

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GWENDOLYN YARBROUGH and U.S. POSTAL SERVICE,  
JOYFIELD STATION, Detroit, Mich.

*Docket No. 96-1398; Submitted on the Record;  
Issued April 20, 1998*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained a recurrence of disability on November 30, 1993 casually related to the accepted February 13, 1992 employment injury; and (2) whether appellant has met her burden of proof to establish that her back condition was caused by the October 27, 1995 employment incident.

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a recurrence of disability on November 30, 1993 casually related to the accepted February 13, 1992 employment injury or that her back condition was caused by the October 27, 1995 employment incident.

On February 13, 1992 appellant, then a letter carrier, filed a notice of traumatic injury (Form CA-1) assigned claim number A9-363589 alleging that on that date she injured her right shoulder and back when she stepped off a curve, slipped and fell on the ice.<sup>1</sup> Appellant did not stop work. Appellant performed light-duty work from February 13 until May 16, 1992. On May 16, 1992 appellant returned to her route assignment with the use of a mail cart.

The Office accepted appellant's claim for low back strain, a contusion of the right shoulder and right sciatic pain.

On June 16, 1992 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that on June 6, 1992, she experienced back pain after she had returned to work following the February 13, 1992 employment injury. Appellant stopped work on June 11, 1992.

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<sup>1</sup> Previously, appellant filed a claim assigned number A9-357452 for a right knee injury sustained on July 22, 1991. The Office of Workers' Compensation Programs accepted appellant's claim for a contusion with an abrasion, a sprained right knee and a sprained right elbow. Claim numbers A9-357452 and A9-363589 were consolidated into a master case file assigned number A9-363589.

On August 24, 1992 appellant returned to limited-duty work on partial work days. On December 21, 1992 appellant returned to limited-duty work eight hours per day.

The Office accepted appellant's recurrence claim.

By letter dated August 23, 1993, the Office referred appellant along with a statement of accepted facts, medical records and a list of specific questions to Dr. James Ives, a Board-certified orthopedic surgeon, for a second opinion examination.

Dr. Ives submitted a September 7, 1993 medical report revealing that appellant had chronic low back pain of undetermined etiology, that there were no objective findings that suggested that appellant had a disc problem in the lower back and that appellant was able to perform all of her duties based on the time elapsed since the date of the employment injury, the negative objective test results and his findings on physical examination. Dr. Ives' report was accompanied by objective test results and a work restriction evaluation.

On October 4, 1993 the Office found a conflict in the medical opinion evidence between Dr. Oscar U. Fernando, a neurosurgeon and appellant's treating physician, who opined that appellant had a lumbar disc condition and Dr. Ives. By letter dated November 16, 1993, the Office referred appellant along with medical records and a statement of accepted facts to Dr. Michael Kosinski, a Board-certified orthopedic surgeon, for an impartial medical examination.

Dr. Kosinski submitted a December 23, 1993 medical report indicating that appellant did not have an employment-related back condition that would prevent her from performing her regular work duties.

On December 18, 1993 appellant filed a Form CA-2a which was received by the Office on January 18, 1994. Appellant alleged that on November 30, 1993 she sustained a recurrence of disability when she could not move upon awakening on the that date. Appellant stopped work on November 30, 1993.

By decision dated May 26, 1994, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability causally related to the February 13, 1992 employment injury.

In a June 11, 1994 letter, appellant requested an oral hearing before an Office representative.

By decision dated October 18, 1995, the hearing representative affirmed the Office's May 26, 1994 decision.

On October 27, 1995 appellant filed a Form CA-1 assigned claim number A9-408451 alleging that on that date her back popped when she bent down to pick up a letter in the box section and then stood up again. Appellant stopped work on October 27, 1995 and returned to work on the following day, October 28, 1995.

By letter dated November 22, 1995, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office then advised appellant to submit medical evidence supportive of her claim.

By decision dated December 26, 1995, the Office found the evidence of record insufficient to establish that appellant's back condition was caused by the October 27, 1995 employment incident.

The Office received medical evidence and advised appellant by letter dated January 4, 1996 that the new evidence may have been sufficient to reopen her case and to reconsider its decision denying benefits. The Office then advised appellant to exercise her appeal rights if she wished to use the new evidence to request reconsideration of her case.

In a January 10, 1996 letter, appellant requested reconsideration of the Office's December 26, 1995 decision based on the new evidence previously submitted to the Office.

