

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANELLE CALI and U.S. POSTAL SERVICE,
POST OFFICE, Niagara Falls, NY

*Docket No. 00-402; Submitted on the Record;
Issued September 19, 2001*

DECISION and ORDER

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

The issue is whether appellant had any condition or continuing disability after March 17, 1997 causally related to the December 30, 1988 employment injury.

On December 30, 1988 appellant, then a 47-year old city mail carrier, filed a traumatic injury claim alleging that she slipped on a snow covered driveway and injured her back and right knee. The Office of Workers' Compensation Programs accepted the claim for lumbar myositis and right knee sprain. Appellant stopped work on December 30, 1988 and returned to limited-duty work on March 26, 1990 with specified work restrictions, however, stopped again on March 30, 1990.

Appellant received evaluation and treatment from various physicians following the work injury for continued complaints of low back pain with bilateral radiation into the leg and hips. Sometime in 1994, Dr. Jeffrey Lewis, an attending physician, began treating appellant for her continued symptoms. In various reports of record, he indicated that appellant's pain likely originated from the facet joints and requested authorization from the Office to perform facet rhizotomy. Dr. Lewis asserted that until appellant underwent the procedure, she was totally disabled due to residuals of the work-related injury.

On June 15, 1995 the Office referred appellant to Dr. George Fuska, a Board-certified orthopedic surgeon, who in a report dated July 13, 1995, indicated that appellant suffered from pain dysfunction syndrome with musculoskeletal manifestations, low back and knee related to the fall. He found that appellant was mildly disabled due to the fall, because of pain syndrome, which was likely impossible to treat. In a work capacity evaluation, Dr. Fuska determined that appellant could perform sedentary work for four hours a day with certain restrictions.

On August 25, 1995 the Office authorized Dr. Lewis to perform the facet rhizotomy procedure. The surgery was scheduled for October 28, 1995, but appellant cancelled her appointment. Appellant subsequently was referred by the Office for a functional capacity evaluation.

On April 11, 1996 the Office subsequently referred appellant to Dr. Gunseli Sarpel, a Board-certified neurologist, to determine appellant's condition. Dr. Sarpel discussed appellant's history and his findings on examination and concluded that appellant could work for four hours per day in a sedentary position with restrictions on kneeling, bending, twisting, reaching and lifting up to 20 pounds.

On September 24, 1996 the employing establishment offered appellant a permanent modified general clerk position based on the functional capacity evaluation and report of Dr. Sarpel. The duties of the clerical position included document preparation, maintenance of records and files and administrative tasks. The work activities required were listed as simple grasping ability and normal handling of objects less than 10 pounds in weight. The job description indicated that the position was basically sedentary. Appellant accepted the position on March 6, 1997 and returned to work on March 17, 1997 for one shift. She called in sick the following day and informed the Office that she planned to elect disability retirement. Appellant never returned to work.

On May 13, 1997 appellant filed a notice of recurrence of disability alleging that her condition and disability on or after March 18, 1997 was causally related to the December 30, 1988 employment injury. Appellant submitted a copy of a hearing decision from the Social Security Administration finding total disability.

Appellant also submitted a medical report dated March 19, 1997 from Dr. Elizabeth Doherty, a Board-certified psychiatrist and neurologist, who asserted that appellant had chronic lumbosacral strains, left ulnar neuropathy and left carpal tunnel syndrome and was totally disabled from work. In a January 7, 1997 report of record, Dr. Doherty had previously indicated that appellant was totally disabled from all employment due to her employment injury, which resulted in chronic low back pain, with aggravation by prolonged sitting, standing and walking.

On November 7, 1997 the Office referred appellant to Dr. Daniel A. Castellani, a Board-certified neurologist, for an evaluation to determine the extent of any disability related to the employment factors. In his report dated November 12, 1997, Dr. Castellani reviewed appellant's history and medical records and determined that appellant sustained a lumbosacral strain and a sprained knee as a result of her fall in December 1988 and that sufficient time had elapsed to have allowed her to recover from those soft tissue injuries. He added that all of appellant's complaints were subjective and there was no objective neurologic or radiographic evidence of lumbar radiculopathy.

