

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

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**OXANA M. MOUSHLIAN, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Buffalo, NY, Employer**

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**Docket No. 03-2279  
Issued: January 27, 2004**

*Appearances:*  
*David W. Covino, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
DAVID S. GERSON, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On September 22, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 6, 2003 denying her recurrence of total disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant sustained a recurrence of total disability on May 25, 2001 causally related to her October 8, 1999 employment injury.

**FACTUAL HISTORY**

On October 8, 1999 appellant, then a 48-year-old mail processor, filed a claim for a traumatic injury alleging that on that date she injured her back and left leg and hip, when she

lifted a tray of mail. She stopped work on October 9, 1999 and returned to work on November 9, 1999 in a light-duty capacity with no lifting over 15 pounds and standing limited to one hour. On November 4, 1999 the Office accepted appellant's claim for a lumbosacral sprain. On November 15, 2000 the Office accepted appellant's claim for a recurrence of disability on August 25, 2000.<sup>1</sup>

In a report dated December 12, 2000, Dr. D. Paul Garg, appellant's attending family practitioner, indicated that she could perform light duty.

In a report dated January 25, 2001,<sup>2</sup> Dr. Kenneth F. Munroe, a chiropractor, stated that appellant was under his care for her October 8, 1999 low back injury through November 29, 2000. He indicated that x-rays revealed spinal subluxations at the L3-5 levels. Dr. Munroe stated that appellant responded well to her chiropractic regime until her return to work on October 26, 2000.<sup>3</sup> He noted that she had an increase in symptomatology upon her return to work but stopped her chiropractic care on November 29, 2000.

On June 4, 2001 appellant filed a claim for a recurrence of total disability on May 25, 2001. She indicated that when she awoke on May 25, 2001 her back and left leg pain was so severe that she could barely sit, drive or take a shower.

In notes dated May 7, 2001 for a routine visit, Dr. Garg stated that appellant continued to have back pain and her spine was tender. He recommended light-duty work and physical therapy for two months. On May 30, 2001 he noted that appellant was having abdominal pain that was "the same feeling as back pain" that radiated to her shoulders and hips. Dr. Garg recommended that appellant consult Dr. Teter again and be off work for four weeks. In June 27, 2001 notes for a routine visit, Dr. Garg noted that appellant had mild and diffuse back pain, had been seeing a chiropractor and performing light duty. He recommended that she continue to see her chiropractor and be off work for four weeks.

By decision dated August 20, 2001, the Office denied appellant's claim for a recurrence of total disability on May 25, 2001.

On September 18, 2001 appellant requested a hearing that was held on March 21, 2002. By decision dated and finalized June 17, 2002, an Office hearing representative affirmed the Office's August 20, 2001 decision.

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<sup>1</sup> In a report dated August 25, 2000, Dr. James Teter, a neurologist, stated that appellant had to take a long car ride and was without chiropractic treatment for about a month resulting in increased back and left leg pain. On November 20, 2000 Dr. Teter opined that appellant could perform light duty.

<sup>2</sup> The report is dated January 25, 2000, but it is clear from the context of the report that the correct date is January 25, 2001.

<sup>3</sup> As noted above, appellant sustained a recurrence of disability on August 25, 2000.

On July 31, 2002 appellant requested reconsideration and submitted additional evidence. In a March 25, 2002 report, Dr. Garg stated that when he examined appellant on May 7, 2001 she had low back pain but was able to perform light-duty work. He stated that on May 30, 2001 appellant had increased back pain and tenderness on palpation and was totally disabled. Dr. Garg indicated that he had reviewed a June 21, 2001 report<sup>4</sup> of Dr. Munroe, who found low back muscle spasm, worsened low back pain, decreased low back range of motion and a positive Valsalva test. He stated:

“Dr. Munroe’s notes are consistent with a patient who has suffered a recurrence. It is also significant that [appellant] did not feel the need to see her chiropractor for her low back pain from November 29, 2000 until after the May 25, 2001 recurrence. This suggests that her low back pain was under control until the May 25, 2001 recurrence.

