

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

DONNA M. RYAN, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Utica, NY, Employer**

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**Docket No. 04-134
Issued: June 9, 2005**

Appearances:
Donna M. Ryan, pro se
Jim Gordon, Esq., for the Director

Oral Argument April 7, 2005

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On October 22, 2003 appellant filed a timely appeal of an October 8, 2003 decision of the Office of Workers' Compensation Programs, denying her claim for a recurrence of disability commencing June 17, 2000. Pursuant to 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant established a recurrence of disability as of June 17, 2000; and (2) whether the Office properly terminated medical benefits in the October 3, 2003 decision.

FACTUAL HISTORY

On January 28, 1999 appellant, then a 38-year-old computerized forwarding system (CFS) clerk, filed an occupational disease claim (Form CA-2) alleging that her cervical condition was causally related to her federal employment. On April 9, 1999 the Office accepted the claim for a cervical strain. Appellant returned to work initially at four hours per day. On October 23,

1999 appellant began working full time as a relief window clerk. The employment establishment indicated that the position had a 30-pound lifting limitation in accord with appellant's physical restrictions.

The Office referred appellant for a second opinion examination by Dr. Joseph Pierz, a Board-certified orthopedic surgeon. In a report dated May 12, 2000, Dr. Pierz provided a history of injury and results on examination, diagnosing degenerative disc disease and osteoarthritis at C5-6 and a chronic cervical strain. He stated that appellant had a permanent partial disability of a moderate degree and should continue in her capacity as a window clerk with modifications.

In a treatment note dated June 14, 2000, Dr. Rudolph Buckley, reported that appellant had increasing pain in her neck and shoulder. He indicated that appellant stated that she could not continue to perform her current job due to the pain. Dr. Buckley noted that objectively there was no obvious change in her examination and he recommended a new magnetic resonance imaging (MRI) scan. In a duty status report (Form CA-17) dated June 14, 2000, Dr. Buckley indicated that appellant should work four hours per day with restrictions that included 20 pounds lifting and 2 hours of sitting and standing. He diagnosed cervical degenerative disease.

On June 16, 2000 appellant filed a notice of recurrence of disability and claim for continuation of pay/compensation (Form CA-2a). She indicated that she had received medical treatment on June 14, 2000 and that her cervical pain had never resolved. Appellant noted that her current job required repetitive neck movements. On June 17, 2000 the employing establishment offered appellant a four hour per day light-duty position. The record indicates that appellant accepted the position and began working four hours per day.

By decision dated October 2, 2000, the Office denied appellant's claim for a recurrence of disability as of June 17, 2000. It found that the medical evidence failed to show that the claimed recurrence of disability was causally related to the employment injury.

Appellant requested reconsideration and submitted additional medical evidence. An MRI scan report dated September 19, 2000 from Dr. Mohammad Omar, a radiologist, stated that there was "little interval change seen with a moderate degree of degenerative change seen at the C5-6 level." In a report dated November 18, 2000, Dr. Buckley noted that appellant had been placed on additional restrictions as of June 14, 2000. He stated that x-ray changes noted since May 17, 2000, had increased and become more degenerative. Dr. Buckley reported that appellant's neck condition had worsened and the diagnosis of strain and degenerative disc disease was directly related to the original neck injury of December 1998.

In a decision dated February 22, 2001, the Office denied modification of the October 2, 2000 decision. The Office stated that the medical evidence did establish an aggravation of cervical degenerative disc disease as employment related and appropriate medical treatment was authorized, but found that a worsening of the condition or a change in the light-duty job was not established. By decision dated April 13, 2001, the Office denied merit review of the claim.

Appellant requested reconsideration and submitted an April 30, 2001 report from Dr. Mark Zongrone, an occupational medicine specialist, who provided a history and results on examination, diagnosing severe degenerative arthritis of the cervical spine and radiculopathy.

He opined that the diagnosed conditions were causally related to injuries of October 21, 1998 and June 16, 2000.

By decision dated August 7, 2001, the Office reviewed the case on its merits and denied modification of the February 22, 2001 decision.

