

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALICIA S. MOORE and U.S. POSTAL SERVICE,
POST OFFICE, Charlotte MI

*Docket No. 02-497; Submitted on the Record;
Issued July 3, 2002*

DECISION and ORDER

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

The issue is whether appellant has met her burden of proof to establish that she sustained a recurrence of total disability on April 4, 2001 causally related to her November 5, 2000 accepted employment injury.

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

On November 5, 2000 appellant, then a 33-year-old mailhandler, filed a notice of traumatic injury and claim for compensation (CA-1), alleging that she injured her back while sweeping SPBS machine and lifting and pulling sacks. On November 6, 2000 Dr. Debra Hallack, DO, diagnosed lumbar strain with acute and chronic low back pain. Appellant had a previous back claim in January 2000 and was working on restrictions.¹

Appellant was given work restrictions of lifting no more than 20 pounds intermittently, bending/stooping, twisting and pulling 4 hours a day and reaching above shoulders 6 hours a day. The restrictions were to last two weeks.

On November 6, 2000 the employing establishment offered appellant a restricted-duty job and she accepted.

A November 7, 2000 radiology report showed a mild diffuse posterior bulging, no evidence of herniation or central or foraminal stenosis at L3-4, L4-5 diffuse posterior bulging of the disc, causing flattening of the ventral thecal sac, but did not appear to cause central stenosis. At L5-S1, mild diffuse posterior bulging of the disc. "Appears to be a super imposed focal posterior central disc herniation. The posterior margin of the annulus abuts the proximal intradural portions of both S1 nerve roots, but this does not appear to significantly compress or

¹ This claim is not included in this case record.

displace these structures. There is mild migration of the disc fragment posterior to the S1 vertebral body. No significant central foraminal stenosis identified.”

On November 7, 2000 her restrictions were extended through December 12, 2000 and were eventually extended through May 5, 2001.

On February 5, 2001 appellant accepted a limited-duty job offer.

On March 26, 2001 appellant submitted a leave request and stopped work, claiming her supervisor deliberately violated her limited-duty job offer. She returned to work on April 3, 2001 for one day.

On April 9, 2001 Dr. Hallack wrote on a medical absence form letter that appellant could not perform her work duties. “[She] has not been able to go back to work because her restrictions are not being followed and she is having trouble with pain. Examination remains unchanged. We will keep her off work until April 18, 2001. On April 19, 2001 appellant filed a claim for compensation (Form CA-7), for the period April 19 through May 28, 2000.

In an April 26, 2001 report, Dr. Theodore DeLaCruz, a neurologist, conducted a magnetic resonance imaging (MRI) scan and reported a small disc herniation at L5-S1 and annular tear in the posterior annulus at the L4-5 level and some degenerative changes. He took her off work until May 28, 2000 with restrictions at that time of no lifting more than 10 pounds.

On May 4, 2001 the claim was accepted for lumbar strain.

On April 24, 2001 appellant filed a recurrence claim (Form CA-2a), alleging that on April 4, 2000 she was “working extremely hard and overworked her bad discs” and could no longer work.

In May 3, 2001 report, Dr. DeLaCruz found electrocardiogram (EKG) results showed a normal examination. His clinical examination revealed chronic low back pain with recurrent episodes of severe pain. Dr. DeLaCruz further wrote:

“[Appellant] does not describe to me any radicular symptoms and I wonder if this is more joint-musculoskeletal related. The lack of any leg pain, numbness or parasthesias makes it very difficult for me to say that her localized back pain is the result of bilateral S1 nerve root compression. MRI of the spine shows evidence of posterior central herniation at L5-S1 but it does not appear to significantly compress or displace the S1 nerve roots.”

In a May 9, 2001 letter, the Office of Workers’ Compensation Programs requested more information regarding the recurrence claim.

In a May 20, 2000 letter, appellant wrote that she was repeatedly asked to work outside her restrictions and had to stop due to pain and the medications she was taking.

In May 22, 2001 form letter, Dr. DeLaCruz indicated that appellant could return to work on May 29, 2001 with restrictions for two months.

In a June 9, 2001 letter, the Office offered and appellant accepted a job consistent with Dr. DeLaCruz's restrictions.

In a June 14, 2001 decision, the Office denied appellant's disability claim finding the medical evidence in the record lacked a rationalized explanation on how the injury worsened to the point she could not perform her restricted duties, how the two injuries were related and why the diagnosis changed.

In a June 30, 2001 letter, appellant requested reconsideration.

In a July 18, 2001 report, appellant's work restrictions were extended for two more months by the employing establishment after Dr. DeLaCruz had provided a lumbar brace.

In a September 11, 2001 report, Dr. DeLaCruz raised appellant's restrictions to include no lifting over 20 pounds and extended them for an additional two months. The employing establishment modified its job offer to reflect the new restrictions and appellant accepted on September 19, 2001.

In a September 26, 2001 decision, after a merit review, the Office denied appellant's recurrence claim finding the medical evidence lacked an explanation on how her previously accepted injuries were related to her recurrence claim or how her medical condition after April 4, 2001 worsened.

The Board finds appellant has not met her burden of proof to establish that she sustained a recurrence on April 4, 2001.

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 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 light-duty job requirements.²

Appellant has not submitted medical evidence that explains how her medical condition worsened on April 4, 2001 to the point that she could not perform her restricted duties, nor does it discuss how her medical condition on April 4, 2001 is related to her previously accepted injuries. With the exception of the flare-ups of pain nothing in the record supports that appellant's condition changed. Her diagnosis at the time the November 5, 2000 injury was accepted for a lumbar strain included an annular tear at L4-5 and small herniation at L5-S1. The diagnosis has not changed.

Dr. DeLaCruz, in his May 3, 2001 report, suggested that he was not sure appellant's pain was originating in the tear or the herniation because appellant did not describe any radicular symptoms. He wrote: "I wonder if this is more joint-musculoskeletal related. The lack of any

² *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

leg pain, numbness or parasthesias makes it very difficult for me to say that her localized back pain is the result of bilateral S1 nerve root compression, but it does not appear to significantly compress or displace the S1 nerve roots.”

Finally, there is no evidence in the record other than appellant’s statements that her job duties changed and were outside her medical restrictions. The record does reveal in several instances that the employing establishment modified its job restrictions based on medical documentation indicating the need to do so.

Absent rationalized medical evidence that appellant’s condition worsened on and after April 4, 2001 to the point she could not perform her restricted-duty position and corroborating evidence that her position duty changed the denial of recurrence must be affirmed.

The decisions of the Office of Workers’ Compensation Programs dated November 26 and June 14, 2001 are hereby affirmed.

Dated, Washington, DC
July 3, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member