“My records indicate that [appellant’s] back had continued to trouble her from the original injury on October 8, 1999 to the May 25, 2001 recurrence. She suffered an accepted recurrence on August 25, 2000 showing her back injury had become chronic. It is not surprising that the light[-]duty work she was doing for the [employing establishment] would exacerbate her back injury. As a result of [appellant’s] injury, herself doing only light[-]duty work, I believe she is totally disabled.

“For these reasons, I believe that on May 25, 2001, [appellant] suffered a recurrence of her original, accepted back injury of October 8, 1999.”

By decision dated August 6, 2003, the Office denied modification of its June 17, 2002 decision.<sup>5</sup>

### **LEGAL PRECEDENT**

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 either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.<sup>6</sup>

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<sup>4</sup> This report is not of record.

<sup>5</sup> Appellant submitted additional evidence subsequent to the Office decision of August 6, 2003. However, the jurisdiction of the Board is limited to the evidence that was before the Office at the time it issued its final decision. See 20 C.F.R. § 501.2(c). The Board may not review this evidence for the first time on appeal.

<sup>6</sup> *Cynthia M. Judd*, 42 ECAB 246 (1990); *Stuart K. Stanton*, 40 ECAB 859 (1989); *Terry R. Hedman*, 38 ECAB 222 (1986).

## ANALYSIS

Following her October 8, 1999 employment-related lumbosacral strain, appellant returned to work in a light-duty capacity with no lifting greater than 15 pounds and standing limited to one hour. She filed a claim for a recurrence of total disability on May 25, 2001.

In a report dated December 12, 2000, Dr. Garg indicated that appellant could perform light duty. In notes dated May 7, 2001, he stated that appellant continued to have back pain and recommended light-duty work and physical therapy for two months.

On May 30, 2001 Dr. Garg noted that appellant was having abdominal pain that was “the same feeling as back pain” that radiated to her shoulders and hips. Dr. Garg recommended that appellant consult Dr. Teter and be off work for four weeks. On June 27, 2001 Dr. Garg noted that appellant had mild and diffuse back pain and recommended that she continue to see her chiropractor and be off work for four weeks. However, in these notes Dr. Garg did not provide a well-reasoned medical opinion explaining how appellant’s employment-related lumbosacral strain had worsened such that she could not perform her light-duty position. Therefore, his May 30 and June 27, 2001 notes are not sufficient to establish that appellant sustained a recurrence of total disability on May 25, 2001 causally related to her October 8, 1999 employment injury.

In a March 25, 2002 report, Dr. Garg stated that when he examined appellant on May 7, 2001 she had low back pain but was able to perform light-duty work. He stated that on May 30, 2001 appellant had increased back pain and tenderness on palpation and was totally disabled. Dr. Garg indicated that he had reviewed a June 21, 2001 report of Dr. Munroe, who found low back muscle spasm, worsened low back pain, decreased low back range of motion and a positive Valsalva test and he stated that Dr. Munroe’s notes were consistent with a patient who has suffered a recurrence. However, Dr. Garg did not address his own physical findings. He stated that appellant’s back had continued to trouble her from the October 8, 1999 employment injury to May 25, 2001 and that it was “not surprising” that the light-duty work she was performing would exacerbate her back injury and cause her to be totally disabled. However, Dr. Garg did not explain how the specific requirements of appellant’s light-duty position had changed such that she was unable to perform that position. Nor did he provide a rationalized medical opinion explaining how appellant’s accepted lumbosacral strain had worsened such that she could not perform her light-duty position. Therefore, his March 25, 2002 report is insufficient to establish that appellant sustained a recurrence of total disability on May 25, 2001 causally related to her October 8, 1999 employment injury.

## CONCLUSION

As appellant failed to provide medical evidence establishing a change in the nature and extent of her injury-related condition or a change in the nature and extent of her light-duty job requirements such that she was unable to perform her light-duty position, she failed to meet her burden of proof to establish that her recurrence of disability after May 25, 2001 was causally related to her accepted employment injury on October 8, 1999.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 6, 2003 is affirmed.

Issued: January 27, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member