

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHLEEN STEPHENS and U.S. POSTAL SERVICE,
POST OFFICE, Albany, NY

*Docket No. 99-1803; Submitted on the Record;
Issued August 21, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability on July 12, 1998 causally related to her April 9, 1996 employment injury.

Appellant, then a 45-year-old postal clerk filed a traumatic injury claim on May 2, 1996 alleging that on April 9, 1996 she sustained low back and right leg pain while sweeping flats from a flat sorter at work. The Office of Workers' Compensation Programs accepted his claim for a herniated disc L5-S1. Appellant stopped work on April 11, 1996. Appropriate benefits for wage loss were paid for periods of disability.

Appellant's physician, Dr. Frank Genovese, a Board-certified neurologist, authorized her return to light duty on September 19, 1996 after review of her physical therapy regimen. She returned to work for four hours per day on or around September 26, 1996 and to full work duty on October 7, 1996. Appellant's wage-loss benefits were terminated upon her return to full duty.

Appellant filed a recurrence claim in July 1998 alleging that her original injury caused her additional disability on July 12, 1998. She asserted that due to her original injury she was not able to consistently lift more than 25 pounds or objects from a low position and that she could not tolerate long periods of sitting without back support. She further asserted that she had become depressed and fearful of driving due to her limitations. Appellant stopped work on July 20, 1998 and has not since returned.

Appellant submitted physical therapy treatment notes, which outlined recommendations regarding her light-duty work as of September 10, 1998 and a letter from Dr. Genovese dated July 28, 1998, in which he reported that appellant had difficulty with endurance and long periods of sitting at work. Dr. Genovese noted, however, that appellant had no difficulties when allowed to change positions frequently. He concluded that appellant had gone back to work with no limitations and that there had been no interval changes since her last visit. A functional capacity

evaluation administered to appellant on July 31 and August 3, 1998 was submitted to the Office, which indicated that appellant was capable of performing light work for an eight-hour day.

By decision dated December 5, 1998, the Office denied appellant's recurrence of disability claim on the grounds that the evidence submitted did not establish that her alleged recurrence of disability of July 12, 1998 was causally related to the original injury on April 9, 1996.

The Board finds that the medical evidence of record fails to establish that appellant sustained a recurrence of disability on July 12, 1998 causally related to her April 9, 1996 employment injury.

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 on July 12, 1998 and her April 9, 1996 accepted injury.¹ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is casually related to employment factors and supports that conclusion with sound medical reasoning.²

In this case, appellant asserted that she sustained a recurrence of disability commencing July 12, 1998 causally related to her April 9, 1996 herniated disc injury. While she alleged that her physical limitations prevented her from carrying out her work duties and caused her to become depressed and fearful of driving, the medical evidence submitted in support of her claim does not support such allegations. Dr. Genovese's July 28, 1998 report merely discusses appellant's work status and condition at the time of his evaluation and does not establish a causal relationship between her current condition and the accepted employment injury. Although appellant alleged that her condition prevented her from performing her work duties, Dr. Genovese noted that she had no difficulties when allowed to change positions frequently. He did indicate that appellant had difficulty with endurance and long periods of sitting at work, however, he did not implicate the April 9, 1996 employment incident or opine that appellant's condition resulted from the accepted herniated disc injury. To be of probative value a physician must address the specific facts and medical condition applicable to appellant's case and support his or her findings with sound medical reasoning.³ An award of compensation may not be based upon surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.⁴ To establish causal relationship, appellant must submit a physician's report in which the physician reviews the factors of employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history,

¹ *Dominic M. DeScala*, 37 ECAB 795 (1986).

² *Nicolea Brusco*, 33 ECAB 1138 (1982).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *William S. Wright*, 45 ECAB 498 (1993).

state whether these employment factors caused or aggravated the diagnosed condition.⁵ Appellant has failed to submit such medical evidence in this case. With respect to the treatment notes of appellant's physical therapist submitted in support of her recurrence claim, the Board finds that such notes are of no probative value inasmuch as a physical therapist is not a physician under the Federal Employees' Compensation Act and therefore, is not competent to render a medical opinion.⁶

Consequently, appellant has not established by substantial, reliable and probative evidence that her alleged recurrent condition is causally related to her April 9, 1996 employment injury and therefore, she has failed to meet her burden of proof.

The decision of the Office of Workers' Compensation Programs dated December 5, 1998 is affirmed.

Dated, Washington, D.C.
August 21, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

⁵ *Id.*

⁶ 5 U.S.C. § 8101(2).