed a room that was dark, with no windows and no convenient restroom and no place for her to change positions or lie down when she has an attack of spasms. Appellant further asserted that the basement dampness contributed to her neck and shoulder problems.

In a letter dated April 19, 2000, Dr. Cienciva again attempted to explain her decision to take appellant off work, stating that “... in October 1998, [appellant] developed more pain and spasm in her neck; she was n[o]t sure what precipitated it, but it was intense enough to require her to go to the [e]mergency [r]oom. When I saw [appellant] a few weeks later she had tried to work, but persisted to have a lot of spasm. Her work situation did not improve. [Appellant] was

still working in the basement, doing data entry and really had no guidance as to what her work requirements were. At that time we advised her not to work.”

Appellant also submitted a report dated December 8, 2000 from Dr. Garrett W. Dixon, a Board-certified physiatrist to whom she had been referred by Dr. Cienciva. Dr. Dixon examined appellant and concluded that her examination and history is most suggestive of mechanical pain with a superimposed myofascial component, in keeping with the findings on MRI which have not substantially changed since 1996. He noted that although mild, appellant’s stenosis could be the cause of her symptoms, but that further studies might provide additional information. Dr. Dixon further noted that while he would expect appellant to have problems with a primarily sitting, desk job involving extensive computer work, he would not have expected her to have such difficulty with her light-duty job, which appeared much easier than her job held when injured.

An MRI performed on January 31, 2001 revealed mild degenerative changes in the mid and lower thoracic spine.

In a report dated March 29, 2001, Dr. Cienciva reviewed appellant’s history of injury and noted again that she developed increasing pain in October 1998 and that she tried to work, but her spasms seemed to be persistent. He also noted that appellant’s work situation had not been ideal, as she was in the basement doing data entry, with no guidance and she felt isolated and was disillusioned that this was all she would be doing for the rest of her life. Dr. Cienciva stated that appellant was given a slip to be off work at that time. She noted that appellant continued to have spasms in her neck, but that on January 30, 2001 she had actually returned to work, four hours a day, until she suffered an exacerbation of her condition on March 7, 2001. Dr. Cienciva concluded that she hoped appellant would be considered for full disability.

In a report dated April 17, 2001, Dr. Maurus L. Sorg, a Board-certified family practitioner and associate of Dr. Cienciva, stated that following appellant’s return to work in October 1998, she found the environment to be cold and damp and she was unable to get her work done. He stated that on current examination, her condition remained relatively unchanged and diagnosed chronic neck strain and posterior trapezius strain. Dr. Sorg concluded that he agreed with Dr. Cienciva’s 1998 assessment that appellant is totally disabled.

Appellant also submitted treatment notes from Dr. Richard Freedman, a psychologist to whom she was referred by Dr. Sorg. In his notes dated May 3 and 10, 2001, Dr. Freedman diagnosed dysthmic disorder, chronic moderate depression and prolonged anxiety disorder with [p]ost traumatic features. He noted that appellant reported having tried unsuccessfully to return to work three times in the last nine years and that she had stopped each time due to the pain, but did not otherwise offer any opinion as to appellant’s ability to perform her light-duty job in October 1998.

Finally, appellant submitted cervical x-rays and MRI reports dated May 17, 2001, showing mild degenerative changes including mild stenosis at C6 due to a small disc herniation and bony spur formation. In addition, appellant submitted numerous form reports and treatment notes from Dr. Cienciva, which do not discuss her October 1998 recurrence of disability.

In a decision dated October 12, 2001, the Office found the newly submitted evidence and arguments to be insufficient to warrant modification of the prior decision.

The Board finds that appellant has failed to establish that she sustained a recurrence of disability on October 22, 1998 causally related to her December 24, 1987 employment injury.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she 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 or she 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 job requirements.³ 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 and supports that conclusion with sound medical reasoning.⁴ Causal relationship is a medical issue⁵ 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

In this case, appellant has shown no change in the nature and extent of her injury-related condition or of the limited-duty requirements. The record shows that appellant returned to limited-duty work four hours a day at the employing establishment on June 6, 1998. The record does not establish that the claimed recurrence of total disability was caused by a change in the nature or extent of her limited-duty job requirements and further does not contain sufficient medical evidence establishing that the accepted conditions have materially changed or worsened since her return to work. While appellant states that her basement workstation was cold and damp, she acknowledged that she had been provided with a dehumidifier and a heater. In addition, while appellant's treating physicians repeatedly noted her complaints that her work area

³ *George DePasquale*, 39 ECAB 295 (1987); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ *Frances B. Evans*, 32 ECAB 60 (1980).

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

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

was cold and damp, none of the physicians of record stated that appellant was physically unable to perform her light-duty job, four hours a day, due to her work station's basement location. Rather, Dr. Murray specifically noted in his October 14, 1998 report that a work site evaluation had been performed and no significant problems were found⁷ and Dr. Cienciva did not point to any particular work duties as being the cause of appellant's increased pain, but seemed to be more concerned with the effect of appellant's isolated basement work station on her emotional health. In her report dated October 21, 1998, while Dr. Cienciva noted that appellant had an exacerbation of her neck pain and spasms, she did not opine that her underlying accepted conditions had worsened such, that she could no longer perform her light duties, four hours a day, but instead attributed appellant's increased pain to her disillusionment with her employment duties. As this claim has not been accepted for an emotional condition and as none of appellant's treating physicians offered any rationalized medical opinion, supported by objective findings, explaining how appellant's accepted conditions had worsened such that she could no longer perform her limited-duty work, four hours a day, these reports lack the necessary probative value to establish appellant's claim. Therefore, the Board finds that the weight of the medical evidence rests with Dr. Kunkle's well-rationalized second opinion report, in which he noted that appellant's MRI results were essentially unchanged since 1996, that her underlying arthritis and spinal stenosis of the cervical spine were unrelated to her work injury and that there were no objective findings to support appellant's ongoing complaints of severe pain. Finally, Dr. Kunkle concluded that despite her complaints of pain, which were possibly due to a pain syndrome, appellant could perform light-duty work at least four hours a day, which is what she was working at the time of her alleged recurrence.

By letter dated January 4, 1999, the Office advised appellant of the type of medical evidence necessary to establish her claim. As she has failed to submit rationalized medical evidence establishing that she sustained a recurrence of disability causally related to her accepted employment injury, she has not met her burden of proof.⁸

⁷ Dr. Murray noted that the recommended changes in appellant's work environment included changing the arrangement of the office work spaces for greater efficiency and less neck strain and providing a paper holder and a mouse pad.

⁸ *Charles P. Mulholland, Jr.*, 48 ECAB 604 (1997) (the test of "disability" under the Federal Employees' Compensation, is whether an employment-related impairment prevents the employee from engaging in the kind of work he or she was doing when injured); *Debra A. Kirk-Littleton*, 41 ECAB 703, 706 (1990) (whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence); (in assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality); *Anna C. Leanza*, 48 ECAB 115, 124 (1996) (the factors which enter in such an evaluation include the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion).

The October 12, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 6, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member