

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**LINDA K. DEBOER, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Hudson, FL, Employer**

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**Docket No. 05-1624**

**Issued: February 3, 2006**

*Appearances:*

*Capp P. Taylor, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge

MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On July 29, 2005 appellant, through her attorney, filed a timely appeal from a July 7, 2005 merit decision of the Office of Workers' Compensation Programs, denying a recurrence of disability from December 15 through 28, 2001 and that appellant did not sustain a cervical or lumbar herniated disc causally related to the accepted employment injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant has established that she sustained a recurrence of disability from December 15 through 28, 2001 causally related to her July 13, 2000 employment injury; and (2) whether appellant has established that she sustained cervical or lumbar herniated discs causally related to the July 13, 2000 employment injury.

**FACTUAL HISTORY**

On July 20, 2000 appellant, then a 42-year-old rural letter carrier, filed a traumatic injury claim alleging that on July 13, 2000 she hurt her neck, head, shoulders, ribs and hips following a motor vehicle accident while returning from her route to the employing establishment. Appellant

stopped work on July 18, 2000. The Office accepted her claim for cervical and lumbar strains. Appellant returned to limited-duty work on September 5, 2000 and to full-duty work on September 11, 2000.

On November 21, 2000 and January 5, 2001 appellant reported to Dr. Michael W. Perry, an attending Board-certified internist, that she was experiencing discomfort in her spine and left shoulder while carrying magazines. On January 30, 2001 Dr. Perry ordered a magnetic resonance imaging (MRI) scan of her cervical and lumbar spines. He placed appellant on limited-duty work as of February 20, 2001 and she stopped work on February 24, 2001.

On March 1, 2001 Dr. Charles L. Domson, a Board-certified radiologist, performed an MRI scan of appellant's lumbar spine. He found mild annular bulging discs at L4-5 and L5-S1 with hypertrophic osteoarthropathy in the posterior facet joints. No focal disc protrusions, central canal stenosis or significant neural foraminal narrowing were identified. Dr. Domson's March 1, 2001 MRI scan of appellant's cervical spine found a central disc protrusion to the right of the midline at C5-6 with moderate central canal stenosis and mild neural foraminal narrowing on the right. He also found a central disc protrusion at C6-8 with moderate central canal stenosis and a paracentral disc bulge to the left at C4-5 with moderate neural foraminal narrowing on the left and mild central canal stenosis.

On April 25, 2001 appellant returned to part-time limited-duty work. She returned to full-time limited-duty work on July 6, 2001.

On September 17, 2001 the Office referred appellant along with the case record, a list of questions and a statement of accepted facts to Dr. Michael D. Slomka, a Board-certified orthopedic surgeon, for a second opinion medical examination to determine the extent of any remaining employment-related disability.

On October 15, 2001 the employing establishment offered appellant a full-time limited-duty position which involved all the duties of a rural letter carrier with no lifting more than 30 pounds based on the restrictions set forth by Dr. Dennis M. Lox, appellant's attending Board-certified physiatrist, on October 12, 2001. Appellant accepted the offered position on October 17, 2001.

Dr. Slomka submitted an October 22, 2001 report which found that appellant's cervical and lumbar sprains had resolved. Dr. Slomka, however, stated that the symptoms which related to the aggravation of the underlying conditions continued. He concluded that appellant's residuals did not preclude her from performing her regular work duties as long as she did not lift more than 25 pounds. In a work capacity evaluation dated October 23, 2001, Dr. Slomka stated that appellant could work 8 hours a day and that she could not push, pull or lift more than 25 pounds.

On November 8, 2001 Dr. Lox found that appellant could not drive her route and that she could only lift up to 10 pounds. Based on Dr. Lox's restrictions, the employing establishment, on November 9, 2001, offered appellant a full-time limited-duty position which she accepted.

On December 14, 2001 appellant filed a claim (Form CA-7) for wage-loss compensation for the period December 15 through 28, 2001. By letter dated January 8, 2002, the Office

advised her that the record established that she returned to limited-duty work on November 9, 2001 based on restrictions set forth by her attending physician and Office referral physician. The Office advised appellant that the evidence of record was insufficient to establish that she sustained a recurrence of disability during the claimed period. The Office informed her of the factual and medical evidence needed to establish her claim.

