

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GWENDOLYN D. JOHNSON and U.S. POSTAL SERVICE,
POST OFFICE, Rocky Mount, NC

*Docket No. 00-1741; Submitted on the Record;
Issued April 9, 2001*

DECISION and ORDER

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

The issue is whether appellant has sustained a recurrence of disability commencing April 9, 1999, causally related to her January 28, 1999 employment injury.

The Office of Workers' Compensation Programs accepted that on January 28, 1999 appellant, then a 41-year-old automation clerk, sustained an injury when she fell backwards into a machine.¹ However, no specific condition was accepted and the case was administratively closed because appellant returned to full duty on February 1, 1999.² Appellant accepted a limited-duty assignment on February 5, 1999.

On April 12, 1999 appellant filed a claim for a recurrence of disability commencing April 9, 1999, causally related to the January 28, 1999 injury. Appellant claimed that she "[r]eturned to work without stiffness in back or spine so I felt able to do regular duties until leg started giving away." Appellant stated: "I have a slipped disc that is causing my hip [and] leg to hurt all the way to my foot. My leg also gives away on me."

In support of her recurrence of disability claim, appellant submitted an April 9, 1999 report from Dr. J.Th. Bloem, a Board-certified orthopedist, who noted that appellant "has had low back pain for about a month with left-sided radiation to the middle toes with numbness and pain at times. At times she is very uncomfortable. She does normal work, but she has to lift trays weighing up to 15 pounds." Appellant's general examination was noted to be normal. Dr. Bloem diagnosed "[l]ow back pain, left radiation."

Appellant also submitted an April 13, 1999 form report, which noted a diagnosis of "[d]isc displacement." History of injury was noted as "while traying on DBCs, employee fell

¹ On February 1, 1999 appellant was diagnosed with a back contusion.

² Examination on February 1, 1999 revealed no clinical findings.

back, hit buttocks on the machine.” Dr. Bloem indicated that appellant could perform no activities and that she was advised to resume work on approximately April 26, 1999.

By letter to the employing establishment dated April 14, 1999, Dr. Bloem noted:

“[Appellant] has had back pain now for several weeks.... Initially I thought that with radiating back pain, light work would be acceptable.... [Appellant] phoned yesterday and explained that she tried that and that she just could not stand the pain. She indicated that the numbness was getting worse and I, therefore, gave her a note that she should stay out of work for two weeks.

“The symptoms that [appellant] described are subjective.... Her story, however, sounds fairly realistic and has been consistent over several weeks now. It seems that with continuing to work, we do not really get any improvement....

“That means that I would suggest that she stay out of work for now and not even do light work.”

On April 26, 1999 Dr. Bloem indicated that appellant could return to light work.

By letter dated May 14, 1999, the Office requested that appellant submit further factual and medical evidence to support her alleged recurrence on April 9, 1999.

In response appellant submitted multiple medical treatment and physical therapy progress notes. A treatment note dated April 26, 1999 from Dr. Bloem related that appellant continued to have radiating pain on the left and had not worked for two weeks. He noted that straight leg raising was negative and opined that she could try light sedentary work.

By report dated May 24, 1999, Dr. Bloem indicated that appellant could work light duty only.

On June 9, 1999 appellant filed another claim for recurrence of disability commencing May 4, 1999, causally related to the January 28, 1999 injury. However, appellant indicated that she stopped work following the recurrence on April 12, 1999.³ Appellant claimed that “[s]everal weeks after original injury my leg started hurting and giving out on me. I thought it was leg problems. I did n[o]t think it was my back but it was. I did n[o]t know back injury would cause leg problems.”

In support of her claim, appellant submitted a May 25, 1999 attending physician’s report from Dr. Bloem who noted as history “[appellant] fell at work [and] has had consistent pain,” related findings of “lower back pain/left radiation,” and diagnosed “disc displacement.” He checked “yes” to the question of whether the condition found was caused or aggravated by an employment activity and indicated that appellant could perform “sitting office type work.”

³ As the date appellant stopped work was noted to be the same as that of her earlier claim, this claim was treated by the Office as the same recurrence.

By report received on June 11, 1999, Dr. Bloem argued that appellant needed an epidural steroid injection and noted in the meantime she should stay on light work. In a form report dated June 22, 1999, which contained a description of appellant's January 28, 1999 injury, he annotated the box "Diagnosis Due to Injury" with "yes," and recommended light duty. Dr. Bloem indicated that appellant's current medical status was improving and that her magnetic resonance imaging (MRI) did not show any major bulging or herniation, but some slight bulging at L3-4 and L4-5.

By report dated July 20, 1999, Dr. Bloem noted that appellant had no real pain and no neurological symptoms, but that she complained of left knee pain and weakness.

