U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDITH E. SMITH and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, FL

Docket No. 98-1713; Submitted on the Record;
Issued February 23, 2000

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability commencing November 5, 1994 causally related to her employment injury of September 17, 1994.

On October 7, 1994 appellant, then a 49-year-old rural route associate, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she suffered a pinched sciatic nerve (lower back, buttock, left thigh left knee and left calf) as a result of working her delivery route on September 17, 1994. Appellant contended that her left leg began hurting her while working on her route on September 17, 1994 and that the leg swelled when she got home. Appellant stopped working on September 18, 1994.

In support of her claim, appellant submitted records from her September 27, 1994 visit to St. Joseph's Emergency Department, which indicated that appellant was seen on that date by Dr. William Holsonback who diagnosed appellant with sciatica and prescribed Ibuprofen. Dr. Holsonback noted that appellant was disabled for two days and that afterwards, she could work with restrictions of no prolonged standing/walking for one week. He referred appellant to Dr. Seth Gasser, an orthopedic surgeon, for follow-up care.

Thereafter, appellant submitted medical reports and other evidence in further support of her claim. The record reflects that appellant was treated at the Florida Orthopedic Institute by Dr. Glenn R. Rechtine, a Board-certified orthopedic surgeon. Appellant first saw Dr. Rechtine on October 3, 1994 with her chief complaint being left leg pain; at that time appellant was diagnosed as suffering from a lumbar strain. He found that appellant was unable to work at that time. On October 17, 1994 Dr. Rechtine released appellant to return to light-duty work on a full-time basis. Appellant' s restrictions were not lifting over 20 pounds, the ability to change positions every hour, overhead reaching on a regular basis and no repeated bending, stooping or squatting. In a medical report dated November 14, 1994, he noted that appellant had become worse, and that due to her persistent complaints of lower back pain and left leg pain, a whole

body bone scan and magnetic resonance imaging (MRI) scan were ordered. It was recommended that appellant see Dr. Mark A. Frankle, an orthopedic surgeon, regarding her left knee pain.

On December 8, 1994 the Office of Workers' Compensation Programs accepted appellant's claim for a lumbar strain.

Appellant later submitted a report by Dr. James M. Quigley, a Board-certified radiologist, who conducted a routine lumbar spine examination on September 27, 1994 and found that the "vertebral bodies appear in alignment. No fracture or subluxation is seen. There appears to be degenerative disc change at multiple levels."

On December 12, 1994 Dr. Reed Murtagh, a Board-certified radiologist, took an MRI of appellant's lumbar spine and diagnosed moderate spinal stenosis at L4-5 and L5-S1. A whole body scan of that same date revealed no abnormal areas of increased uptake or decreased uptake.

On December 13, 1994 appellant, was again seen by Dr. Rechtine, who noted again that at that time appellant was capable of performing light-duty work on a full-time basis.

In a medical report dated January 10, 1995, Dr. Frankle, noted that he examined appellant's knee and diagnosed degenerative arthritis with medial joint line symptoms. He released appellant back to work at her light-duty occupation, with restrictions of avoiding excessive standing and walking and carrying objects.

By letter dated February 14, 1995, the Office accepted appellant's claim for temporary aggravation of arthritis of the left knee as a work-related condition connected to her September 17, 1994 employment injury.

In a medical report dated February 21, 1995 and received by the Office on March 9, 1995, Dr. Frankle found that appellant reached maximum medical improvement and that appellant had a permanent disability that required her to do sedentary work with minimal lifting, standing and squatting, but that her permanent impairment rating was zero percent.

On February 27 and March 28, 1995 appellant was again seen at the Florida Orthopedic Institute and Dr. Rechtine again noted appellant's light-duty restrictions. In an attending physician's report (Form CA-20) dated April 19, 1995, Nurse Ann Marie Chrin checked a box stating that she believed appellant's condition of lumbar spinal stenosis was caused or aggravated by an employment activity. However, when asked to explain her answer, she neglected to do so.

On April 20, 1995 appellant filed a claim for compensation on account of traumatic injury or occupational disease claiming lost wages for the period November 5, 1994 through April 28, 1995, (Form CA-7).

