U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERESA CHILDERS and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Buffalo, NY

Docket No. 01-942; Submitted on the Record;
Issued December 10, 2001

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant established that he sustained recurrences of disability on July 28, August 5 and August 21, 1998 causally related to her January 1, 1990 employment injury.

On January 1, 1990 appellant, then a flat-sorting machine clerk, slipped and fell in the parking lot of the employing establishment. Her claim was accepted for fracture and contusion of the coccyx.

On September 28, 1998 appellant filed a claim for recurrences of disability on July 28, August 5 and August 21, 1998. She indicated that she was on light duty, six hours a day, from August 7 through August 21, 1998 and had stopped working on August 24, 1998. She commented that she had always had limitations since the 1990 injury and had been placed on permanent restrictions in April 1994, including no prolonged sitting or standing, no lifting and no bending. She noted that she was able to maintain these restrictions as a letter-sorting machine clerk and a temporary supervisor.

The employing establishment stated that appellant's job was abolished and she bid on another job and was awarded her present position as a window, mark-up and distribution clerk on July 4, 1998 after providing medical documentation.

In a December 16, 1998 decision, the Office denied appellant's claim on the grounds that the evidence of record failed to established that the claimed recurrences of disability were causally related to the original employment injury.

Appellant requested a hearing, which was conducted on September 29, 1999. In a November 23, 1999 decision, the Office hearing representative found that the medical evidence submitted by appellant did not establish that her recurrences of disability or her disability after August 21, 1998 were causally related to the employment injury.

Appellant requested reconsideration. In an April 24, 2000 decision, the Office denied appellant's request on the grounds that she had not submitted any evidence in support of her request for reconsideration. Appellant appealed to the Board but withdrew her appeal to request reconsideration from the Office.[1] In a November 3, 2000 merit decision, the Office denied appellant's request for modification of its prior decisions.

The Board finds that appellant has not met her burden of proof in establishing that the claimed recurrences of disability were causally related to the January 1, 1990 employment injury.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which he seeks compensation was causally related to his employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.[2]

In a February 1, 1990 report, Dr. Eugene E. Cisek, a Board-certified orthopedic surgeon, diagnosed a lumbar contusion and an undisplaced fracture of the sacrum. He found no evidence of peripheral nerve root irritation or compression. He concluded that appellant was capable of light work.

In a May 11, 1998 report, Dr. Andrew C. Matteliano, a Board-certified physiatrist, noted appellant's January 1, 1990 employment injury. He indicated that appellant was involved in an automobile accident on June 30, 1996. X-rays taken at that time showed a chip fracture in the anterior superior portion of the S1 vertebra as well as degenerative changes of the sacroiliac joints. A magnetic resonance imaging (MRI) scan showed a right paracentral L5-6 disc protrusion and some degenerative change at L4-5. The December 27, 1996 MRI scan also showed that the disc protrusion displaced the S1 nerve root. Dr. Matteliano attributed 90 percent of appellant's current condition to the original employment injury, stating that the fracture of the sacrum was responsible for the L5-6 disc protrusion and degenerative changes at L4-5. He attributed 10 percent of appellant's problem to the effects of the automobile accident.

Appellant also submitted a November 8, 1991 x-ray report in which Dr. Joseph G. Rusnax, a radiologist, stated that appellant had minimally bulging discs at L4-5 and L5-S1 and a borderline spinal stenosis at L4-5. The report did not discuss the cause of appellant's condition.

In an October 25, 1999 report, Dr. Julian L. Ambrus, a hematologist, stated that, prior to appellant's fall on the ice, she had no injuries. He commented that the June 1996 car accident resulted in no injury. He indicated that appellant's status was aggravated on July 28, 1998 while working as a window clerk at the employing establishment and had continued to deteriorate. He noted appellant continued working on light and limited-duty five-hour day assignments until August 21, 1999 when her back pain became so severe that she had to stop working. He diagnosed fracture of the sacrum, L5-6 disc protrusion, displacement of the S1 nerve root and L4-5 disc degeneration with bulging annulus fibrosis. He concluded that there was a reasonable

[1] Docket No. 00-1196 (Order Dismissing Appeal, September 28, 2000).

[2] *Dominic M. DeScala*, 37 ECAB 369 (1986).

possibility that appellant's ongoing deteriorating condition was due to her original work-related injury on January 1, 1990. He stated that the employment injury resulted in fracture of the sacrum and in the L5-6 disc protrusion and S1 nerve displacement. He commented that the employment injury was possibly the reason for progressive degenerative changes at L4-5. Dr. Ambrus stated that this condition and appellant's continuous back pain had been a factor in her depression.

In a May 8, 2000 report, Dr. Ambrus noted Dr. Matteliano's assertion that 90 percent of appellant's condition was attributable to the original employment injury. Dr. Ambrus stated that appellant was a flat-sorting machine clerk at the time of the employment injury then was transferred to a position as a letter-sorting machine clerk because it was less demanding physically. He indicated that most of the time appellant was an acting supervisor with minimal physical activities. He stated that in July 1998 appellant was forced to accept a position as a window clerk which aggravated her condition. He reported that she began experiencing severe pain on July 28, 1998. He placed her on partial disability on August 4, 1998, working five hours a day on light duty. He stated that her condition required that she be placed on total disability on August 21, 1998. He concluded that appellant's disability was causally related to the employment injury.

Dr. Matteliano and Dr. Ambrus concluded that the January 1, 1990 employment injury caused the L5-L6 disc protrusion and S1 nerve root displacement, as well as the degenerative disc disease at L4-5. The disc degeneration was not seen in a January 2, 1990 x-ray but was seen in the MRI scan. The L5-6 disc protrusion and S1 nerve root displacement were not diagnosed until the MRI scan, taken almost seven years after the employment injury. Dr. Matteliano and Dr. Ambrus did not explain how they concluded that the January 1, 1990 employment injury and not the car accident of June 1996 caused the disc protrusion or the displaced S1 nerve root. Dr. Ambrus stated that the car accident caused no injury. However, Dr. Matteliano contradicted Dr. Ambrus by noting that appellant had a chip fracture of S1 due to the car accident. Neither physician provided a physiological explanation of how appellant's disability eight years after the employment injury was caused by the employment injury. The reports of Dr. Matteliano and Dr. Ambrus therefore have limited probative value and are insufficient to meet appellant's burden of proof in establishing that her recurrences of disability were due to the employment injury eight years previously.

The decisions of the Office of Workers' Compensation Programs, dated November 3 and April 24, 2000, are hereby affirmed.[3]

Dated, Washington, DC
December 10, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

[3] Appellant argues that the April 24, 2000 decision should be "removed" from the record because she had filed an appeal with the Board. However, the Board dismissed appellant's appeal on September 28, 2000 at her request. Thus, the Office retained jurisdiction of appellant's April 8, 2000 request for reconsideration.