Dr. Castellani opined that appellant's ongoing symptoms could not be related to the December 30, 1988 fall but were related to her psychological state and that she did not have a compensable condition. In a report dated February 20, 1998, he noted that appellant's psychological condition was unrelated to her work injury. Dr. Castellani further stated that appellant was physically capable of working eight hours a day from a neurologic and musculoskeletal standpoint but that she had a cardiac condition, which should be taken into account.

On March 16, 1998 the Office denied appellant's recurrence of disability claim on the grounds that the evidence failed to establish that appellant's current condition was due to the December 30, 1988 employment injury.¹

Appellant through counsel requested an oral hearing, which was held on February 24, 1999. By decision dated August 18, 1999, an Office hearing representative affirmed the March 16, 1998 decision denying appellant's recurrence of disability claim. The Office hearing representative found that there was no rationalized medical opinion evidence in support of appellant's claim that her condition and disability after March 18, 1997 was due to the December 30, 1988 work injury. The Office hearing representative noted that although Dr. Doherty indicated in various reports of record that appellant was totally disabled; she failed to provide objective evidence and medical rationale to support her opinions. The Office hearing representative noted that appellant was evaluated by Dr. Castellani, an impartial medical examiner who determined that there was no evidence to support residuals of the work injury and determined that his well-reasoned report constituted the weight of the medical evidence.

The Board finds that appellant failed to establish that she had any condition or continuing disability after March 17, 1997 causally related to the December 30, 1988 employment injury.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.²

In this case, appellant has not shown a change in the nature and extent of her modified-duty job requirements, nor has she submitted sufficient medical evidence to show a change in the nature and extent of her injury-related condition. To support her claim, appellant submitted reports and notes from Dr. Doherty from September 15, 1998 to May 26, 1999 and a Social Security Administration opinion regarding a claim for disability retirement. Dr. Doherty diagnosed chronic lumbosacral strain and determined that appellant was totally disabled from all employment due to her employment injury, which resulted in chronic low back pain, with aggravation by prolonged sitting, standing and walking. However, Dr. Doherty's reports did not contain rationalized medical evidence causally relating appellant's current condition and total disability on or after March 18, 1997 to employment factors. She did not specifically indicate in any report that appellant had a recurrence of disability causally related to her December 30, 1988 employment injury, nor did Dr. Doherty otherwise explain how any of appellant's current symptoms and diagnoses were related to the original work injury and caused disability for work on or after March 18, 1997.

¹ On April 15, 1998 the Office issued a notice of proposed termination of compensation benefits. The Board notes that the record does not contain a final termination decision from the Office.

² *Glenn Robertson*, 48 ECAB 344, 352 (1997); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

The medical evidence of record establishes that appellant's current condition was unrelated to the work injury and that appellant was indeed capable of work. Dr. Castellani, the impartial medical specialist reviewed the medical record and examined appellant. He determined in his November 12, 1997 and February 20, 1998 reports that appellant's subjective complaints of pain were psychological and unrelated to the December 30, 1988 work injury. He noted that appellant should have been able to work four hours per day on March 17, 1997 and that she was at that time capable of full-time work from a neurologic and musculoskeletal standpoint.

The Board notes that although appellant submitted a copy of a social security decision finding her to be totally disabled, that decision is not binding on the Board since a totally different criteria may be used under the Social Security Act to determine disability. Moreover, the findings of other administrative agencies are not dispositive of proceedings under the Federal Employees' Compensation Act, which is administered by the Office and the Board.³

Appellant has the burden of proof to establish that her disability for work commencing March 17, 1997 and continuing was causally related to her accepted December 30, 1988 employment injury.⁴ Appellant has not met that burden of proof.

The August 18, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 19, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

³ *Richard L. Ballard*, 44 ECAB 146 (1992).

⁴ *Beatrice F. Berman*, 32 ECAB 138 (1980).