

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HEIDI L. OSBORNE and U.S. POSTAL SERVICE,
WARREN POST OFFICE, Warren, Mich.

*Docket No. 97-2301; Submitted on the Record;
Issued June 22, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof in establishing that her recurrence of disability commencing March 12, 1996 was causally related to her May 13, 1995 employment injury.

Appellant, then a 29-year-old letter carrier, experienced back pain on May 13, 1995 while pushing a postal cart filled with canned food from an employing establishment food drive. She stopped working on May 18, 1995 and returned to light-duty work, four hours a day on May 24, 1995. Dr. Joseph Kraft, an osteopath, diagnosed lumbar myositis which was accepted by the Office of Workers' Compensation Programs.

On March 24, 1996 appellant filed a claim for recurrence of disability effective March 12, 1996. She indicated that since the original injury her back had been sore on a few occasions. Appellant related that she was off work at the time of the recurrence due to the death of her father. She stated that her back was sore but it became progressively worse. Appellant returned to work on March 22, 1996 but she indicated that her back remained sore. In an August 14, 1996 decision, the Office denied appellant's claim for recurrence of disability beginning March 12, 1996 on the grounds that the evidence of record failed to establish a causal relationship between the claimed recurrence of disability and the accepted employment injury. In a June 3, 1997 decision, an Office hearing representative found that appellant had not submitted medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, had concluded that appellant had a disabling condition causally related to the employment injury and supported that conclusion with sound medical reasoning. The hearing representative therefore affirmed the Office's August 14, 1996 decision.

The Board finds that appellant has not met her burden of proof in establishing that her recurrence of disability as of March 12, 1996 was causally related to her May 13, 1995 employment injury.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which she seeks compensation was causally related to her employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.¹

In a July 31, 1996 report, Dr. Kraft stated in support of appellant's claim that appellant originally injured her back in May 1995 and her condition was prone to recurrence. He indicated that appellant had recovered from the original disability and had lingering symptoms of persistent pain. Dr. Kraft commented that the factor that produced a recurrence was lifting at work. He stated that the diagnosis was the same as the original injury and the initial condition was prone to recurrence and there were no precipitating factors capable of causing the condition. This report is speculative and circular in reasoning. It therefore is of diminished probative value.

In a March 14, 1997 report, Dr. Kraft stated that the factors that produce a recurrence from lifting at work were due to lifting trays of mail, casing mail and lifting mail into the postal truck. He commented that these conditions caused the recurrence of appellant's back injury. However, appellant's recurrence of disability occurred while she was off work due to the death of her father. Dr. Kraft's report therefore is based on an inaccurate history of the cause of the recurrence of disability. This report therefore has little probative value.

In a March 25, 1997 report, Dr. Martin O. Karp, an osteopath and associate of Dr. Kraft, stated that appellant was seen on March 13, 1996 with a history of pulling her back out at work. He concluded that appellant had a soft tissue injury or strain. Dr. Karp commented that, in regards to appellant's previous injury, "it may have been an aggravation of her previously described injury." This report is equivocal and speculative in nature. It is unclear whether Dr. Karp, in discussing the history of pulling her back out at work was referring to the original injury or the inaccurate history of recurrence that Dr. Kraft used. His report was equivocal and speculative in stating that appellant's condition may have been an aggravation of the previous employment injury. His report therefore is of diminished probative value.

In an April 22, 1997 report, Dr. Kraft also stated that appellant's back pain was due to an altered gait caused by a fracture of her ankle. In the hearing appellant indicated that she had fractured her ankle twice, in 1988 and 1990 and had filed claims for the injuries. This report therefore is irrelevant to the current claim and is relevant to appellant's claims for the ankle injuries. His report therefore is insufficient to show that appellant's recurrence of disability was related to the May 13, 1995 back injury. Appellant's medical evidence of record does not establish that she had a recurrence of disability as of March 12, 1996 that was causally related to the original employment injury. She has not met her burden of proof.

¹ *Dominic M. DeScala*, 37 ECAB 369 (1986).

The decisions of the Office of Workers' Compensation Programs, dated June 3, 1997 and August 14, 1996, are hereby affirmed.

Dated, Washington, D.C.
June 22, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member