

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CONNIE L. BELL and DEPARTMENT OF DEFENSE,
DEFENSE COMMISSARY AGENCY, Fort Benning, GA

*Docket No. 03-1364; Submitted on the Record;
Issued September 2, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of total disability on November 14, 1998 causally related to her January 6, 1998 employment injury.

On January 20, 1999 appellant, then a 39-year-old commissary cashier, filed a traumatic injury claim alleging that on January 6, 1998 she injured her lower back and hip when she picked up a bag of sweet potatoes. She was placed on light duty from January 7 to 16, 1998. Appellant stopped work again on March 1, 1998 with a release to return to limited duties on March 23, 1998. On May 10, 1999 the Office of Workers' Compensation Programs accepted appellant's claim for an acute lumbar strain.

On April 26, 2000 appellant filed a claim for total disability commencing on November 14, 1998.

By decision dated January 15, 2002, the Office denied appellant's claim on the grounds that the evidence did not establish that she sustained a recurrence of total disability on November 14, 1998 causally related to her January 6, 1998 employment injury.

Appellant requested reconsideration by letter dated October 1, 2002 and submitted additional medical evidence.

By decision dated January 8, 2003, the Office affirmed the January 15, 2002 decision denying appellant's claim for a recurrence of total disability.

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of total disability on November 14, 1998 causally related to her January 6, 1998 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 to show that she cannot perform such light-duty work. 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

In a report dated November 9, 1998, Dr. Charles R. Roman, appellant's attending internist, stated that he was not sure of the cause of appellant's back pain, noting that he could find no objective evidence of any anatomic abnormality as the cause of the pain.² Dr. Roman stated in a report dated November 23, 1998 that he was unable to find a cause of appellant's chronic back pain. As Dr. Roman did not diagnose a cause of appellant's continuing back pain and found no objective evidence to support her complaint of pain, these reports do not support appellant's claim for a recurrence of total disability on November 14, 1998 causally related to her January 6, 1998 employment injury.

In a form report dated May 6, 2000 regarding an examination on April 26, 2000, Dr. Roman indicated that appellant was totally disabled due to chronic pain and associated depression. He indicated, by checking the block marked "yes," that appellant's condition was causally related to her January 6, 1998 employment injury. However, the Board has held that an opinion on causal relationship which consists only of checking "yes" to a form report question on whether the claimant's disability was related to the history given is of little probative value.³ Without any explanation or rationale, such a report is insufficient to establish causal relationship.⁴ As Dr. Roman did not provide a rationalized medical opinion explaining how appellant's disability was caused by a change in the nature and extent of her employment-related condition or a change in the nature and extent of her light-duty job requirements, this report is not sufficient to discharge appellant's burden of proof to establish a work-related recurrence of total disability.

Dr. Joseph R. Lewis, appellant's attending family practitioner, stated in a report dated September 27, 2002 that appellant had injured her back at work in 1998 and had been disabled since that time. He stated:

“[Appellant] was found to have a lumbar spine syndrome with a right leg radiculopathy and isolated right hip pain as well as major depression. [Appellant] has had much difficulty coping with her loss and, because of the extreme pain, radiculopathy, unresponsiveness to medical therapy and deep depression has continued to be totally disabled in the activities of daily living. [Appellant] is on

¹ *Cynthia M. Judd*, 42 ECAB 246 (1990); *Stuart K. Stanton*, 40 ECAB 859 (1989).

² A radiology report dated January 12, 1998 indicated that a magnetic resonance imaging (MRI) scan of appellant's lumbosacral spine was normal.

³ *Debra S. King*, 44 ECAB 203 (1992); *Donald W. Long*, 41 ECAB 142 (1989).

⁴ *Id.*

anti-depressant medications as well as pain modalities and I do not feel that she will ever be able to return to work.”

However, Dr. Lewis did not provide any physical findings to support his diagnosis or any rationalized explanation as to how the diagnosed conditions and disability were causally related to any change in the nature and extent of appellant’s January 6, 1998 employment-related lumbar strain or a change in the nature and extent of her light-duty job requirements. Therefore, his report is not sufficient to establish that appellant sustained an employment-related recurrence of total disability on November 14, 1998.

In a report dated May 23, 2001, Dr. Jeffrey A. Fried, a Board-certified orthopedic surgeon and an Office referral physician, provided a history of appellant’s condition and findings on examination and stated his opinion that appellant’s work-related lumbar strain had resolved. He stated that she was not totally disabled but did have some back deconditioning, asthma, hypertension, obesity and depression which hindered her return to work. Dr. Fried further stated, “However, I do not find [appellant] disabled due to her January 6, 1998 back injury.” He indicated that appellant could return to work with some restrictions due to nonwork-related medical conditions. On December 19, 2001 Dr. Fried provided a supplemental report in which he stated that injuries to muscles and tendons such as appellant’s lumbar strain tended to heal within several months. He noted that there were no focal neurological signs and an MRI scan was negative. Dr. Fried indicated that most of appellant’s pain was related to her deconditioning and possibly some nonorganic component.

As appellant has provided insufficient medical evidence establishing a change in the nature and extent a change of her employment-related condition or a change in the nature and extent of her light-duty job requirements such that she was totally disabled, she failed to meet her burden of proof to establish that she sustained a recurrence of total disability on November 14, 1998 causally related to her January 6, 1998 employment injury.

The Board notes that appellant has alleged that she sustained an emotional condition causally related to her chronic back pain resulting from her January 6, 1998 employment injury. She submitted medical evidence from a psychologist and several physicians regarding her depression, including a psychiatrist. The Board has held that an emotional condition related to chronic pain and limitations resulting from an employment injury is covered under the Act.⁵ However, the Office did not address appellant’s claimed emotional condition in its January 15, 2002 and January 8, 2003 decisions. On remand the Office should develop the evidence regarding appellant’s emotional condition and issue an appropriate decision.

⁵ See *Arnold A. Alley*, 44 ECAB 912 (1993); *Charles J. Jenkins*, 40 ECAB 362 (1988).

The January 8, 2003 decision of the Office of Workers' Compensation Programs is affirmed as to appellant's claim for a recurrence of total disability and remanded for further development of her claim for an emotional condition.

Dated, Washington, DC
September 2, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member