The employing establishment submitted a statement dated April 24, 1995, noting that appellant was terminated on November 5, 1994. The statement stated that she worked an average of less than 24 hours per week up until her incident on September 17, 1994. After that

incident, she was on limited duty during pay period 22 and 23 and worked one week in pay period 23, before being terminated. She was terminated for repeated unavailability for work.

In his report of May 19, 1995, Dr. Rechtine kept appellant on the original restrictions. He also noted that appellant reached maximum medical improvement and that her permanent impairment was eight percent.

On June 6, 1995 Nurse Chrin completed a duty status report (CA-17), which limited appellant to continuous lifting less than 20 pounds, intermittent lifting 20 to 100 pounds per day, continuous sitting 5 hours per day, intermittent standing 3 hours per day, continuous walking 6 hours per day and intermittent climbing, kneeling, bending and stooping. She noted that appellant was advised on October 17, 1994 that she could resume working.

In response to the Office's request for further information, the employing establishment noted that appellant had returned to work in a "light/limited"-duty position. The employing establishment noted that the reason for her termination was "based on the fact that she was hired to deliver mail ([r]ural [c]arrier [a]ssociate) and since she could not perform the duties of her position *AND* because she was in her probationary period, she was terminated." (Emphasis in the original.)

In his October 12, 1995 medical report, Dr. Rechtine noted that appellant was seen for a follow-up for a chief complaint of neck pain, lower back pain and bilateral leg pain and that since her initial visit, her condition has become worse. He noted that on "August 19 she leaned over at foot of bed and experienced low back pain. Also since she complains of neck pain. Severe pain has improved but she complains of constant back pain" and intermittent leg pain. Dr. Rechtine encouraged nonoperative treatment and recommended evaluation of appellant's neck pain by a family physician as he could not relate this to her employment injury.

On April 3, 1996 the Office requested that appellant submit further information regarding her claim for benefits. On July 9, 1996 the Office informed appellant that as no response had been received to its letter, no further action would be taken and closed her case.

In a letter dated October 4, 1996, the Office apprised appellant's attorney that the evidence established that her work-related problem improved by October 1994, and that she had an increase in the level of disability reported in November 1994, which was not shown to be due to the September 17, 1994 employment injury. The Office noted that the recommendation for continuing light duty appeared to be based on appellant's arthritic condition and not the injury of September 17, 1994.

By letter dated October 10, 1996, appellant advised the Office that she wished to pursue her claim and requested additional time to submit medical evidence.

By letter dated October 31, 1996, the Office asked appellant to submit a Form CA-2a for recurrence of compensable injury.

On December 10, 1996 appellant, filed a notice of recurrence of disability and claim for continuation of pay/compensation (Form CA-2a), alleging continuation of the original injury.

Appellant submitted further medical reports from Dr. Rechtine and the Florida Orthopedic Institute dated April 18, 1996, October 12 and May 18, 1995. These reports restate that appellant was able to work full-time light duty.

By decision dated April 15, 1997, the Office denied appellant's recurrence claim. The Office found that appellant had sustained a new injury on August 19, 1995, when she leaned over the foot of her bed and experienced severe low back pain and that her new request for benefits regarding neck pain, lower back pain and bilateral leg pain was not related to the injury of September 17, 1994. As appellant had failed to establish that her continuing conditions were caused by her work-related injury, the Office denied compensation and medical benefits for the injury commencing November 4, 1994.

At the request of appellant, a hearing was conducted on February 11, 1998 wherein appellant stated, *inter alia*, that her work on the date of her injury involved casing mail, walking and driving, that when she arrived home from work that day her leg was swollen that this was the only accident she ever filed a claim for that her supervisor told her the employing establishment could not use her because she could not perform her job, that her job as a rural carrier associate was not full time, but that she did work "quite a bit," that she worked close to 30 hours per week and that she still had problems with her knee. At the hearing, appellant was told that she would have to submit a narrative report from Dr. Rechtine.

By letter dated January 27, 1997, Dr. Rechtine wrote a letter stating that it was not his custom to prepare narrative reports, as his progress notes are specific in nature and he does not feel that individual narrative reports are necessary. Dr. Rechtine added that appellant was initially treated on October 3, 1994 for left leg pain "which started at work on September 17, 1994," and that she continues to be treated for the same condition.