Appellant again requested reconsideration and submitted additional medical evidence. In a report dated March 11, 2001, Dr. Buckley stated that appellant's diagnoses were cervical strain, retrolisthesis and degenerative C5-6 disc, which was a permanent diagnosis that is precipitated by repetitive cervical movements while performing her job. Dr. Buckley indicated that x-rays in May 2000 showed increase in the retrolisthesis and degenerative changes and appellant's condition worsened leading to a recurrence on June 17, 2000.

Appellant also submitted a report dated September 12, 2001 from Dr. Peter Fragatos, a neurosurgeon, providing results on examination. In a report dated September 26, 2001, Dr. Fragatos diagnosed degenerative disease with retrolisthesis and radiculopathy, which was directly related to repetitive activity of her cervical spine at work.

In a report dated December 7, 2001, Dr. Buckley stated that it was necessary to reduce appellant's hours from eight to four in June 2000, because the flexion and rotation of the neck irritated the facet joints, ligaments and discs, resulting in debilitating pain. Dr. Buckley reported that x-rays on November 21, 2001 showed a mild progression from June 2000 and the progression has most likely slowed due to the sedentary nature of the work performed since June 2000. He concluded that the work appellant performed as a window clerk, small parcel bundle sorter and distribution clerk "aggravated and deteriorated her condition to the point where she had to be reduced to [four] hours per day again."

By decision dated May 9, 2002, the Office reviewed the case on its merits and denied modification of the August 7, 2001 decision. The Office found that the evidence did not support that the accepted condition had worsened.

Appellant requested an appeal of the May 9, 2002 decision. By order dated May 23, 2003, the Board granted the Director's motion to remand the case on the grounds that the case record was incomplete as it did not include the report of the second opinion physician, Dr. Pierz. By decision dated October 8, 2003, the Office denied appellant's claim for a recurrence of disability. The Office found that the medical evidence was insufficient to establish the claim. In addition, the decision stated the "further medical treatment at [the Office] expense is not authorized and prior authorization, if any, is hereby terminated."

LEGAL PRECEDENT -- ISSUE 1

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this

burden of proof, 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.¹

ANALYSIS -- ISSUE 1

Although appellant stated that the job she performed from October 1999 to June 2000 was not a light-duty job, the record indicates that it was not her date-of-injury job and there were physical restrictions based on appellant's employment injury. For the purposes of a recurrence of disability claim, it is considered a light-duty job.

The medical evidence of record includes reports from Dr. Buckley, who supported appellant's claim of a recurrence of disability as of June 17, 2000. He opined that appellant could not continue to work her full-time position, as her employment-related condition had worsened. Dr. Buckley indicated that x-rays in November 2001 showed a mild progression from May 2000. Appellant therefore submitted probative evidence in support of her claim.

While Dr. Buckley did not discuss in detail appellant's condition as on June 14, 2000 when he examined her and reduced her hours, he did provide an opinion that appellant's condition had worsened and he did refer to objective medical evidence and the factual history. The Office did not clearly identify the specific deficiencies it found in Dr. Buckley's reports on the relevant issue. The Office procedures indicate that when the medical evidence is *prima facie* sufficient but causal relationship cannot properly be determined based on the evidence of record, the Office should prepare a statement of accepted facts as a frame of reference for the physician.² In this case, the Office did not further develop the record by preparing a statement of accepted facts and requesting that Dr. Buckley submit a more fully rationalized report regarding the worsening of appellant's condition as of June 14, 2000. Accordingly, the case will be remanded to the Office for further development.

LEGAL PRECEDENT -- ISSUE 2

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.³

ANALYSIS -- ISSUE 2

The October 8, 2003 decision stated that it was terminating medical benefits, without making additional findings. There is no medical evidence in the record indicating that appellant's employment-related condition has resolved nor did the Office identify any medical evidence to support a termination of medical benefits. None of the physicians of record offered

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

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.5 (June 1995).

³ *Furman G. Peake*, 41 ECAB 361 (1990).

an opinion that residuals of the employment injury had ceased. Accordingly, the Board finds that the Office did not meet its burden of proof in this case.

CONCLUSION

The Board finds that appellant has submitted sufficient medical evidence to require further development of the record with respect to the claimed recurrence of disability. The Board further finds that the Office did not meet its burden of proof to terminate authorization for medical benefits.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 8, 2003 is set aside with respect to a recurrence of disability and remanded for further action consistent with this decision of the Board. The decision is reversed with respect to termination of medical benefits.

Issued: June 9, 2005
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member