In a report dated August 12, 1999, Dr. Bloem indicated that appellant's myelogram was essentially negative for disc herniation, rupture or nerve root compression, but that she did have facet hypertrophy and some mild stenosis and that she complained of left leg symptomatology. Straight leg raising was noted as normal.

By decision dated October 4, 1999, the Office denied appellant's claim, finding that the evidence of record failed to establish that the claimed recurrence was causally related to the January 28, 1999 injury.

By letter dated October 27, 1999, appellant requested reconsideration and submitted a lumbar myelogram report, an October 19, 1999 narrative report from Dr. Bloem discussing her childhood left knee injury "that seems to be related to a current problem," and a November 15, 1999 statement claiming that the January 28, 1999 was the cause of her "April 4, 1999" recurrence. Appellant stated "I got out of bed [on April 4, 1999] [and] my leg gave away and I had to be admitted of [sic] [emergency room] of Nash General Hospital where the doctor said I had a bulging disc that evidently had come from injuring my back." Appellant claimed that she had been in constant back and leg pain since January 28, 1999 and that she ignored it until April 9, 1999 when she saw Dr. Bloem.

By decision dated January 13, 2000, the Office denied appellant's request, finding that the evidence submitted in support was insufficient to warrant modification.

The Board finds that appellant has failed to establish that she sustained a recurrence of disability commencing April 9, 1999, causally related to her January 28, 1999 employment injury.

An individual who claims a recurrence of disability due to an accepted employment 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 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.⁴ Causal relationship is a medical issue and can be established only by medical evidence.⁵

An employee returning to light duty, or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability by the weight of reliable, probative and substantial evidence and to show that he cannot perform the light duty.⁶ As part of his burden, the employee must show a change in the nature or extent of the injury-related conditions or a change in the nature or extent of the light-duty requirements.⁷

Appellant has met neither burden in this case.

Appellant has not submitted rationalized medical evidence supporting that her present condition is causally related to the January 28, 1999 employment injury and she has not demonstrated a change in the nature or extent of her post-incident condition, or a change in the nature or extent of her light-duty job requirements.⁸

Appellant admitted that following the January 28, 1999 injury she returned to work without stiffness in her back or spine and was able to perform regular duties until her leg started giving way. Examination on February 1, 1999 revealed no clinical findings. Thereafter, she alleged that she had sustained a slipped disc. However, subsequent MRI and myelogram testing revealed no disc herniations or major bulging of clinical significance, but only some mild stenosis and facet hypertrophy.

Multiple reports from Dr. Bloem related appellant's history of back pain for about a month, but neither discussed causation nor related its onset to her January 28, 1999 employment injury or to other identifiable factors of her federal employment. He reported as history, the injury of January 28, 1999, but never provided any discussion of how that incident caused or contributed to appellant's present symptomatology.

Further, Dr. Bloem initially never provided a definitive diagnosis, noting only "low back pain, left radiation." When he did provide a diagnosis, "[d]isc displacement," it was not supported by the MRI and myelogram objective testing results. Dr. Bloem opined that appellant should stay out of work because she stated that she could not stand the pain she experienced performing light duty. However, no objective changes were noted to support appellant's pain

⁴ *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

⁵ *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

⁶ *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁷ *Id.*

⁸ It is unclear whether appellant was working full or limited duty at the time of her alleged recurrence of disability as she was returned to full duty following the January 28, 1999 incident, she accepted a subsequent light-duty offer, but she stated that she was performing her regular duties prior to the April 9, 1999 alleged recurrence.

complaints, either following either the January 28, 1999 incident or the alleged April 9, 1999 recurrence.

Appellant claimed that her left leg gave way and she fell when she got out of bed on April 4, 1999 and had to be admitted to the hospital. She alleged that this was due to the January 28, 1999 incident. However, Dr. Bloem opined that her childhood left knee injury seemed to be related to her current left knee problem of giving out. This opinion does not support that appellant's contentions of employment relatedness. Moreover, any recurrent disability after April 4, 1999 cannot be presumed to be the consequence of the natural progression of the January 28, 1999 injury, because the direct chain of causation from the January 28, 1999 injury to her current condition was interrupted by this new April 4, 1999 fall injury, which constituted an independent intervening cause.⁹

As appellant failed to submit any rationalized medical evidence establishing that her April 9, 1999 claimed recurrence of disability was causally related to the January 28, 1999 accepted employment injury, or that she sustained a change in the nature or extent of her condition, she has not met her burden of proof to establish her recurrence claim.

The January 13, 2000 and October 4, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
April 9, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁹ See *John R. Knox*, 42 ECAB 193 (1990).