Appellant submitted Dr. Lox's December 21, 2001 report which diagnosed a disc herniation at C5-6 and a disc protrusion at C6-7. He stated that she could continue performing limited-duty work. She also submitted a January 15, 2002 report of Dr. Frank B. Gomes, a Board-certified neurological surgeon, who reviewed a history of appellant's July 13, 2000 employment injury and medical treatment and provided findings on physical examination. He reviewed the March 1, 2001 MRI scan results and found that appellant was post status the July 13, 2000 employment injury and traumatic cervical sprain/strain. Dr. Gomes, however, found that she had a two-level spondylitic protrusion at C5-6 and C6-7 and a severe lumbar strain with a bulging disc at L4-5 and L5-S1. He opined that appellant's symptoms were consistent with the MRI scan findings and that surgical intervention was required. Dr. Gomes concluded that appellant would be unable to return to her previous job as a mail carrier.

In a January 30, 2002 treatment note, Dr. Lox noted appellant's refusal to undergo surgery. He stated that she should continue her light-duty restrictions and that he would reassess her condition based on her symptoms.

By decision dated February 14, 2002, the Office denied appellant's recurrence of disability claim. The Office found that the evidence submitted by appellant was insufficient to establish that she sustained a recurrence of total disability for the period December 15 through 28, 2001.

In a February 14, 2002 letter, the Office advised the employing establishment that Dr. Slomka's October 22, 2001 second opinion report constituted the weight of the medical opinion evidence. The Office noted that the October 15, 2001 job offer was not suitable because the lifting restrictions exceeded the restrictions imposed by Dr. Slomka. The Office instructed the employing establishment to offer appellant a permanent limited-duty job in accordance with Dr. Slomka's restrictions.

By letter dated February 19, 2002, the employing establishment offered appellant a limited-duty position based on Dr. Slomka's restrictions. On February 27, 2002 she rejected the offered position.

In letters dated March 4 and 13, 2002, appellant requested an oral hearing before an Office hearing representative regarding the Office's February 14, 2002 decision. She submitted several medical records of Dr. David A. Petersen, a Board-certified orthopedic surgeon. A February 14, 2002 report found that appellant sustained a herniated disc at C5-6 as a result of the July 13, 2000 employment injury. He recommended that she be allowed to change positions every few minutes. In a July 9, 2002 report, Dr. Petersen diagnosed a herniated nucleus pulposus of the cervical and lumbar spines. In an August 22, 2002 report, he diagnosed radiculopathy in both legs and the left arm and pain in the neck and lower back. Dr. Petersen's disability

certificates dated February 14 and March 14, 2002 found that appellant was totally disabled for one month.

An April 23, 2001 functional capacity evaluation report found that appellant was unable to complete the evaluation due to significantly high blood pressure. She was reevaluated on May 7, 2001 and a report of that date found that she was able to perform full-time work at a light classification level. The report also found that appellant was unable to perform the strength classification of a rural mail carrier position, but that she could perform all the positional tolerances and handling demands of the job.

Appellant submitted unsigned progress notes of her physical therapist which covered intermittent dates from March 7 through 30, 2001 and addressed her cervical and lumbar spine and left shoulder problems.

At the October 23, 2002 hearing, appellant requested that the Office expand the acceptance of her claim to include the lumbar and cervical herniated discs at C6-7, L4-5 and L5-S1. She stopped work on December 4, 2001 because she could no longer perform her work duties and noted that there was no change in her limited-duty job. She submitted a handwritten job description of her work duties as a mail carrier and the employing establishment's February 19, 2002 job offer. Appellant also submitted Dr. Petersen's October 16, 2002 deposition. He reviewed appellant's handwritten job description and the employing establishment's limited-duty job offer. Dr. Petersen stated that the physical requirements of both positions exceeded the physical restrictions he established for appellant. She was restricted to standing, sitting and walking no more than 10 minutes at a time. Dr. Petersen opined that appellant sustained a herniated disc at C6-7 and L4-5 with a bulging disc at L5-S1 as a result of the July 13, 2000 employment injury based on MRI scans and his findings on physical examination. Dr. Petersen's October 25, 2002 report reiterated his diagnosis and findings.

By decision dated January 15, 2003, an Office hearing representative affirmed the Office's February 14, 2002 decision, finding that appellant failed to establish that she sustained a recurrence of disability from December 15 through 28, 2001. The hearing representative also found that she failed to establish that her lumbar and cervical herniated discs were causally related to the July 13, 2000 employment injury.<sup>1</sup>

Following the hearing representative's decision, appellant submitted Dr. Petersen's January 17, 2003 report which found that she had increasing radiculopathy of the left arm. A February 21, 2003 MRI scan of appellant's cervical spine performed by Dr. William L. Nyman, a Board-certified radiologist, found a broad-based disc herniation at C5-6 that was slightly greater on the right than on the left. This caused some moderate ascites/plasma narrowing of the

