

DENISE MOORE, Appellant

and

**U.S. POSTAL SERVICE, AIRPORT POSTAL
FACILITY, Jamaica, NY, Employer**

Case Submitted on the Record

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

On November 26, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 27, 2003, wherein the Office determined that appellant's claim for recurrence would be treated as a claim for occupational disease and as such, appellant was not entitled to continuation of pay.

The issues are: (1) whether appellant's claim was properly treated as a new claim for occupational disease rather than a recurrence of disability due to her March 11, 2001 injury; and (2) whether appellant was entitled to continuation of pay.

On March 11, 2001 appellant filed a traumatic injury claim, alleging that on March 10, 2001 she slipped on a piece of fish and fell, thereby hitting her elbow, twisting her back and hitting her left foot. By letter dated June 18, 2001, appellant's claim was accepted for left ankle strain and costochondritis.

On January 27, 2003 appellant filed a claim for a recurrence of disability due to the March 10, 2001 employment injury. She noted that she never felt normal on her left side since the injury. In statements submitted after the claim was filed, appellant indicated that she believed her current condition was causally related to her initial injury. Appellant noted that she was doing a lot of lifting when the injury recurred. She also submitted a statement signed by three colleagues stating that the bags which she was lifting were very heavy, weighing at times more than 70 pounds. In further support of her claim, appellant submitted medical reports by Dr. Julie Patel-Pannullo, a Board-certified internist. In a note dated January 27, 2003, Dr. Patel-Pannullo indicated that appellant was being treated for costochondritis of the left upper chest and left trapezius muscle. She indicated that appellant may return to light duty on February 3, 2003 and on February 10, 2003 may resume full duty. On February 10, 2003 Dr. Patel-Pannullo indicated that appellant may now return to work with no restrictions.

By letter dated January 29, 2003, the employing establishment argued that appellant's case was not a recurrence, but an occupational disease claim.

By letter dated March 21, 2003, the Office requested that appellant submit information in support of her claim that her current injury was a recurrence of the March 10, 2001 employment injury. In response appellant submitted a March 26, 2003 report from Dr. Patel-Panullo, wherein she indicated:

"This letter is in reference to [appellant's] recent absence from work from January 27, 2003 to February 30, 2003. She had left shoulder and left upper chest pain. She had left trapizeus (sic) muscle spasm and exacerbation of costochondritis due to the lifting at work. [Appellant] had an injury on the job on March 11, 2001 with left shoulder pain and costochondritis. It is my opinion she currently had an exacerbation of this injury. She was treated with Naprosyn (sic), Flexoril and rest."

Appellant also submitted answers to questions propounded by the Office and indicated that she returned to work on April 20, 2001 and that her present condition was caused by nine months of doing a lot of heavy lifting in her federal employment.

In a statement dated April 16, 2003, appellant's supervisor indicated that employees are instructed not to attempt to lift any bags that they think are too heavy.

On August 5, 2003 the Office accepted appellant's claim for recurrence for costochondritis.

By decision dated August 27, 2003, the Office found that appellant's claim for recurrence was, in fact, a claim for occupational disease and that as such, appellant was not entitled to continuation of pay.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability is defined as a spontaneous, material change, demonstrated by objective findings, in the previous employment-related injury or condition without an intervening injury or new exposure to factors causing the original injury or condition.¹ A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which she claims compensation is causally related to the accepted employment injury.² To meet this burden of proof, a claimant must furnish medical evidence from a physician, who on the basis of a complete factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.³

An occupational disease is distinguished from a traumatic injury and defined “as a condition produced by the work environment over a period longer than a single workday or shift.”⁴

ANALYSIS -- ISSUE 1

In the instant case, the Office properly changed appellant’s claim for a recurrence of disability into a claim for occupational disease. The only evidence that linked appellant’s current condition to her March 11, 2001 employment injury was Dr. Patel-Panullo’s March 26, 2003 note wherein she indicated that appellant currently had an exacerbation of the March 11, 2001 employment injury. However, Dr. Patel-Panullo does not provide a rationalized explanation as to why this was an exacerbation of her previous injury and not a new injury. In fact, the evidence clearly indicates that this is a new injury, caused by lifting over a period of time that was greater than one day. In fact, in answer to the questions asked by the Office, appellant indicated that her injury occurred as a result of nine months of doing a lot of heavy lifting. There is no indication that a specific event occurred that would make this a claim for a traumatic injury. Accordingly, the Office properly treated appellant’s case as a new occupational disease claim.

LEGAL PRECEDENT -- ISSUE 2

Section 8118⁵ of the Federal Employees’ Compensation Act provides for payment of continuation of pay, not to exceed 45 days, to an employee “who has filed a claim for a period of wage loss due to traumatic injury with his immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of the title.”⁶ The regulation

¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(1)(a) (May 1997).

² *Kenneth R. Love*, 50 ECAB 193, 199 (1998)

³ *Carmen Gould*, 50 ECAB 504 (1999); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

⁴ 20 C.F.R. § 10.5(a).

⁵ 5 U.S.C. § 8118.

⁶ Section 8122(a)(2) provides that written notice of injury must be given as specified in section 8119, which provides for a 30-day time limitation for filing a claim of traumatic injury. 5 U.S.C. § 8119(a)(c) and 8122(a)(2).

implementing the Act provide that an employee is not entitled to continuation of pay unless the employee has sustained a traumatic injury.⁷

Furthermore, the regulation indicate that when an employee who recovers from disability and returns to work and then becomes disabled again and stops work, the employer shall pay any of the 45 days of entitlement to continuation of pay not used during the initial period of disability where: (a) the employee completes Form CA-2a and elects to receive regular pay; (b) the Office did not deny the original claim for disability; (c) the disability recurs and the employee stops work within 45 days of the time the employee first returned to work following the initial period of disability; and (d) pay has not been continued for the entire 45 days.⁸

ANALYSIS -- ISSUE 2

As stated previously, appellant's claim was properly determined to be an occupational disease claim, as appellant did not establish that the injury occurred on a single date or work shift, therefore, appellant is not entitled to continuation of pay. The Board further notes that appellant was not entitled to continuation of pay even if she had a recurrence, as her alleged injury occurred after she had been working for over 9 months and that, therefore, she did not stop working within 45 days of her return to work, as required by the regulation.

CONCLUSION

Appellant's claim for continuation of pay was properly denied and appellant's case was properly treated as an occupational disease claim.

⁷ 20 C.F.R. § 10.201(a).

⁸ 20 C.F.R. § 10.207.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 27, 2003 is affirmed.

Issued: June 1, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member