

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CONCEPCION AZMITIA and U.S. POSTAL SERVICE,
CHANDLER STATION, Hollywood, CA

*Docket No. 02-2112; Submitted on the Record;
Issued January 28, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on or after April 6, 2002 causally related to her January 26, 1998 employment injury.

Appellant, a 37-year-old carrier technician, filed a notice of traumatic injury on January 26, 1998 alleging on that date she was struck by an automobile in the performance of duty. Appellant did not stop work. The Office of Workers' Compensation Programs accepted appellant's claim for low back strain and lower leg abrasion on February 12, 1998.

Appellant filed a notice of recurrence of disability on April 6, 2002 alleging that due to her January 26, 1998 employment injury she was experiencing a lumbosacral strain. In a letter dated May 2, 2002, the Office requested additional factual and medical evidence. By decision dated June 28, 2002, the Office denied appellant's claim for recurrence of disability as she failed to submit the necessary supportive medical evidence.¹

The Board finds that appellant failed to meet her burden of proof in establishing a recurrence of disability on or after April 6, 2002 as causally related to her January 26, 1998 employment injury.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability commencing on or after April 6, 2002 and her January 26, 1998 employment injury.² This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and

¹ Following the Office's June 28, 2002 decision, appellant submitted additional evidence. As the Office did not review this evidence in reaching a final decision, the Board will not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

² *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.³

Appellant's supervisor, Kevin McClendon, submitted statements dated April 15 and April 17, 2002. Mr. McClendon stated that on March 23, 2002 appellant was limping while at work. She reported low back pain and attributed this condition to kidney stones. He also noted that appellant sustained a work-related dog attack on March 26, 2002 which resulted in an abrasion. Mr. McClendon stated that appellant reported that the dog attack worsened her back condition.

In her claim for recurrence of disability, appellant reported that she was involved in a motor vehicle accident on February 6, 2001. In a statement dated April 15, 2002, appellant asserted that her low back pain for which she sought treatment on October 19, 2001 was due to her January 26, 1998 employment injury. On May 27, 2002 appellant completed a narrative statement and reported back pain with activities including walking quickly or twisting. She also noted that she sustained a dog bite on October 29, 1999 and that she underwent surgery for kidney stones on May 5, 2002. Appellant attributed her current condition to her accepted employment injury as she was experiencing the same lower back pain as well as sharp, burning pain going down to her left knee and heel.

On October 23, 2001 Dr. John Harbaugh, a Board-certified family practitioner, completed a report and noted that appellant "pulled the blue bag and strained my back." He diagnosed right thoracic strain and lumbosacral strain. Dr. Harbaugh further noted that appellant reported that her left lower back pain worsened three months ago with a cumulative onset. He noted that appellant was in a car accident and hurt the left side of her neck in April 2001. Dr. Harbaugh released appellant to return to work without restriction. This report does not support appellant's claim for a recurrence of disability due to her 1998 employment injury. Dr. Harbaugh indicated that appellant experienced a separate incident of pulling a blue bag and further noted that her back pain had a cumulative onset. As Dr. Harbaugh did not relate appellant's current condition to her accepted employment injury, his report is not sufficient to meet appellant's burden of proof.

Dr. Harbaugh's October 23, 2001 report is the only medical evidence before the Board. This report does not provide a complete history of injury and does not relate appellant's current condition to her accepted employment injuries of 1998. Without the necessary rationalized medical opinion evidence establishing a causal relationship between appellant's diagnosed condition in 2001 and her accepted employment injury of 1998, appellant has not met her burden of proof and the Office properly denied her claim.⁴

³ See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁴ A recurrence of disability is defined as the 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. See 20 C.F.R. § 10.5(x). In the present case, the medical evidence attributes appellant's disability commencing April 1, 2002 to a new incident in which appellant pulled at a blue bag rather than the accepted 1998 injury.

The June 28, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 28, 2003

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member