

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

J.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cincinnati, OH, Employer**

)
)
)
)
)
)
)
)
)
)

**Docket No. 06-1299
Issued: November 17, 2006**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 22, 2006 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated April 26, 2006, which denied modification of a June 14, 2005 decision denying her recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability for the period January 12 through 17, 2005 causally related to her accepted July 10, 2004 employment injury.

FACTUAL HISTORY

On July 29, 2004 appellant, then a 31-year-old priority clerk, filed a traumatic injury claim (Form CA-1), alleging that on July 10, 2004 she threw priority mail in an all purpose container (APC) and pouch racks and experienced a sharp pain in the middle of her back and

neck. She stopped work July 13, 2004 and returned to limited duty on July 29, 2004.¹ On January 12, 2005 the Office accepted the claim for a cervical strain.

On January 19, 2005 appellant filed a notice of recurrence of disability on January 8, 2005. She alleged that she had a sharp shooting pain in her shoulder. Appellant stopped work on January 12, 2005 and returned on January 18, 2005. She was given a limited-duty assignment and allowed to work within the restrictions prescribed by her physician.

In a January 20, 2005 disability certificate, Dr. Edward A. Marcheschi, a Board-certified internist and a treating physician, advised that appellant should be off work from January 12 to 17, 2005. In progress notes of the same date, he noted that appellant returned for treatment after missing a few scheduled appointments. He advised that appellant had missed a week of work, which she “related to symptoms of pain with respect to some pain about her neck from January 11 to 17, 2005.” Appellant explained that her symptoms worsened such that she expected to go to the emergency room; however, when she presented for work, she was not referred to the hospital. She related that she subsequently stayed home for approximately six to seven days. Dr. Marcheschi noted that appellant continued to have pain but did not have a “reinjury and/or trauma in the interim with respect to her cervical spine.” He advised that she was otherwise healthy. Dr. Marcheschi noted continued pain in the low back with pain in the mid line distribution and mid thoracic level. He diagnosed cervical sprain/strain syndrome, myofascial pain syndrome of the cervical spine and chronic lumbar strain/sprain. Dr. Marcheschi recommended a magnetic resonance imaging (MRI) scan of the cervical spine.

A March 1, 2005 MRI scan of the cervical spine, read by Dr. Benjamin P. Pschesang, a Board-certified diagnostic radiologist, revealed there was no evidence of fracture or subluxation, or disc herniation. Dr. Pschesang noted a one centimeter mucus retention cyst within the left maxillary sinus. He opined that the examination of the cervical spine was unremarkable.

Appellant filed a Form CA-7 on March 10, 2005 in which she alleged that she was totally disabled from January 12 to 17, 2005.

On March 15 and 16, 2005 the Office advised appellant that her claim was only accepted for a cervical strain. It advised her to submit a physician’s opinion explaining whether any additional diagnosed condition was caused or aggravated by her July 10, 2004 injury.

In a March 17, 2005 report, Dr. Marcheschi diagnosed cervical sprain/strain syndrome, myofascial pain syndrome of the cervicothoracic spine which was persistent and stable and lumbar sprain, strain syndrome which was chronic and persistent. He advised continued restrictions on lifting, carrying, pushing or pulling of more than 16 to 30 pounds.

On April 1, 2005 the employing establishment offered appellant a modified-duty position. She refused the job offer contending that it did not comply with her restrictions.

¹ The restrictions included a 30-pound weight lifting limit and standing limited to seven hours per day.

In a March 17, 2005 duty status report, Dr. Marcheschi advised that appellant could resume work on March 31, 2005 but could not perform her regular duties. He prescribed restrictions which included limited lifting or carrying, and sitting, no kneeling or bending, and limited reaching above the shoulder of 16 to 30 pounds. In a disability certificate of the same date, Dr. Marcheschi indicated that appellant was off work from February 12 to March 21, 2005 as she was incapacitated and could return to work on March 21, 2005. In progress notes dated March 17, 2005, Dr. Marcheschi noted that appellant was seen in follow up from January 20, 2005. Appellant was released from her job duties in mid February and was no longer working.

On April 14, 2005 Dr. Marcheschi noted that appellant related that she attempted to return to work but was unable to tolerate her work restrictions. Appellant related that, despite not lifting objects of 16 to 30 pounds, she was unable to carry this amount of weight for extended periods of time without her myofascial pain and neck pain escalating.

