

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SALLY A. DWYER and U.S. POSTAL SERVICE,
POST OFFICE, New Haven, Conn.

*Docket No. 98-194; Submitted on the Record;
Issued June 11, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on July 2, 1995 causally related to her January 23, 1995 employment injury.

The Board has duly reviewed the case on appeal and finds that appellant has failed to meet her burden of proof in establishing that she sustained a recurrence of disability causally related to her accepted employment injury.

Appellant filed a claim alleging that she sustained injuries due to a January 23, 1995 motor vehicle accident. The Office of Workers' Compensation Programs accepted appellant's claim for cervical strain, lumbosacral strain, abrasions and left shoulder contusions on March 24, 1995. Appellant resumed light duty on February 6, 1995 and returned to full duty on March 4, 1995. On July 27, 1995 appellant filed a notice of recurrence of disability alleging on July 2, 1995 she stopped work due to neck and shoulder pain due to her accepted employment injury. By decision dated November 15, 1995, the Office denied appellant's claim for recurrence of disability. Appellant requested an oral hearing and by decision dated July 14, 1997 and finalized July 15, 1997, the hearing representative affirmed the Office's November 15, 1995 decision.

Appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence, a causal relationship between her recurrence of disability commencing July 2, 1995 and her January 23, 1995 employment injuries.¹ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate

¹ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.²

In support of her claim for recurrence of disability, appellant submitted several reports from Dr. Jacquelyn Kos, a chiropractor. Section 8101(2) of the Federal Employees Compensation Act³ provides that the term “physician” includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated by x-ray to exist. Dr. Kos did not diagnose a subluxation of the spine on x-ray and therefore she is not a physician for the purposes of the Act. As Dr. Kos is not a physician, her reports do not constitute medical evidence and are insufficient to meet appellant’s burden of proof in establishing a causal relationship between her disability and condition on or after July 2, 1995 and her accepted employment injuries of January 23, 1995.

Appellant also submitted a series of reports from Dr. Samuel L. Bridges. In a report dated July 28, 1995, Dr. Bridges stated that appellant was temporarily totally disabled and noted that appellant and her chiropractor determined that appellant could not perform the duties of her position. Dr. Bridges completed two reports on August 8, 1995. He noted that appellant’s magnetic resonance imaging scan exhibited no disc herniation or explanation for her complaints. He stated that appellant had fair range of motion of the lumbosacral spine and minimum discomfort. Also on August 8, 1995 Dr. Bridges stated that appellant was unable to perform her duties and that this disability was causally related to her employment injuries. On September 7, 1995 Dr. Bridges diagnosed chronic cervical and lumbar strain exacerbated due to appellant’s employment injuries. He stated that these problems made it impossible for appellant to continue full duty at the employing establishment. In a report dated September 13, 1995, Dr. Bridges found that appellant’s lower back had improved, that she was experienced cervical and upper back discomfort and that her headaches were related to her back problems. Dr. Bridges provided appellant’s work restrictions on November 3, 1995. On March 27, 1996 Dr. Bridges noted that appellant’s headaches improved when she stopped chiropractic treatment, that her low back was much improved and that her neck demonstrated muscle spasm, good range of motion and minimal discomfort.

These reports are not sufficient to meet appellant’s burden of proof. Although Dr. Bridges indicated on August 8, 1995 and September 7, 1995 that he believed her current conditions were related to her employment injuries, he failed to provide any medical reasoning in support of his conclusion. Dr. Bridges also failed to provide objective physical findings in support of his conclusions that appellant was totally disabled and did not offer any explanation of why and how her soft tissue injuries worsened four months after returning to full duty such that she could no longer work.

Due to the lack of objective physical findings and supportive medical rationale, appellant failed to meet her burden of proof in establishing a recurrence of disability on July 2, 1995 causally related to her January 23, 1995 employment injuries.

² See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

³ 5 U.S.C. §§ 8101-8193, 8101(2).

The decision of the Office of Workers' Compensation Programs dated July 15, 1997 is hereby affirmed.

Dated, Washington, D.C.
June 11, 1999

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member