U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of YVONNE L. EVANS and U.S. POSTAL SERVICE,
ROYAL OAK P & D PLANT, Troy, Mich.

Docket No. 96-916; Submitted on the Record;
Issued March 6, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant sustained a recurrence of disability on April 12, 1994 was causally related to her federal employment; and (2) whether the Office of Workers' Compensation Programs properly terminated appellant's authorization to receive medical treatment under the Federal Employees' Compensation Act.

On September 21, 1993 appellant, then a 53-year-old distribution clerk, filed a claim alleging that she injured her arm, shoulder, hand and the left side of her back when she was hit by a mail container. She stopped work that day and returned to limited duty on October 25, 1993 for six hours per day. By letter dated March 2, 1994, the Office approved the claim for a somatic dysfunction condition.[1] Appellant began working eight hours per day on March 14, 1994. On April 20, 1994 she filed a recurrence claim, alleging that, as she could not work eight hours per day, she had reduced her workday to six hours per day on April 12, 1994. In an accompanying statement she indicated that she could not work eight hours due to discomfort and pain and that her physician advised that she return to a six-hour per day schedule. She also submitted reports from her treating osteopathic general practitioner, Dr. John Dickey. In an undated report, Dr. Dickey advised that appellant could try to work eight hours per day beginning March 14, 1994 but should return to a six-hour day if her condition became aggravated. In a second undated note he advised that she should return to a six-hour day, effective April 12, 1994.

By letter dated May 12, 1994, the Office informed appellant of the type of information needed to support her claim. In response, she submitted a statement indicating that she sustained an employment injury on March 19, 1990, worked a variety of hours until she returned to an eight-hour day on March 10, 1992 which continued until her September 21, 1993 injury. She

[1] The Office stated that it was closing a claim for an employment injury sustained by appellant on March 19, 1990, adjudicated under Office number A9-341711 and had informed the employing establishment that the September 21, 1993 injury, adjudicated under Office number A9-381655, was an intervening injury. The case file for claim number A9-341711 is not in the record before the Board.

stated that she performed minimal household work and was having difficulty entering and leaving her car.

Dr. Dickey continued to submit reports noting findings on examination and indicating that appellant's condition was employment related and, in treatment notes dated April 12, May 24 and 27, 1994, advised that appellant could not work because of pain in her neck, back and down her leg due to cervical somatic dysfunction and lumbar spasm.

By decision dated June 10, 1994, the Office denied the recurrence claim on the grounds that appellant had submitted no supporting medical evidence. The Office also terminated appellant's medical benefits. On July 1, 1994 appellant, through counsel, requested a hearing. Prior to the hearing, Dr. Dickey submitted a number of duty status reports indicating that appellant could work six hours per day with restrictions due to a herniated cervical disc and somatic dysfunction.

At the hearing held on February 27, 1995, appellant testified that in 1990 she sustained an employment-related injury to the right neck, shoulder, arm and hand. She described her return to an eight-hour workday on March 14, 1994 as a "trial" and that, as her condition worsened on this schedule, Dr. Dickey placed her back on a six-hour day. She stated that she had continued to work six hours per day and was still under treatment and physical therapy. She also submitted additional medical evidence including a July 7, 1994 report, Dr. Dickey noted that appellant was under his care for the March 19, 1990 employment injury when she sustained the September 21, 1993 injury. Diagnoses included cervical disc herniation, right shoulder strain and somatic dysfunction of the lumbar region due to the 1990 injury and somatic dysfunction of the lumbar region and superficial hand contusion for the 1993 injury. In a July 26, 1994 report, Dr. Joseph Meerschaert, a Board-certified physiatrist and Dr. David McElroy, a physiatrist, repeated the history of two work injuries. Physical findings included decreased range of motion of the left shoulder and mild tenderness to percussion and palpation over the low lumbar region and sacroiliac joints bilaterally with limited range of motion of the hips. A lumbar spine series revealed sacralization of L5. Their impression was fibromyalgia. In an August 5, 1994 cervical spine x-ray, Dr. Gregory J. Raiss, a Board-certified radiologist, diagnosed moderate degenerative disc changes at C5-6 with significant disc space narrowing, marginal spurring and narrowing of the right C5-6 neural foramen. In an August 23, 1994 report, Dr. Meerschaert advised that appellant's fibromyalgia was post traumatic and secondary to the 1990 and 1993 employment injuries which caused significant pain to the neck and low back. He stated that the herniated disc at C5-6 was employment related and noted that, following the September 21, 1993 injury, she had increased left shoulder and low back pain. Dr. Meerschaert advised that she could continue to work six hours per day with restrictions.