In an April 21, 2005 report, Dr. Marcheschi noted appellant's history of injury and treatment due to the injury of July 10, 2004. He opined that an objective evaluation with an MRI scan would be useful to assess any underlying discogenic pathology that might be contributing to her persistent back pain and lack of response to conservative measures. Dr. Marcheschi also recommended a work hardening program. He did not address a specific period of disability on or about January 12 to 17, 2005.

In a June 14, 2005 decision, the Office denied appellant's claim for a recurrence of disability on January 8, 2005. The Office noted that her claim was not accepted for a back condition and that the medical evidence did not support that she was disabled from January 12 to 17, 2005 due to a worsening of her accepted condition.²

In a June 14, 2005 letter, appellant alleged that she was unable to get a statement from her former supervisor. She contended that Eliza Harrell, a union steward, and potential witness, retired two months earlier. Appellant indicated that she was forwarding a "PS 3971" form to show that she "came in and was sent home at approximately 1:20 a.m." She enclosed a copy of a notice of recurrence which she alleged showed that she was "refused medical attention and was sent home until my doctor's appointment on January 20, 2005."

In an August 18, 2005 report, Dr. Marcheschi attributed appellant's myofascial pain syndrome directly to her job duties, which included multiple manual activities that entailed pulling APCs and bulk mail containers, unloading and taking mail to trucks and lifting heavy parcels. He advised that appellant had intermittent aggravations of her underlying cervical-thoracic myofascial pain syndrome and that "on January 20, 2005 she presented to the office with a 'flare' of this condition." Dr. Marcheschi opined that she apparently had escalating symptoms that prompted her to stay home from work January 11 to 17, 2005. He opined that appellant's job duties could be aggravating factors for a preexisting low back condition. On

² By separate decision also dated June 14, 2005, the Office denied appellant's claim for compensation for disability for the period February 12 to March 21, 2005. The Office found that appellant did not submit sufficient medical evidence to support her inability to work. Appellant did not appeal this decision.

January 24, 2006 Dr. Marcheschi stated that “[r]elative to her date of absenteeism from work from January 11 to 17, 2005 ... this was not time removed from work relative to my decision making.” Appellant stayed home and presented to him for evaluation on January 20, 2005. Dr. Marcheschi noted that appellant’s job duties could be an aggravating factor for a preexisting condition and were felt less likely to be a direct cause of his findings.

On February 13, 2006 appellant requested reconsideration and requested acceptance of her lumbar condition. She alleged that, upon her return to work on January 19, 2005, her supervisor refused to take her to the hospital and she was sent home. Appellant alleged that she could not obtain a physician’s appointment until January 20, 2005.

On February 22, 2006 the Office received a statement from Yolanda Nixon, a coworker. On January 11, 2005 Ms. Nixon was on the telephone with appellant when Randy Seay, a supervisor, told her to come to work and somebody would take her to the hospital. Ms. Nixon explained that appellant called her because she only lived a few minutes away from the employing establishment and appellant alleged that her back hurt too much to drive all the way home. On February 22, 2006 the Office also received a statement from Karen Hogan, a coworker. When Ms. Hogan saw appellant on “the night in question,” appellant indicated that she was going to the hospital. However, appellant later indicated that her supervisor decided that he “would not take her.” Ms. Hogan stated that appellant then left the employing establishment.

In a November 1, 2005 report, Dr. Mitchell E. Simons, a Board-certified anesthesiologist, stated that he treated appellant from November 1, 2005 to March 30, 2006. He diagnosed a herniated lumbar disc, lumbar and thoracic degenerative disc disease and aggravation of a prior fracture at T5. Dr. Mitchell did not address the period of disability from January 12 to 17, 2005.

By decision dated April 26, 2006, the Office denied appellant’s request for reconsideration. The Office found that the evidence submitted was insufficient to warrant modification.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.³ 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 establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantive evidence, a recurrence of total disability and to 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 light-duty job requirements.⁴

³ 20 C.F.R. § 10.5(x).

⁴ *Richard E. Konnen*, 47 ECAB 388 (1996); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence.⁵ This consists of 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.⁶ The physician's opinion 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.⁷

ANALYSIS

Appellant's claim was accepted for a cervical strain and she performed limited duty as of July 29, 2005. She subsequently stopped work from January 12 to 18, 2005, alleging a recurrence of disability. The Board finds that appellant did not submit sufficient medical evidence to establish that her disability for work was related to her accepted cervical condition.