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<sup>1</sup> Following the return of the case record to the Office, the Office referred appellant along with a statement of accepted facts, the case record and a list of questions to Dr. Vydialinga G. Raghavan, a Board-certified orthopedic surgeon, for a second opinion medical examination to determine whether she had any residuals of the July 13, 2000 employment injury. Dr. Raghavan submitted a July 21, 2003 report, finding that the accepted employment injury had resolved. Based on Dr. Raghavan's report, the Office, in an October 23, 2003 decision, terminated appellant's compensation effective October 22, 2003. In an October 27, 2003 letter, appellant, through her attorney, requested an oral hearing before an Office hearing representative. By decision dated May 9, 2005, a hearing representative affirmed the Office's October 23, 2003 decision.

spinal canal, obliterating the subarachnoid space anterior to the cord. Dr. Nyman also found a large extruded disc extending below the end plate to the right of the midline at C6-7 which also impinged upon the thecal sac.

In an October 25, 2002 report, Dr. Petersen found that appellant continued to experience persistent radiculopathy of both legs and the left arm and neck and low back pain. In reports dated January 17, March 16 and April 22, 2003, Dr. Petersen diagnosed a herniated nucleus pulposus at C5-6 and C6-7 and radiculopathy of the left arm and requested authorization for surgery.

By letter dated April 28, 2003, the Office denied Dr. Petersen's request on the grounds that appellant's claim had not been accepted for cervical herniated discs causally related to the July 13, 2000 employment injury.

In a letter dated June 11, 2003, appellant's attorney requested that the Office expand the acceptance of her claim to include an emotional condition as a consequential injury of the July 13, 2000 employment injury.

The Office received Dr. Petersen's August 15, 2003 prescriptions for a lumbar corset and aspen cervical collar. In an August 15, 2003 report, he addressed appellant's chronic left shoulder pain with radiculopathy and left shoulder adhesive capsulitis, that was slightly better after an injection. In an October 10, 2003 report, Dr. Petersen diagnosed neck pain, a herniated nucleus pulposus at C5-6 and C6-7 and radiculopathy of the left arm at the C6 distribution. On November 3, 2003 Dr. Petersen performed an anterior cervical discectomy and fusion at C5-7 and C6-7 and instrumentation anterior cervical spine at C5-7. He indicated that appellant's preoperative and postoperative diagnoses were a herniated nucleus pulposus at C5-6 and C6-7.

In a December 9, 2003 letter, appellant, through her attorney, requested reconsideration of the hearing representative's January 15, 2003 decision. Counsel argued that the evidence of record was sufficient to establish that appellant's herniated discs were caused by the accepted employment injury and that she was incapable of performing the limited-duty positions offered by the employing establishment. He argued that the Office failed to address whether appellant's emotional condition constituted a consequential injury of the July 13, 2000 employment injury.

Appellant submitted Dr. Petersen's November 13, 2003 report which indicated that she was doing well. In an October 21, 2003 affidavit, Dr. Petersen stated that MRI scans demonstrated herniated discs at L4-5 and L5-S1 and bulging discs with hypertrophic facet joints at both levels. He further stated that the March 1, 2001 MRI scan of the cervical spine revealed spondylitic protrusion at C5-6 central and to the right and C6-7 central disc protrusion. He recommended surgical intervention. Dr. Petersen opined that appellant's medical history did not include low back or neck problems or symptomatology for a period of at least 10 years prior to the date of the employment injury. Based on the MRI scan films, her cervical and lumbar spine conditions were caused by the July 13, 2000 employment injury. He reviewed the October 15, 2001 and February 19, 2002 job offers, and opined that appellant was not capable of performing the duties of either position at the time they were offered because she was unable to meet the lifting requirements or drive six hours a day.

A May 10, 2004 functional capacity evaluation found that appellant was unable to perform sedentary and light classified work. The report further found that she was unable to perform her previous job.

Dr. Petersen's reports dated July 15, 2003 to August 5, 2004 found that appellant experienced neck and low back pain, dysphasia, left shoulder impingement syndrome, adhesive capsulitis and radiculopathy in both lower extremities. She was scheduled to undergo left shoulder arthroscopy for a possible small rotator cuff tear.

In an August 11, 2003 affidavit, Dr. Petersen reiterated that appellant was unable to perform the jobs offered by the employing establishment on October 15, 2001 and February 19, 2002 and that her herniated discs were employment related. He corrected the date of the employment injury to reflect July 13, 2000 rather than February 13, 2002.

A December 9, 2003 affidavit of S. Rob Oyer, a functional capacity evaluator, who performed a May 3, 2001 functional capacity evaluation, opined that appellant was unable to perform the jobs offered by the employing establishment on October 15, 2001 and February 19, 2002 due to her physical restrictions.