By decision dated March 19, 1996, the Office denied appellant's request for modification based on a merit review of the claim.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>2</sup>

In the present case, appellant has not submitted rationalized medical evidence sufficient to establish that she sustained a recurrence of disability on November 30, 1993 causally related to the February 13, 1992 employment injury. The record reveals the disability certificates of Dr. Fernando dated January 7, April 29, May 27 and July 8, 1994 and a certificate that has an illegible date. These certificates indicated that appellant should perform restricted work. Dr. Fernando's June 8, 1994 disability certificate provided a diagnosis of possible ruptured lumbar disc. Dr. Fernando's August 10 and October 11, 1994, January 31 and March 28, 1995 certificates diagnosed a ruptured lumbar disc and noted appellant's physical restrictions. Dr. Fernando's November 29, 1994 certificate diagnosed a degenerated bulging lumbar disc and appellant's physical restrictions. The June 27, 1995 disability certificate of Dr. S. Ahmad revealed that appellant had lumbosacral myofascitis and a degenerated bulging disc and that appellant was able to work with physical restrictions. These disability certificates are insufficient to establish appellant's burden inasmuch as they failed to address a causal relationship between her current back condition and the February 13, 1992 employment injury.

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<sup>2</sup> *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1989); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

The record further reveals Dr. Fernando's January 7, 1994 duty status report (Form CA-17) indicating appellant's physical restrictions. The record also reveals Dr. Fernando's March 4, April 1, April 29 and October 11, 1994 Forms CA-17 revealing that appellant could not perform her regular work duties and appellant's physical restrictions. In addition, the record reveals Dr. Fernando's May 27, June 8, September 9 and December 6, 1994 and the April 7 and July 12, 1995 Forms CA-17 of Dr. Ahmad providing that appellant could perform her regular work duties with physical restrictions. An August 21, 1995 Form CA-17 of physician whose signature is illegible diagnosed left sciatica neuritis and provided that appellant could work with physical restrictions. These Forms CA-17 are insufficient to establish appellant's burden because they do not address whether appellant's current back condition was caused by the February 13, 1992 employment injury.

Additionally, the record reveals Dr. Fernando's January 7, 1994 narrative medical report indicating his findings on physical examination, a diagnosis of degenerative bulging lumbar disc and recommendations for medical treatment. Dr. Fernando's February 4, March 4, April 29 and May 27 1994 medical reports revealing that appellant's back condition had remained unchanged, appellant's work restrictions, findings on physical examination and that he was waiting for approval from the Office to perform a lumbar myelogram. Dr. Fernando's April 1, 1994 medical report indicating appellant's lower back pain, findings on physical examination and that he was waiting for the Office's approval to perform a lumbar myelogram. Dr. Fernando's June 8, 1994 medical report revealing his findings on objective examination, a history of the February 13, 1992 employment injury and appellant's physical restrictions and Dr. Fernando's March 8, 1995 medical report providing that appellant was disabled and unable to carry the mail. Inasmuch as Dr. Fernando failed to address whether appellant's current back condition was caused by the February 13, 1992 employment injury, the Board finds that his reports are insufficient to establish appellant's burden.

Dr. Fernando's treatment notes covered the period June 8, 1994 through March 28, 1995. These notes are insufficient to establish appellant's burden because they do not address whether there is a causal relationship between appellant's current back condition and the February 13, 1992 employment injury.

The Office, in the present case, determined that a conflict in the evidence existed between Dr. Fernando, a neurosurgeon and appellant's attending physician, and Dr. Ives, a Board-certified orthopedic surgeon and second opinion physician, as to whether appellant had any existing conditions of the right shoulder and back that were causally related to the July 22, 1991 and/or February 13, 1992 employment injuries. The Office properly referred appellant to Dr. Konsinki, a Board-certified orthopedic surgeon, for an impartial medical evaluation pursuant to section 8123(a) of the Federal Employees' Compensation Act.<sup>3</sup> By decision dated October 18, 1995, the hearing representative affirmed the Office's May 26, 1994 decision that appellant had failed to establish that she sustained a recurrence of disability causally related to the February 13, 1992 employment injury based on the medical reports of Drs. Ives and Konsinki. Dr. Konsinki provided a thorough report. He reviewed appellant's medical records and statement of accepted facts, noted a history of the February 13, 1992 employment injury,

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<sup>3</sup> 5 U.S.C. § 8123(a).

reported his findings on an extensive physical and x-ray examination, and most importantly, provided convincing rationale for his opinion that appellant had no employment-related disability. Specifically, Dr. Konsinki stated that appellant was overweight and out of shape. Dr. Konsinki opined:

“[Appellant] gets intermittent backache because she is overweight, out of shape and because of her degenerative disease. This condition is not caused or aggravated by activity or trauma. I see no evidence of any problems clinically of a radicular nature, either by history or by physical examination.

“I would recommend a home exercise program, a low-fat diet and weight reduction. Because [appellant] does have the degenerative disease and is overweight and out of shape, she may develop symptoms more frequently. There is no objective evidence of any work-related condition involving her back which would prevent her from performing her normal job duties. The extensive walking performed by a letter carrier would be beneficial for her basic general health.”

In situations where there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.<sup>4</sup> Inasmuch as Dr. Konsinki provided a rationalized opinion based on a complete medical and factual background, the Board finds that his report represents the weight of the evidence in this case and establishes that appellant did not sustain a recurrence of disability on November 30, 1993 causally related to the February 13, 1992 employment injury.

