

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JEANNE RAPA and U.S. POSTAL SERVICE,  
POST OFFICE, Armonk, NY

*Docket No. 00-957; Submitted on the Record;  
Issued April 10, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established a recurrence of disability commencing March 25, 1998.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a lumbosacral strain on January 31, 1998 while loading a truck. Appellant returned to a limited-duty position on March 16, 1998; she filed a notice of recurrence of disability commencing March 25, 1998.

By decision dated July 2, 1998, the Office denied appellant's claim for a recurrence of disability. In a decision dated December 3, 1998, the Office denied modification of the prior decision. In a decision dated October 6, 1999, the Office again denied modification.<sup>1</sup>

The Board finds that appellant has not established a recurrence of disability commencing March 25, 1998.

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.<sup>2</sup>

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<sup>1</sup> The Office concluded that the evidence did not establish "clear evidence of error." This standard is appropriate only for untimely reconsideration requests. *See, e.g., Dennis G. Nivens*, 46 ECAB 926 (1995). Since the Office reviewed the evidence in detail and made no findings that the request was untimely, the Board concludes that the October 6, 1999 decision was a merit review of the claim.

<sup>2</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

In this case, the contemporaneous evidence includes a report dated March 25, 1998 from Dr. Aris Comninellis, an internist, who stated that appellant had lumbar radiculopathy due to her work injury. However, lumbar radiculopathy is not an accepted injury,<sup>3</sup> and Dr. Comninellis did not provide a reasoned medical opinion on causal relationship with the employment injury. He stated that “returning back to work aggravated her condition” without further explanation.<sup>4</sup>

In a form report (Form CA-20) dated March 28, 1998, Dr. Comninellis diagnosed lumbosacral radiculopathy and checked a box “yes” that the condition was employment related. The checking of a “yes” box in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship,<sup>5</sup> and in addition Dr. Comninellis did not discuss disability for work commencing March 25, 1998.

In a report dated July 18, 1998, Dr. Comninellis stated that on March 25, 1998 appellant complained of right leg pain and “she had this same symptom [January 31, 1998.] This is a recurrence of the original injury.” He does not provide any additional detail or explanation. The presence of symptoms after an employment incident is not sufficient to establish causal relationship without supporting medical rationale.<sup>6</sup> Dr. Comninellis also indicated that a magnetic resonance imaging revealed an L2-3 herniation, but he did not provide an opinion on causal relationship between a herniation and the employment injury.

In a later report dated March 8, 1999, Dr. Comninellis provided a history and diagnosed lumbosacral radiculopathy with sciatica, and chronic low back pain. Dr. Comninellis stated that “the recurrence of the total disability was on March 25, 1998, which was causally related to the original injury on January 31, 1998. This is evidenced by the fact that the patient’s pain was identical, and her symptoms were never 100 percent improved when she returned to work.” As noted above, the presence of symptoms after an injury does not establish causal relationship. Dr. Comninellis did not provide an opinion discussing the mechanism of injury and explaining causal relationship with the diagnosis of lumbar radiculopathy or other diagnosed condition. A review of the record indicates that none of the medical reports of record provides a reasoned medical opinion on the issues presented. Accordingly, the Board finds that appellant did not meet her burden of proof.

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<sup>3</sup> Appellant notes that Office procedures indicate that a recurrence of disability within 90 days of return to work may not require a reasoned medical opinion on causal relationship; however, in this case the diagnosis of lumbar radiculopathy was not an accepted condition, and appellant must first establish an employment-related condition with reasoned medical evidence. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 (January 1995).

<sup>4</sup> To the extent appellant claims that the light-duty job aggravated her condition, this would be a claim for a new injury, not a recurrence of disability. A recurrence of disability includes a work stoppage caused by a spontaneous material change in the employment-related condition without an intervening injury. If the disability results from new exposure to work factors, an appropriate new claim should be filed; *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (January 1995).

<sup>5</sup> *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

<sup>6</sup> *See Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (because the employee is symptomatic after an injury is not sufficient to establish causal relationship without supporting rationale).

The October 6, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
April 10, 2001

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member