On February 11, 2004 Dr. Vincent G. Cotroneo, a Board-certified radiologist, performed an MRI scan of appellant's lumbar spine which found mild degenerative disc changes particularly at the L2-3 level that were somewhat advanced for her age. There was no sign of disc herniation or spinal stenosis. Dr. Cotroneo's February 12, 2004 MRI scan of appellant's thoracic spine was normal.

Unsigned treatment notes dated February 14, 2002 addressed appellant's cervical spine and left arm symptoms. On January 20, 2004 Dr. Howard A. Manhoff, a Board-certified radiologist, performed an MRI scan of appellant's left shoulder joint and upper extremity and found mild arthropathy and mild impingement of the rotator cuff tendon complex with no evidence of a tear or tendinosis. A July 20, 2004 MRI scan report of Dr. Anil G. Patel, a Board-certified radiologist, found disc desiccation at L2-3, L3-4 and L5-S1, a mild annular tear of the L5-S1 level without any thecal sac effacement and a mild annular disc bulge at L2-3 without any evidence of thecal sac effacement or exiting nerve root compression.

On September 1, 2004 appellant underwent left shoulder surgery. In an October 21, 2003 report, Dr. Gomes stated that MRI scan films demonstrated herniated discs at L4-5 and L5-S1 and bulging discs with hypertrophic facet joints at both levels. The March 1, 2001 MRI scan showed spondylolytic protrusion at C5-6 central and to the right and C6-7 central disc protrusion. He indicated that appellant would benefit from surgical intervention. Dr. Gomes attributed the cervical and lumbar conditions to the accepted employment injury based on appellant's prior history of no low back or neck problems or symptomology for a period of at least 10 years prior to the accepted employment injury. He reviewed the employing establishment's October 15, 2001 and February 19, 2002 job offers and opined that appellant was not capable or would not have been capable of performing the duties of these positions at the time they were offered because she could not meet the lifting requirements of either job or drive six hours a day.

In a March 23, 2004 report, Dr. Petersen noted appellant's symptoms of neck, back and bilateral knee pain. He stated that her thoracic and lumbar MRI scans were unimpressive. Dr. Petersen's January 16, 2004 report provided his findings on physical examination. He diagnosed chronic left shoulder pain, left shoulder adhesive capsulitis and status post C5-6, C6-7 anterior cervical discectomy fusion with instrumentation. Dr. Petersen recommended that appellant continue her home neck exercises. In an April 27, 2004 report, Dr. Petersen found that appellant suffered from neck, low back and bilateral knee pain.

A November 25, 2003 x-ray report of Dr. Richard M. Slone, a Board-certified radiologist, found intraoperative films for surgical guidance during three-level anterior cervical fusion. A November 3, 2003 pathology report of a physician whose signature is illegible revealed fibrocartilage and nucleus pulposus at C5-6 and C6-7 and focal necrosis involving nucleus.

By decision dated July 7, 2005, the Office denied modification of the January 15, 2003 decision. The Office found the evidence of record insufficient to establish that she sustained a recurrence of disability for December 15 through 28, 2001 or that her herniated discs were causally related to the July 13, 2000 employment injury.<sup>2</sup>

### **LEGAL PRECEDENT -- ISSUE 1**

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>3</sup>

When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that she can perform the limited-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 to show that she cannot perform such limited-duty work. 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 job requirements.<sup>4</sup>

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.<sup>5</sup>

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<sup>2</sup> In the July 7, 2005 decision, the Office stated that appellant's attorney's argument that her claim should be expanded to include a consequential emotional condition should be pursued according to the appeal rights that accompanied the October 23, 2003 termination decision.

<sup>3</sup> 20 C.F.R. § 10.5(x).

<sup>4</sup> *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>5</sup> *James H. Botts*, 50 ECAB 265 (1999).

### **ANALYSIS -- ISSUE 1**

The July 13, 2000 injury was accepted for cervical and lumbar strains. Appellant returned to work in a full-time limited-duty capacity on November 9, 2001. She claimed compensation for total disability for the period December 15 through 28, 2001 due to the July 13, 2000 employment injury.

The relevant medical evidence of record which addresses appellant's disability for work consists of Dr. Lox's December 21, 2001 report. Dr. Lox diagnosed disc herniation at C5-6 and a disc protrusion at C6-7 and opined that appellant could continue performing limited-duty work. Dr. Lox did not find that appellant was totally disabled for work during the claimed period and his report does not support her claim.

