

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLORIA VALDERRAMA and U.S. POSTAL SERVICE,
MORGAN PROCESSING & DISTRIBUTING CENTER, New York, NY

*Docket No. 01-906; Submitted on the Record;
Issued November 5, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained recurrences of disability causally related to her January 29, 1999 employment injury.

On January 29, 1999 appellant, then a 53-year-old postal clerk, was walking to her workstation when she fell, landing on her hands and knees. She filed a claim for injuries to her knees, left ankle and left hand, but did not stop working. The Office of Workers' Compensation Programs accepted appellant's claim for contusions to both knees.

On February 10, 1999 appellant stopped working. She returned to work on February 12, 1999. Appellant stopped working again on February 18, 1999, returning to work on February 24, 1999. She stated that on both occasions, she was working her full duties with pain in her knees and lower back. Appellant stopped working again on April 10, 1999 and returned on April 24, 1999. She stated that when she returned to work, she tried to perform her usual duties but was in severe back pain as she picked up mail trays.

On July 30, 1999 appellant again stopped working. She returned to work on August 12, 1999. Appellant noted that she had pain and swelling in her right knee and pain in the lower back. The employing establishment noted that appellant had been given limited duty and was exempted from sweeping the mail.

In a September 23, 1999 decision, the Office denied appellant's claims for recurrences of disability from February 10 to 12, February 18 to 24 and April 10 to 24, 1999 on the grounds that the evidence of record failed to establish either a change in the nature or extent of her injury-related condition or in the nature or extent of her limited-duty position. In a December 14, 1999 decision, the Office denied appellant's claim for recurrence of disability from July 30 to August 12, 1999 on the same basis.

In a September 20, 2000 letter, appellant requested reconsideration of the September 23, 1999 decision. In a November 8, 2000 merit decision, the Office denied appellant's request for modification.

The jurisdiction of the Board is limited to review of final decisions of the Office issued within one year prior to the filing of an appeal with the Board.¹ As appellant's appeal was filed on February 9, 2001 the Board has jurisdiction to consider only the Office's November 8, 2000 decision. The Board has no jurisdiction to consider the Office's December 14, 1999 decision.

The Board finds that appellant has not met her burden of proof in establishing that she sustained recurrences of disability in February and April 1999 causally related to her January 29, 1999 employment injury.

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

A February 19, 1999 note stated that appellant could not work on February 10, 11 and 18, 1999 due to musculoskeletal pain. In a February 23, 1999 note, Dr. Rosa F. Carrera, a Board-certified internist, stated that appellant was not able to work on February 20, 1999 because of pain in her right knee and back. He indicated that appellant could return to work on February 23, 1999. Neither report related appellant's inability to work to the January 29, 1999 employment injury.

In a July 16, 1999 report, Dr. Alfred A. Pecora, a chiropractor, noted that he took x-rays of appellant's lumbar spine. He stated that the x-rays showed a moderate levoscoliosis at L3 with myospasm, rotation of the left ilium, L4-5 and L5-S1 disc space narrowing and a major subluxation of L1-2 with a right rotation. Dr. Pecora diagnosed lumbar radiculitis and sciatic neuralgia. He also diagnosed cervical radiculitis.

Section 8101(2) of the Federal Employees' Compensation Act recognizes a chiropractor as a physician "only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist...."³

Dr. Pecora diagnosed a subluxation of L1-2, based on x-rays. His report, therefore, can be considered medical evidence. Dr. Pecora, however, did not state that appellant's periods of disability were causally related to the January 29, 1999 employment injury. He also did not describe how the employment injury would have caused appellant's subsequent recurrent disability. His report, therefore, has limited probative value and is insufficient to meet appellant's burden of proof.

¹ 20 C.F.R. § 501.3(d).

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

³ 5 U.S.C. § 8101(2); *see Marjorie S. Geer*, 39 ECAB 1099, 1101-02 (1988).

In a September 20, 1999 report, Dr. Ernesto Lee, an orthopedic surgeon, stated that he first examined appellant on August 10, 1999. He noted that she gave a history of falling at work on January 29, 1999 with injuries to her back, left elbow, left hand and right knee. Dr. Lee noted that appellant had a limp in the right leg and palpable spasms in the lumbar spine with tenderness on percussion over the spinous processes. He also reported appellant had limited ranges of motion in the left elbow, left hand and right knee. Dr. Lee diagnosed lumbosacral spine sprain, contusion of the left elbow and contusion of the right knee. He concluded, on the basis of appellant's history and physical findings, appellant's symptoms were causally related to the January 29, 1999 employment injury. Dr. Lee, however, did not give any rationale in explaining how he concluded that appellant's condition and her recurrences of disability were causally related to the employment injury. His report, therefore, also has little probative value and is insufficient to establish that appellant's recurrences of disability were causally related to the January 29, 1999 employment injury.

The decision of the Office of Workers' Compensation Programs dated November 8, 2000 is hereby affirmed.

Dated, Washington, DC
November 5, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member