The Board further finds that appellant failed to establish that her back condition was caused by the October 27, 1995 employment incident.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the condition for which she seeks compensation is causally related to her employment. As part of this burden she must present rationalized medical opinion evidence supporting an employment relationship, based on a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated the condition. The fact that the condition became apparent during a period of employment is not sufficient to establish the causal relationship, which must be established in each case by affirmative medical evidence.<sup>5</sup>

The Board has held that the mere belief that a condition was caused or aggravated by employment factors is insufficient to establish a causal relationship between the two.<sup>6</sup> As applied to this case, appellant’s assertion that her back condition was causally related to the October 27, 1995 employment incident or other factors of her employment must be supported by

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<sup>4</sup> *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

<sup>5</sup> *Brian E. Flescher*, 40 ECAB 532 (1989).

<sup>6</sup> *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

rationalized medical evidence. Without a physician's supporting medical rationale, appellant's subjective symptoms and belief that her back condition was due to work-related conditions are insufficient to establish her claim.

In this case, the record reveals an August 21, 1995 Form CA-17 from a physician whose signature is illegible indicating that appellant had sciatic neurosis and that appellant could work with physical restrictions and an October 4, 1995 duty status report (Form CA-17) from a physician whose signature is illegible revealing that appellant could work with physical restrictions. The record further reveals several Forms CA-17 of Dr. Frank R. Renier, an orthopedic surgeon. Dr. Renier's October 31, 1995 Form CA-17 indicated a diagnosis of right lumbar myofascitis at L4-5 and radiculitis and that appellant could work with physical restrictions. Dr. Renier's November 9, 1995 Form CA-17 revealed a diagnosis of lumbosacral myofascitis and myalgia, and that appellant could work with physical restrictions. Dr. Renier's December 4, 1995 Form CA-17 provided a diagnosis of myalgia of the back and that appellant could work with physical restrictions. Dr. Renier's January 20, 1996 Form CA-17 revealed a diagnosis of myofascitis and that appellant could work with physical restrictions. Dr. Renier's Forms CA-17 are insufficient to establish appellant's burden inasmuch as they failed to address whether appellant's back condition was caused by the October 27, 1995 employment incident.

The record further reveals Dr. Renier's October 27, 1995 disability certificates which indicated that appellant could work with restrictions and that physical therapy was ordered. Dr. Renier's disability certificates are insufficient to establish appellant's burden because they failed to indicate a diagnosis and to discuss whether or how the diagnosed condition was caused by the October 27, 1995 employment incident.<sup>7</sup>

The record also reveals Dr. Renier's October 31, 1995 authorization for examination and/or treatment (Form CA-16) which revealed a history of the October 27, 1995 employment incident, a diagnosis of right myofascitis lumbar at L4-5 and radiculitis and that appellant could work with physical restrictions. Dr. Renier indicated that appellant's back condition was caused or aggravated by the described employment activity and checked the box marked "yes." The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history is of diminished probative value without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.<sup>8</sup> Inasmuch as Dr. Renier did not provide any medical rationale for his conclusion that appellant's back condition was caused by her employment, his opinion is insufficient to establish appellant's burden.

Additionally, the record reveals treatment notes that appellant had subluxation at L4-5 and lumbar myofascitis. The treatment notes are insufficient to establish appellant's burden because they failed to address a causal relationship between appellant's back condition and her October 27, 1995 employment incident.

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<sup>7</sup> *Daniel Deparini*, 44 ECAB 657, 659 (1993).

<sup>8</sup> *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

The November 15, 1995 medical report of Dr. Joseph Walkiewicz, an orthopedic surgeon, revealed a history of the February 13, 1992 employment injury and October 27, 1995 employment incident, and his findings on physical and x-ray examination. Dr. Walkiewicz opined that appellant had no orthopedic disability regarding the lumbar spine and concluded that there was no clinical or roentgenographic reasons why appellant could not return to her normal duties as a postal worker.

Dr. Renier's December 13, 1995 medical report indicated a history of the October 27, 1995 employment incident and his findings on physical examination. Dr. Renier diagnosed lumbar myofascitis and recommended that appellant perform restricted job duties. Dr. Renier's report is insufficient to establish appellant's burden because he did not address whether appellant's back condition was caused by the October 27, 1995 employment incident.

There is no probative medical evidence of record establishing that appellant sustained a recurrence of disability on November 30, 1993 causally related to the February 13, 1992 employment-related injury, nor is there probative medical evidence of record establishing that appellant's back condition was caused by the October 27, 1995 employment incident. Accordingly, the Board finds that appellant has failed to meet her burden of proof and that the Office properly denied her claims.<sup>9</sup>

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<sup>9</sup> On appeal, appellant submitted evidence. The Board, however, is precluded from reviewing evidence submitted for the first time on appeal; *see* 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence to the Office with a formal request for reconsideration; *see* 20 C.F.R. § 501.7(a).

The March 19, 1996, December 26 and October 18, 1995 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.  
April 20, 1998

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member