

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARILYN F. HOUSER and U.S. POSTAL SERVICE,
POST OFFICE, Fort Wayne, IN

*Docket No. 03-1745; Submitted on the Record;
Issued September 25, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained recurrences of disability on August 15, 2002 and January 8, 2003.

On March 8, 2001 appellant, then a 47-year-old letter carrier, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that while delivering her route she misjudged a curb, tripped and felt pain in her lower back that proceeded down her right leg. In support of her claim, appellant submitted a March 8, 2001 report from Dr. Mark O'Brien, an occupational health specialist, who wrote that appellant should take bed rest for two days, begin stretching and then return to light-duty work with no lifting over 10 pounds. In a March 9, 2001 letter, Dr. O'Brien diagnosed appellant with a sprain/strain of her lower back and lumbar spine with a lesion on the sciatic nerve. On April 12, 2001 appellant returned to work on restricted duty. On May 15, 2001 appellant returned to delivering mail four hours per day and performing indoor light-duty work four hours per day.

In a June 7, 2001 decision, the Office accepted appellant's claim for lumbosacral strain/sprain and authorized epidural injections. Appellant continued on light duty.

In a September 19, 2001 report, Dr. Alan McGee wrote that appellant presented with ongoing pain that had been present for eight months in her low back radiating into her right buttock and leg. He found that appellant had a full range of motion, normal hip rotation with negative bilateral straight leg raising test. Dr. McGee also found some weakness in her right quadriceps and diagnosed lumbar radiculitis. In an October 1, 2001 report, Dr. McGee indicated that appellant continued to complain of persistent pain in her buttocks and leg and a magnetic resonance imaging (MRI) scan revealed a bulging disc at L4-5 and very mild stenosis at L5-S1 on the right side. He further indicated that a myelogram was negative. On October 8, 2001 appellant received another epidural.

On August 17, 2002 appellant filed a notice of recurrence of disability (Form CA-2a), noting that she stopped work as the pain was out of control. In support of her claim, appellant

submitted an August 16, 2002 progress note from Dr. Renee Lass, an osteopath, who wrote that appellant should be excused from work that day. In an August 26, 2002 letter, the Office informed appellant that she needed to submit more information related to her recurrence claim. No further information was received. In a September 30, 2002 decision, the Office denied appellant's recurrence claim finding the medical evidence insufficient.

On January 22, 2003 appellant filed a second notice of recurrence (Form CA-2a) alleging that since her accepted injury the pain has never gone away and gets progressively worse when she works. She indicated that she was claiming wage loss for the periods of August 15 to 17, 2002 and January 8 and 13, 2003 when she stopped work due to severe pain. In support of her claim, appellant submitted a January 9, 2003 note from Dr. Alan Anthony, an osteopath, said appellant was to be off work until January 13, 2003.

In a January 28, 2003 report, Dr. David Borjab, pain management specialist, wrote that appellant should lift no more than 15 pounds. In a January 30, 2003 letter, the Office informed appellant of the evidence necessary to establish a recurrence claim. In a February 7, 2003 report, Dr. Thomas Lazoff, an orthopedist, wrote that appellant presented with back and right posterior pain. He indicated that an MRI scan revealed degenerative disc disease at L3-4 and L5-S1 but no disc herniation, protrusion or spinal stenosis. Dr. Lazoff further indicated that an electrodiagnostic study was normal with no evidence of active radiculopathy. In an April 19, 2003 note, Dr. Borjab diagnosed lumbar radiculopathy and low back pain and gave her an epidural.

In a March 4, 2003 decision, the Office denied appellant's recurrence claim noting that the medical evidence fails to link appellant's medical conditions to the accepted injury.

In a March 11, 2003 letter, appellant requested reconsideration. In support of her claim, appellant submitted a March 6, 2003 report from Dr. Robert Shugart, an orthopedist, who wrote that appellant presented with constant pain at L4-5 and L5-S1 levels as well as over her sacroiliac joint, more on the right and radiating into her buttocks, posterior leg and down to her calf. Dr. Shugart noted that an MRI scan showed degeneration at L3-4 and L5-S1 but no herniation, stenosis or lateral recessed stenosis. He diagnosed back pain and radiculopathy.

In a March 26, 2003 decision, the Office denied modification finding the medical evidence insufficient as it failed to causally relate her condition to the accepted injury.

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.¹ 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 the employment injury and supports that

¹ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

conclusion with sound medical rationale.² Where no such rationale is present, medical evidence is of diminished probative value.³

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.⁴

In the present case, the Office accepted that appellant sustained a lumbosacral strain when she stepped off a curb and felt pain in her back and leg. Appellant claimed a total recurrence of disability for the periods August 15 to 17, 2002 and January 8 to 13, 2003. In support of her August 2002 claim, appellant submitted an August 16, 2002 note from Dr. Renee Lass which indicated that appellant should not work that day. Dr. Lass did not indicate that she was aware of appellant's medical history or her work responsibilities, and she did not provide a diagnosis or causally relate that diagnosis to appellant's accepted injury.

In support of her January 2003 recurrence claim, appellant submitted no medical evidence that reported on appellant's condition of the specific time period she missed work. Appellant did submit a March 6, 2003 medical report from Dr. Shugart, but he did not specifically address appellant's medical condition between January 8 to 13, 2002, the time period she claimed a recurrence of total disability; nor did he causally relate appellant's condition to her March 7, 2001 accepted injury.⁵

Appellant has not submitted rationalized medical evidence establishing that her claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied her claim for compensation.

² *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

³ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁴ *See Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

⁵ The Board notes the appellant submitted new medical evidence subsequent to Office's decision. However, the Board cannot consider that evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c).

The decisions of the Office of Workers' Compensation Programs dated September 30, 2002, March 26 and 4, 2003 are affirmed.

Dated, Washington, DC
September 25, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member