

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RUTH A. SERINO and U.S. POSTAL SERVICE,  
POST OFFICE, Chicago, Ill.

*Docket No. 96-1679; Submitted on the Record;  
Issued September 15, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant's total disability from August 28, 1992 to March 1, 1993 is causally related to her January 24, 1991 employment injury.

The Office of Workers' Compensation Programs accepted that appellant's January 24, 1991 slip and fall at work resulted in contusions of the right side, a sprain of the neck, a lumbosacral sprain, and an ulnar nerve lesion. Appellant received continuation of pay from January 25 through February 25, 1991, and returned to full-time limited duty on February 26, 1991. Appellant again stopped work on May 17, 1991, returning to part-time limited duty on May 19, 1991. Thereafter the Office paid her compensation for the three, then later two, hours fewer than eight she worked each day and also paid compensation for intermittent periods of total disability. From July 17 to August 27, 1992, appellant worked six hours per day and the Office paid appellant compensation for two hours per day.

On August 28, 1992 appellant stopped work and was hospitalized from that date until September 3, 1992 for thrombophlebitis, as diagnosed by her attending physician, Dr. Jia H. Hwang, a general surgeon. By decision dated February 26, 1993, the Office found that the evidence failed to establish that appellant's thrombophlebitis was causally related to her January 24, 1991 employment injury. This decision was affirmed by an Office hearing representative in a September 8, 1993 decision. By decision dated December 20, 1993, the Office found that the evidence failed to demonstrate that appellant's disability after August 14, 1992 was causally related to her January 24, 1991 employment injury. The Office refused to modify its prior decisions in a decision dated September 22, 1995.

The Board finds that there is a conflict of medical opinion on the issue of whether appellant's thrombophlebitis, also referred to as deep vein thrombosis, is causally related to her January 24, 1991 employment injury.

In a report dated June 30, 1993, Dr. Hwang, who has been appellant's attending physician since at least 1987, noted that appellant's January 24, 1991 employment injury limited appellant's ambulation because of severe back pain and pain in her ankle. Dr. Hwang then stated, "The patient's deep vein thrombosis was definitely caused by not enough ambulation of both her lower extremities, which was a definite result of the lumbosacral injury sustained on January 24, 1991." In a report dated June 20, 1995, Dr. Jack M. Rozental, a Board-certified neurologist, stated:

"In view of the absence of any significant family history for clotting disorders, as well as three previous normal pregnancies, the chance that she has any congenital disorder of metabolism which may account for her apparent hypocoagulable state is exceedingly remote. It is clear that these episodes all happened after her leg injury, after which she seems to have developed incompetent valves in the veins of the lower extremities along with stasis changes and chronic thrombophlebitis. This has put her at increased risk for deep vein thrombosis.... It should be clear from this description that her recurrent deep vein thromboses are absolutely directly related to her injury at work."

On the other side of the conflict, Dr. Kevin L. O'Halloran, a Board-certified orthopedic surgeon reviewed the medical evidence on January 23, 1993 as an Office medical adviser and stated:

"The deep vein thrombosis is not attributable to any past injury but rather to two clearly recognizable medical risk factors for this disorder: Obesity and chronic venous insufficiency.... Chronic venous insufficiency (incompetence of the vein valves resulting in pooling of the blood in the feet and ankles) is documented in the notes from the nursing office at work dated [January 24, 1991]. 'Severe incompetent leg veins' are noted on physical exam[ination]. In addition there is evidence for a chronic condition of venous insufficiency on the venogram done [August 29, 1992]."

To resolve this conflict of medical opinion, the Office should, pursuant to section 8123(a) of the Federal Employees' Compensation Act,<sup>1</sup> refer appellant, the case record, and a statement of accepted facts to an appropriate medical specialist for a reasoned medical opinion whether appellant's thrombophlebitis or deep vein thrombosis and her disability from August 28, 1992 to March 1, 1993 are causally related to her January 24, 1991 employment injury. The Office should then issue an appropriate decision addressing this issue.

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<sup>1</sup> 5 U.S.C. § 8123(a) states in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

The decision of the Office of Workers' Compensation Programs dated September 22, 1995 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.  
September 15, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member