

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOY M. BUSH and U.S. POSTAL SERVICE,
TEMPLE TERRACE ANNEX, Tampa, FL

*Docket No. 00-1412; Submitted on the Record;
Issued March 23, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish that she sustained a recurrence of disability on June 23, 1998, causally related to her accepted September 26, 1997 employment injury.

In this case, the Office of Workers' Compensation Programs accepted that on September 26, 1997 appellant, then a 38-year-old letter carrier, sustained a lumbosacral strain as a result of pushing a heavy gurney in the performance of duty. Appellant stopped work on September 27, 1997 and returned to full-time light-duty work on October 1, 1997. On November 21, 1997 appellant returned to full duty, without restrictions. On June 23, 1998 appellant again stopped work and on July 22, 1998 she filed a claim for a recurrence of disability. By decision dated November 30, 1998, the Office denied appellant's claim for a recurrence of disability on the grounds that the medical evidence did not establish a causal relationship between appellant's claimed recurrence of disability and her September 26, 1997 accepted employment injury. Appellant subsequently requested reconsideration of the Office's prior decision and submitted additional medical and factual evidence in support of her claim. In a decision dated July 22, 1999, the Office found the newly submitted evidence insufficient to warrant modification of the prior denial. By letter received November 17, 1999, appellant again requested reconsideration and submitted additional evidence in support of her claim. In a decision dated February 22, 2000, the Office found the evidence submitted in support of appellant's request for reconsideration to be insufficient to warrant modification of the November 30, 1998 decision denying appellant's claim for a recurrence of disability.

The Board has duly reviewed the entire case record on appeal and finds that this case is not in posture for decision.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which she claims compensation is causally related to

the accepted injury.¹ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

In support of her claim for a recurrence of disability, appellant submitted numerous reports from her treating physicians, Dr. Michael A. Cromer, a Board-certified family practitioner and treating physician, Dr. Steven Schweinsaupt, Dr. William O. DeWeese and Dr. Erick A. Grana, appellant's treating Board-certified physiatrist, as well as reports from her treating chiropractor, Dr. W. Martin Underwood. The majority of these medical reports consist of treatment notes, in which appellant's physicians note that she has a history of back trouble dating to 1994 and that she had an employment-related back injury in 1997 and proceed to document their diagnoses and treatment of her 1998 flare-up of back pain, without offering any discussion of the causal relationship between appellant's accepted 1997 back strain and her 1998 claimed recurrence of disability. In a report dated March 10, 1999, however, submitted in support of appellant's most recent request for reconsideration, Dr. Grana diagnosed low back disc herniation at L5-S1, lumbar degenerative disc disease, lumbar muscle strain and lumbar radiculopathy and attempted to explain the cause of these conditions, stating:

"This patient has had a history of low back pain since 1994.... Following her injuries [on] September 26, 1997, she was put on light duty, which she did for approximately seven weeks.³ After coming off light duty on June 23, 1998, she had a reaggravation of her condition, which had improved previous to that time. By June 1998, she was casing mail on three sides, which required her to reach forward in a repetitive motion and then loading trays in her gurney, pulling trays with mail and loading them on her vehicle. She was then driving delivering the mail during that time she was doing turning and twisting toward the left side to put the mail in the mailboxes."

In my professional opinion, this workload resulted in a permanent aggravation of the lumbar spine injuries that the patient suffered while at work on September 26, 1997. The continuous pulling and pushing of heavy trays of mail, the continuous turning and twisting of the low back most likely increased the pressure on the disc of the lumbar spine, which according to the magnetic resonance imaging (MRI) is herniated.⁴ There is a positive causative relation between the patient's job duties as a mail carrier and the reaggravation of her low back pain. Her condition is permanently aggravated due to her job as a letter carrier. As a result, the patient shall be considered disabled for work as a letter carrier."

¹ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

² *Id.*

³ In his prior report of record dated December 16, 1998, Dr. Grana noted that appellant had injured her low back in 1997 by pushing a gurney at work, thus indicating his awareness of the mechanism of appellant's 1997 accepted back strain.

⁴ Magnetic resonance imaging performed on June 30, 1998 revealed a small central disc herniation at L5-S1, mild and annular bulging at L4-L5.

In a report dated September 14, 1999, Dr. Cromer stated that appellant's 1997 back injury was due to the type of work appellant was performing and further concurred that "her flare up in 1998 was a recurrence of this same problem."

While the reports by Drs. Grana and Cromer are not sufficient to carry appellant's burden of proof to establish that her 1998 claimed recurrence is causally related to her accepted 1997 employment injury, as neither physician adequately explains why they believe her current condition is related to her 1997 employment injury, rather than to her acknowledged preexisting low back condition present since 1994, the Board finds that this medical evidence raises an uncontroverted inference that her 1998 recurrence of disability was causally related either to her 1997 accepted employment injury, or to conditions of her employment itself and is sufficient to require further development of the case record by the Office.⁵

On remand the Office should further develop the medical evidence by referring appellant and a statement of accepted facts to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether appellant's disability beginning June 23, 1998 is causally related to her 1997 accepted employment injury. The Office should also ask that the specialist address, in the alternative, whether any of appellant's diagnosed back conditions represent an employment-related aggravation of a preexisting condition, as is implied by the medical evidence currently of record. After such development of the case record as the Office deems necessary, the Office should issue an appropriate decision.

The decisions of the Office of Workers' Compensation Programs dated February 22, 2000 and July 22, 1999 are set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, DC
March 23, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁵ See *John J. Carlone*, 41 ECAB 354 (1989).