By decision dated June 9, 1995, the Office hearing representative affirmed the prior decision, stating that the opinion of Dr. Meerschaert was not rationalized as he did not address the causal relationship between specific work factors and appellant's condition, did not address why she could not work the additional two hours, diagnosed a condition secondary to that accepted by the Office and offered no opinion on the accepted condition.

On August 31, 1995 appellant requested reconsideration and submitted additional reports from Drs. Dickey and Meerschaert. In several duty status reports, Dr. Dickey reiterated his

previous findings and in a report dated June 28, 1995 advised that following appellant's return to an eight-hour workday she complained of extreme pain in her back and neck, radiating down her leg with spasms in the lumbar area which he opined was causally related to the September 21, 1993 work injury. Dr. Dickey stated:

> "At this point [appellant] is not able to work a full eight-hour shift. We are optimistic that she will eventually be able to return to her normal hours, but at this point six hours is all she can handle without increased pain."

In a July 25, 1995 report, Dr. Meerschaert noted the history of the work injury, that appellant tried to return to an eight-hour day with restrictions but due to severe pain in her neck and low back was unable to work eight hours. He noted findings on examination and x-ray and diagnosed cervical degenerative disc disease with significant cervical pain, somatic dysfunction, radiating into the right arm "which is consistent with persistence of the original injury from September 21, 1993." Dr. Meerschaert concluded:

> "There is definitely a causal relationship between the current condition and the work-related conditions[;] proximate causation, precipitation, acceleration and aggravation. The causation was the original injury in September and it was aggravated by increasing her work to eight hours a day. The aggravation is temporary. She is working six hours and she is unable to work the additional two hours of restricted duties because of her continued problems of pain in the neck as well as the low back. She is working six hours a day with restrictions and she is doing fair with this. In spite of the continuing amount of pain that she is having, she is working six hours a day.
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> "This is certainly enough weight of substantial, reliable and probative evidence that the recurrence of disability condition for which the compensation is sought is causally related to the accepted employment injury. This is certain, to a certain degree of medical evidence."

By decision dated November 13, 1995, the Office denied the claim, finding the evidence submitted in support of appellant's reconsideration request insufficient to warrant modification of the prior decision. In the attached memorandum, the Office noted that neither Dr. Dickey nor Dr. Meerschaert identified specific employment factors which caused appellant's increasing disability and provided no medical reasoning to support their opinions.

The Board finds that the case is not in posture for a decision regarding the September 21, 1993 recurrence of disability.

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 either 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.[2]

Causal relationship is a medical issue[3] 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.[4] Moreover, neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[5]

In the present case, the Office accepted that appellant sustained a somatic dysfunction. At the time of the claimed recurrence, she was working in a modified clerk position with certain restrictions. There is no evidence in the record to indicate that her limited-duty position had changed. Appellant, however, submitted reports from her treating general practitioner, Dr. John Dickey and her treating Board-certified physiatrist, Dr. Joseph Meerschaert, who both indicated that her chronic neck and back pain were due to the September 21, 1993 employment injury and both indicated that appellant could only work six hours per day. While these reports lack detailed medical rationale sufficient to discharge appellant's burden of proof to establish by the weight of reliable, substantial and probative evidence that she sustained a recurrence of disability on April 12, 1994 causally related to the September 21, 1993 employment injury, the fact that these reports contain deficiencies preventing appellant from discharging her burden does not mean that they may be completely disregarded by the Office. It merely means that their probative value is diminished.[6] Under such circumstances, the reports are sufficient to require further development of the record, especially given the absence of any opposing medical evidence.[7] Office procedures indicate that the Office must advise a claimant of the defects in his or her claim[8] and, if the medical evidence establishes disability, the Office should further develop the claim.[9] It is well established that proceedings under the Act[10] are not adversarial in

