

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERALDINE E. McKILLIP and U.S. POSTAL SERVICE,
POST OFFICE, Honolulu, HI

*Docket No. 02-482; Submitted on the Record;
Issued July 18, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant established a recurrence of disability causally related to the original employment injury.

On December 21, 1999 appellant, then a 49-year-old mail carrier, filed a traumatic injury claim alleging that on December 16, 1999 she stood up while working and her leg gave out. Appellant asserted that she sustained low back strain with sciatica due to the December 16, 1999 injury. On February 11, 2000 the Office of Workers' Compensation Programs accepted the claim for low back strain. Appellant stopped work on December 17, 1999 and returned to light duty on December 20, 1999.

On November 8, 2001 appellant filed a recurrence of disability claim alleging that on February 2, 2000 while working light duty, she experienced a spontaneous return of her low back strain symptoms related to the original injury. On June 7, 2000 appellant again stopped work.

Appellant submitted a report dated February 3, 2000 from Dr. Erika Pang, a Board-certified internist, who related that appellant had a history of recurrent lumbar sacral strain, which she classified as permanent and chronic, since appellant's symptoms returned when she engaged in activities that exacerbate the condition. She further indicated that appellant should not perform repetitive bending or lifting greater than 25 pounds.

The employing establishment controverted appellant's recurrence of disability claim alleging that appellant had returned to preinjury status. The employing establishment submitted a response to questions it posed to Dr. Pang regarding appellant's current condition. In a note dated April 11, 2000, he concluded that appellant's low back strain of December 16, 1999 had resolved to preinjury status.

In a letter dated February 6, 2001, the Office requested that appellant submit additional information including: a description of her duties upon return to work; a description of other injuries or illnesses since the original injury; a description of medical care received from date of

injury to recurrence and reasons for believing that she sustained a recurrence of the original injury.

Appellant submitted a statement dated March 6, 2001, in which she asserted that she had not been able to return to full duty since December 16, 1999 and still experienced periodic pain related to the injury. She indicated that her light duties included answering telephones and checking mail.

By decision dated March 9, 2001, the Office denied appellant's recurrence of disability claim on the grounds that the medical evidence failed to establish a causal relationship between her current condition and disability and the original employment injury of December 16, 1999.

On May 23, 2001 appellant requested reconsideration and submitted evidence. Appellant submitted a handwritten report dated April 17, 2001 from Dr. Herbert Andrews, a Board-certified orthopedic surgeon, who discussed appellant's employment, history of injury, current diagnosis and whether appellant was disabled from work. In the report, Dr. Andrews stated that appellant had a history of continuous low back problems going back a number of years to the time when she was in the service. He also indicated that appellant had lumbar pain associated with repeated bending, lifting and carrying heavy mailbags up to 70 pounds at her job. Dr. Andrews indicated that his examination of January 19, 2001 showed limited lumbar motion and areas of tenderness of spinal processes L4-5 and paravertebral muscles. He noted that recent x-rays revealed a significant spinal defect, a slippage of the fourth and fifth lumbar vertebrae and he diagnosed spondylolisthesis Grade I-II, osteoarthritis of the lumbar spine and probable L4 disc disease. Dr. Andrews opined that appellant's condition was associated with the work-related injury that had occurred gradually. He indicated that appellant was disabled from work at that time, since prolonged walking and standing aggravated her pain after 10 minutes. Dr. Andrews noted that eventually appellant might be able to do sedentary work with no prolonged walking and no lifting.

Appellant also submitted a CA-20 form, dated April 17, 2001, in which Dr. Andrews repeated appellant's diagnosis of spondylolisthesis, lumbar osteoarthritis, lumbar strain and sprain and lumbar disc disease at L4. The physician checked yes that repeated bending and lifting up to 70 pounds at work aggravated appellant's condition. In the form report, Dr. Andrews recommended sedentary work.

Appellant further submitted treatment notes from Dr. Wes Young, a Board-certified physician in emergency medicine, dated from May 2 to 14, 2001. He indicated that appellant had occasional low back pain during her active duty in the military and reported that appellant had been treated by various physicians for lower back pain since the original December 16, 1999 injury. Dr. Young further reported that immediately following the December 16, 1999 employment injury, Dr. Pang placed appellant on light duty. The physician related that appellant wanted permanent light duty because she felt she could not lift more than 70 pounds due to one of the two injuries.

By decision dated August 17, 2001, the Office reviewed the merits and denied modification of the prior decision. The Office found that the evidence submitted in support of the request for reconsideration was insufficient to warrant modification of the denial decision.

The Board finds that appellant has not established that she sustained a recurrence of disability beginning February 2, 2000 due to her December 16, 1999 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 duties of 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 limited-duty requirements.¹

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her recurrence of disability and her June 14, 1993 employment injury.² 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 employment factors and supports that conclusion with sound medical reasoning.³

In this case, appellant claimed a spontaneous return of disabling symptoms of her accepted low back strain and stopped working in her light-duty position on June 7, 2001. She made no assertion and the record fails to support that she was unable to continue working eight hours a day because of a change in her limited-duty job requirements on or before June 7, 2000. In response to the Office's February 6, 2001 letter requesting factual and medical evidence supporting her recurrence of disability, appellant submitted only factual evidence in a statement dated February 18, 2001. Appellant asserted that she could not work full duty and was only able to perform light duties of answering telephones and checking mail and that she still experienced pain related to the December 16, 1999 injury. As appellant did not show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty requirements, the Office denied the claim in its decision dated March 9, 2001.

Appellant thereafter submitted medical evidence from Dr. Andrews, who concluded that she had lumbar pain associated with repeated bending, lifting and carrying heavy mailbags up to 70 pounds at work. He further stated that prolonged walking and standing aggravated appellant's condition. Dr. Pang stated in a report submitted by appellant that she had recurrent lumbar sacral strain when she engaged in activities that exacerbate the condition and that appellant should not perform repetitive bending or lifting greater than 25 pounds. The Board finds that these reports are not probative to establish a recurrence of disability in this case. The reports only refer to recommended work restrictions based on the December 16, 1999 injury and do not discuss whether appellant can perform the stated light duties of answering telephones and checking mail because of her current condition. The record reflects that both Drs. Pang and

¹ *Barry C. Peterson*, 52 ECAB ____ (Docket No. 98-2547, issued October 16, 2000); *Carlos A. Marrero*, 50 ECAB 117 (1998); *Terry R. Hedman*, 38 ECAB 222 (1986).

² *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes G. Davila*, 45 ECAB 139, 142 (1993); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

³ *Alfred Rodriguez*, 47 ECAB 437, 441 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

Andrews indicated that appellant could work light or sedentary work and Dr. Pang informed the employing establishment that appellant had actually resolved to preinjury status. The Board finds that as appellant did not show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty requirements, appellant has not met her burden of proof. As such, the Office properly denied appellant's claim for recurrence of disability in its March 9 and August 17, 2001 decisions.

The decisions of the Office of Workers' Compensation Programs dated August 17 and March 9, 2001 are affirmed.

Dated, Washington, DC
July 18, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member