Dr. Petersen and Dr. Gomes found that appellant was unable to perform the duties of her position and the limited-duty position offered to her by the employing establishment on October 15, 2001 and February 19, 2002 because they exceeded her physical restrictions. At the time appellant claimed compensation for total disability, she was performing the duties of a limited-duty position she accepted on November 9, 2001 and she later testified at an oral hearing that the duties of this position had not changed. Neither Dr. Petersen nor Dr. Gomes reviewed the job description for this position or specially addressed appellant's disability for the period December 15 to 28, 2001. The Board finds that their opinions regarding appellant's disability for work are insufficient to establish that she was totally disabled from December 15 through 28, 2001 due to the July 13, 2000 employment injury.

The treatment notes from appellant's physical therapists which covered the period March 6, 2001 through June 14, 2002 and diagnosed her as having a cervical strain do not constitute probative medical evidence inasmuch as a physical therapist is not considered a "physician" under the Federal Employees' Compensation Act.<sup>6</sup>

The Board finds that appellant has not submitted sufficiently rationalized medical evidence establishing that she was totally disabled from December 15 through 28, 2001 due to her July 13, 2000 employment-related cervical and lumbar strains. She has not established a recurrence of disability from December 15 through 28, 2001 causally related to her accepted employment injury.

### **LEGAL PRECEDENT -- ISSUE 2**

A claimant seeking benefits under the Act<sup>7</sup> has the burden of proof to establish the essential elements of her claim by the weight of the evidence,<sup>8</sup> including that she sustained an

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<sup>6</sup> 5 U.S.C. §§ 8101-8193; 8101(2); *Vickey C. Randall*, 51 ECAB 357, 360 (2000) (a physical therapist is not a physician under the Act).

<sup>7</sup> 5 U.S.C. §§ 8101-8193.

<sup>8</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.



injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.<sup>9</sup>

The evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>10</sup> The claimant must submit a rationalized medical opinion that supports a causal connection between her current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.<sup>11</sup>

### **ANALYSIS -- ISSUE 2**

The Office accepted that appellant sustained cervical and lumbar strains as a result of the employment-related July 13, 2000 motor vehicle accident. Appellant contends that she also sustained a herniated cervical disc at C5-6, C6-7 and a herniated lumbar disc at L4-5 and L5-S1 as a result of the accepted employment injury.

The medical evidence includes reports from Dr. Lox, Dr. Gomes, Dr. Petersen, Dr. Nyman and Dr. Patel who addressed the herniated discs at C5-6, C6-7, L4-5 and L5-S1. In addition, Dr. Gomes and Dr. Petersen opined that the diagnosed conditions were causally related to the July 13, 2000 employment injury inasmuch as appellant was asymptomatic prior to the occurrence of the accepted employment injury. Dr. Petersen explained that the diagnosed conditions were based on MRI scan findings and his findings on physical examination. However, neither Dr. Petersen nor Dr. Gomes adequately explained how the diagnosed conditions were causally related to the accepted July 13, 2000 employment injury. An opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to establish causal relation.<sup>12</sup> Neither Dr. Petersen nor Dr. Gomes provided sufficient rationale explaining how appellant's cervical and lumbar herniated discs were caused or contributed to by the July 13, 2000 employment injury, accepted for strains. The Board finds that their opinions are not sufficient to meet appellant's burden of proof. The reports of Dr. Lox, Dr. Nyman and Dr. Patel that appellant sustained herniated lumbar and cervical discs is insufficient to establish her claim because they did not address the issue of whether the diagnosed herniated discs were caused by the accepted employment injury.

Dr. Cotroneo's MRI scan report found mild degenerative disc changes at L2-3 that were advanced for appellant's age, but he stated that there was no sign of disc herniation or spinal stenosis. As Dr. Cotroneo did not opine that appellant sustained a disc herniation causally related to the July 13, 2000 employment injury, his report is insufficient to establish her burden of proof.

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<sup>9</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>10</sup> *Id.*

<sup>11</sup> *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

<sup>12</sup> *Kimper Lee*, 45 ECAB 565 (1994). *Thomas D. Petrylak*, 39 ECAB 276 (1987).

The Board finds that the record on appeal contains no reasoned medical opinion to support appellant's assertion that she sustained cervical and lumbar herniated discs as a result of her July 13, 2000 motor vehicle accident. Therefore, appellant has not met her burden of proof.

**CONCLUSION**

The Board finds that appellant has failed to establish that she sustained a recurrence of total disability from December 15 through 28, 2001 causally related to her July 13, 2000 employment injury. The Board further finds that appellant has failed to establish that she sustained cervical and lumbar herniated discs causally related to the July 13, 2000 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 7, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 3, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board