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[2] *See Mary A.* Howard, 45 ECAB 646 (1994); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

[3] *Mary J. Briggs*, 37 ECAB 578 (1986).

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

[5] *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

[6] *See Delores C. Ellyet*, 41 ECAB 992 (1990).

[7] *John J. Carlone*, 41 ECAB 354 (1989).

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Occupational Illness*, Chapter 2.806.6 (April 1991) (provision in effect at the time the decision was issued.)

[9] *Id.*

nature[11] and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[12] Only in rare instances where the evidence indicates that no additional information could possibly overcome one or more defects in the claim is it proper for the Office to deny a case without further development.[13] The Board finds that the reports of Drs. Dickey and Meerschaert, taken as a whole, are sufficiently supportive of appellant's claim to warrant further development of the evidence.[14]

The Board further finds that the Office has not met its burden of proof in terminating medical benefits for appellant's work-related condition.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.[15] The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[16]

On March 2, 1994 the Office accepted that appellant sustained a somatic dysfunction in the performance of duty. By its June 10, 1994 letter, which accompanied its decision of that same date, the Office terminated appellant's authorization for medical treatment. The Office, however, did not establish that appellant no longer had residuals of any employment-related condition which would require further medical treatment. The evidence indicates that, while appellant returned to work on October 5, 1993, she did so with restrictions to her activity and there is no evidence that appellant ever returned to her preinjury baseline. In fact, Drs. Dickey and Meerschaert both noted findings on examination and that appellant continued to suffer residuals of the employment injury. There is therefore no medical evidence establishing that all residuals of the September 21, 1993 employment injury had resolved by June 9, 1994, the date the Office terminated appellant's medical benefits. As the record contains no probative evidence establishing that appellant's accepted condition had totally resolved, the Office did not meet its

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[10] 5 U.S.C. § 8101 *et seq.*

[11] *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

[12] *See Dorothy L. Sidwell*, 36 ECAB 699 (1985).

[13] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.800.5(c) (April 1993).

[14] *See John J. Carlone, supra* note 7; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.5(b) (September 1993); *see also* at Chapter 2.810.8(a) (April 1993).

[15] *Pedro Beltran*, 44 ECAB 222 (1992); *Mary E. Jones*, 40 ECAB 1125 (1989).

[16] *Frederick Justiniano*, 45 ECAB 491 (1994); *see Marlene G. Owens*, 39 ECAB 1320 (1988); *Calvin S. Mays*, 39 ECAB 993 (1988).

burden of proof in terminating appellant's medical benefits for residuals of his work-related injury.

Finally, the Board notes that the medical evidence indicates that appellant's current condition is related to her March 1990 employment injury. The case file for this injury is not in the present record. Thus, upon remand, the case files for Office numbers A9-341711 and A9-381655 should be consolidated. After such further development as is deemed necessary, the Office shall issue a *de novo* decision.[17]

The decisions of the Office of Workers' Compensation Programs dated November 13 and June 9, 1995 are hereby set aside regarding whether appellant established that she sustained a recurrence of disability on April 12, 1994. Insofar as these decisions terminated appellant's authorization for medical benefits under the Federal Employees' Compensation Act, they are reversed.

Dated, Washington, D.C.
March 6, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[17] The Board notes that appellant submitted evidence subsequent to the Office decision dated November 13, 1995. The Board cannot consider this evidence as the Board's review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).