By letter dated February 23, 1998, Nurse Chrin wrote that appellant was diagnosed with lumbar spinal stenosis, that this is a degenerative condition, however, appellant was asymptomatic prior to her work injury of September 17, 1994, and that, therefore, "we believe that her preexisting condition was aggravated by this work injury." Nurse Chrin also noted that appellant was still symptomatic with low back pain and bilateral leg pain.

By decision dated March 23, 1998, the Office hearing representative affirmed the April 15, 1997 Office decision, finding that the medical evidence was insufficient to establish that appellant's partial disability on or after November 4, 1994 was due to the September 17, 1994 work injury.

The Board finds that appellant failed to meet her burden of proof to establish that her alleged recurrence of disability on November 5, 1994 was causally related to her September 17, 1994 employment injury.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that 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 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.[1]

Causal relation is a medical question that generally can be resolved only through medical evidence.[2] In order to establish causal relationship, a physician's opinion must be based on a complete factual and medical background and must be supported by medical rationale that establishes that the diagnosed condition resulted from the specific employment activities.[3] The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized 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 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 appellant.[4]

There are no rationalized medical reports in the record which reveal a causal relationship between appellant's condition on and after November 5, 1994 and her September 17, 1994 employment injury. Appellant was injured, returned to work in a light-duty capacity and then was terminated from employment. The Board finds that appellant has not proven that her termination from employment was due to residuals of her employment injury.

In a letter dated February 23, 1998, Nurse Chrin reasoned that although lumbar spinal stenosis is a degenerative condition, appellant was asymptomatic prior to her work injury of September 17, 1994 and her symptoms began on September 17, 1994 after a work-related injury and, therefore, appellant's preexisting condition was aggravated by this work injury. Nurse Chrin also expressed her opinion on causal relationship in her April 19, 1995 attending physician's report. In this report, Nurse Chin checked the "yes" box corresponding to the question: "Do you believe the condition found was caused or aggravated by the employment activity described? The Board notes that a nurse practitioner is not a physician as defined by the Federal Employees Compensation Act.[5] Lay individuals such as physician assistants, nurse practitioners and social workers are not competent to render a medical opinion.[6] Therefore, her reports do not constitute competent medical evidence and are of no probative value.

[1] *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[2] *Id.*

[3] *Charles E. Burke*, 47 ECAB 185, 189-90 (1995).

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

[5] *See Bertha L. Arnold*, 38 ECAB 282 (1986). As defined by the Act in 5 U.S.C. § 8101(2), physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law.

[6] *See Arnold A. Alley*, 44 ECAB 912 (1992); *Sheila Arbour*, 43 ECAB 779 (1992); *Barbara J. Williams*, 40 ECAB 649 (1989).

The Board further notes that none of the other medical reports expressed an opinion as to the cause of appellant's injuries after November 4, 1994. Although Dr. Rechtine noted in his November 14, 1994 report that appellant's condition had become worse, he gave no reason for this worsening. Dr. Rechtine specifically noted that appellant's neck problems were unrelated to the employment injury. In his medical report dated January 27, 1997, Dr. Rechtine noted that he had treated appellant for leg pain, which commenced on September 17, 1994 but he offered no rationale as to why such pain may be attributed to the employment injury and as to why this disabled her from work. The Board also notes that Dr. Rechtine treated appellant for spinal stenosis. However, the Office did not accept this condition and appellant did not meet her burden of proof to establish a relationship between her spinal stenosis and her employment injury. Dr. Murtagh noted moderate spinal stenosis at L4-5 and L5-S1, but gave no opinion as to causation. Dr. Frankle diagnosed medical degenerative meniscus tear, but also gave no opinion as to the cause of this condition.

Because appellant has not submitted the rationalized medical opinion evidence necessary to show causal relationship, the Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability causally related to the September 17, 1994 employment injury, or that her separation from employment was due to the effects of the September 17, 1994 employment injury.

The decision of the Office of Workers' Compensation Programs' hearing representative dated March 23, 1998 is affirmed.

Dated, Washington, D.C.
February 23, 2000

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member