Appellant submitted statements from her coworkers related to the night of January 11, 2005, when she was allegedly sent home. They included a statement from Ms. Nixon and Ms. Hogan. While these statements indicate that appellant's supervisors would not send her to the hospital, they do establish that there was a change in the nature and extent of her light-duty requirements. The employing establishment indicated on the claim form filed by appellant on January 19, 2005, that she was provided a limited-duty assignment and allowed to work within her restrictions. Appellant has not shown a change in the nature and extent of the light duty job requirements.

The medical reports with respect to the period January 12 to 17, 2005 consist of notes from Dr. Marcheschi. On January 20, 2005 Dr. Marcheschi advised that appellant should be off work from January 12 to 17, 2005. However, he did not explain the basis for her disability for work. Dr. Marcheschi did not provide any objective findings which establish a change in the nature and extent of her accepted cervical condition such that she could no longer perform her light-duty job. This report is insufficient to support disability from January 12 to 17, 2005.⁸ Dr. Marcheschi also noted that appellant stated that she had missed a week of work "related to symptoms of pain with respect to some pain about her neck from January 11 to 17, 2005." He noted that appellant experienced pain but did not have a "reinjury and/or trauma in the interim with respect to her cervical spine." Dr. Marcheschi advised that she was "otherwise healthy." He also noted pain in the low back with pain in the mid-line distribution and mid-thoracic level and diagnosed cervical sprain/sprain syndrome, myofascial pain syndrome of the cervical spine and chronic lumbar strain/sprain. However, the Board notes that the only accepted condition in

⁵ *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

⁶ *Duane B. Harris*, 49 ECAB 170, 173 (1997).

⁷ *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

⁸ *See Barry C. Petterson*, 52 ECAB 120 (2000).

this case is a cervical strain.⁹ Dr. Marcheschi did not explain how appellant's cervical condition had worsened such that she was no longer able to perform her limited-duty work.¹⁰ Rather, he noted that appellant had taken herself off work.

In an August 18, 2005 report, Dr. Marcheschi opined that appellant's myofascial pain syndrome was directly related to her job duties, which included multiple manual activities that entailed pulling APCs and bulk mail containers, unloading and taking mail to trucks and lifting heavy parcels. Appellant had intermittent aggravations of her underlying cervical, thoracic myofascial pain syndrome. Dr. Marcheschi noted that "on January 20, 2005 she represented to the office with a 'flare' of this condition." He opined that appellant apparently had escalating symptoms that prompted her to stay home from work January 11 to 17, 2005. Dr. Marcheschi opined that appellant's job duties could be aggravating the preexisting condition relative to her low back. He again noted that appellant stopped work without providing his own opinion regarding whether her disability was due to the accepted cervical strain. The Board has held that speculative and equivocal medical opinions on causal relationship have no probative value.¹¹ On January 24, 2006 Dr. Marcheschi further addressed the period of disability January 11 through 17, 2005, noting that appellant was not removed from "work relative to my decision making." He stated that appellant's work could "be aggravating factors for a preexisting condition and are felt less likely to be a direct cause of the aforementioned findings." As noted, Dr. Marcheschi related that appellant's disability was due to her decision to stop work and not based on his recommendation.

Other reports submitted by Dr. Marcheschi address conditions not accepted by the Office. They do not support disability from January 12 to 17, 2005 due to the accepted cervical condition.

Appellant has not submitted sufficient evidence to establish that she sustained a recurrence of disability for the period January 12 to 17, 2005 due to her accepted employment injury. She has not met her burden of proof.

CONCLUSION

The Board finds that appellant failed to establish that her claimed recurrence of disability for the period January 12 to 17, 2005 is causally related to her July 10, 2004 employment injury. Therefore, the Office properly denied her claim for compensation.

⁹ Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury. *Jaja K. Asaramo*, 55 ECAB ___ (Docket No. 03-1327, issued January 5, 2004).

¹⁰ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹¹ See *Alberta S. Williamson*, 47 ECAB 569 (1996); *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Paul E. Davis*, 30 ECAB 461 (1979).

ORDER

IT IS HEREBY ORDERD THAT the decisions of the Office of Workers' Compensation Programs dated April 26, 2006 and June 14, 2005 are affirmed.

Issued: November 17, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board