

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

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**GINA RICCIO, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
West Memphis, AR, Employer**

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**Docket No. 03-1594  
Issued: March 16, 2004**

*Appearances:*  
*Kathleen L. Caldwell, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
WILLIE T.C. THOMAS, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On June 6, 2003 appellant filed a timely appeal from the decision of the Office of Workers' Compensation Programs dated March 13, 2003. 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 disability beginning June 14, 1996 causally related to a September 21, 1990 employment injury.

**FACTUAL HISTORY**

On September 21, 1990 appellant, then a 48-year-old clerk, filed a traumatic injury claim alleging that on that date she twisted her leg while walking across the floor at work. Appellant's claim was accepted for right hip sprain, lumbar strain and herniated nucleus pulposus L5. Appellant received continuation of pay until her return to work on October 16, 1990. Appellant sustained a recurrence on April 18, 1991. Appellant underwent back surgery in September 1991. Appellant returned to work as a modified distribution clerk for four hours a

day on March 18, 1995. By decision dated August 7, 1995, the Office determined that this position fairly and reasonably represented appellant's wage-earning capacity.

On June 19, 1996 appellant filed a claim for a recurrence, alleging a recurrence as of June 14, 1996. Appellant noted that her pain had increased due to the turning and twisting involved with sorting mail. The employing establishment reported that appellant stopped work on June 14, 1996.

The Office referred appellant to Dr. James Galyon, a Board-certified orthopedic surgeon, for a second opinion.<sup>1</sup> In a medical report dated November 27, 1998, Dr. Galyon indicated:

"I do not know if there has been any material worsening of the patient's condition since June 14, 1996. I do not feel that she has improved or that she will improve. I do believe that disc disease is progression in deterioration with people who are not willing or motivated to improve their general health. I do believe that her gross obesity is a decided factor in her failure to improve. I do not believe that she is able to perform the duties of her modified job and I believe that that probably would relate to the time when she stopped working in June 1996. That seems appropriate for me. I know of no other nonwork-related condition that would have any significant bearing on her employment. Even if she has some mild hypertension, that usually does not prevent people from working. I think that her obesity is a major factor in the persistence of her back pain and the radiculopathy for which she now complains. I do believe that [appellant] is totally disabled. I do not believe she is able to resume duties of that modified position because twisting, turning, and even sitting for four hours is painful to her to the point that she is not able to do her duties properly."

In response to questions from the Office, in a note dated December 16, 1998, Dr. Galyon indicated:

"I do not believe that my answers are inconsistent. While I do believe that this patient could sit two hours at a time working and spend one hour standing, pushing, pulling, and lifting or even thirty minutes of twisting during a workday, I know of few occupations that one could work a choice of any of those, either two hours of sitting or one hour of standing, walking, pushing, pulling, lifting and twisting. I did not mean this accumulative, I meant that she could do any of these options, but I still believe from a practical point of view, that renders this woman unemployable and therefore disabled in my estimate."

In response to further questions from the Office, by letter dated January 29, 1999, Dr. Galyon responded:

"First, I do not believe there has been any material worsening of the patient's back condition after June 14, 1996. I do believe there is a considerable likelihood

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<sup>1</sup> The Office indicated it had previously referred appellant to two physicians for second opinions, but that the reports from these physicians did not address the issues.

that she can be improved if she will lose weight, but as of this time I see no evidence of material worsening. I find no physical evidence or historical evidence that she is any more disabled or injured now than she was prior to the episode of June 14, 1996. I believe the restrictions imposed were because of the persistent, not worsened, back injury. I believe that those who have a disc problem or a severe lumbrosacral strain should be limited in their physical activities because of the great likelihood of reinjury.”

In a February 16, 1999 report, Dr. Kevin T. Foley, a Board-certified neurosurgeon, indicated that appellant had a history of constant low back pain that is nonmechanical in nature, and radiates into both legs, right greater than left. He indicated that appellant had tenderness in her low back consistent with myofascial back pain and a limited range of motion of her lumbar spine due to pain.

By decision dated March 31, 1999, appellant’s claim was denied because the Office found that the evidence failed to demonstrate that the claimed recurrence of disability was causally related to the injury of September 21, 1990.

Subsequently, appellant submitted a January 8, 1999 report by Dr. Rodney G. Olinger, a Board-certified neurosurgeon, wherein he indicated that appellant’s examination basically showed some lumbar tightness and localized tenderness over the lower lumbar spinous processes.

On April 15, 1999 appellant requested an oral hearing. At the hearing, held on October 27, 1999, appellant testified that she had greater pain now than in September 1990 and that she returned to work in March 1994 and worked until June 13, 1996, when she indicated that she “just couldn’t go anymore.” She noted that on February 28, 1997 she lasted a little over an hour before the pain became too great and she had to go home. Appellant indicated that, since September 1990, she has had no other injuries. Appellant noted that she was not contending that her limited-duty assignment changed, but rather contends that her condition changed to the point where she could not work anymore.

At the hearing, appellant submitted an October 6, 1999 report by her treating Board-certified neurosurgeon, Dr. Thomas D. Weems, who indicated that, in recent years, appellant has had increasing difficulty with her back which, in his opinion, prevents her from resuming any kind of work. Appellant also submitted a December 19, 1996 report wherein Dr. Weems indicated that appellant’s condition had worsened. He noted that he did not expect that the pain would ever be resolved.

By decision dated January 21, 2000, the hearing representative affirmed the March 31, 1999 decision denying appellant’s claim for a recurrence.

By letter dated January 21, 2001, appellant requested reconsideration. In support thereof, appellant submitted a May 18, 2001 report by Dr. Olinger, wherein he indicated that he had not seen appellant since 1999. Appellant further submitted a February 5, 2001 report by Dr. Waleed Qaisi, a Board-certified radiologist, wherein he interpreted appellant’s outside studies. He indicated that the study of July 10, 1996 demonstrated no change in the probable scar formation

surrounding the existing left-sided nerve root at L5-S1. He noted that a persistent diffuse bulge at L4-5 is again noted though the central herniations component has resolved. Dr. Qaisi further noted that the study of September 18, 1997 demonstrated no significant change from July 10, 1996. By decision dated January 16, 2002, modification was denied as the Office found that the evidence submitted in support of the application was not sufficient.

By letter dated January 14, 2003, appellant again requested reconsideration. In support thereof, appellant submitted a January 15, 2003 report by Dr. Mary Margaret Hurley, an orthopedic surgeon, indicating that appellant is seeing her for lumbar degenerative joint disease following an accident in 1990, and that, at this point, her back pain limits daily functions to less than 30 minutes at a time. Appellant also submitted an August 14, 2002 report from Dr. Weems wherein he indicated, "It is my medical opinion that the difficulty [appellant] has with her lumbar spine is the result of the injury which occurred on September 21, 1990."

By decision dated March 13, 2003, the Office denied modification of the January 16, 2002 decision.

### **LEGAL PRECEDENT**

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which he claims compensation is causally related to the accepted injury.<sup>2</sup> This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>3</sup>

### **ANALYSIS**

The Board finds that appellant has failed to submit rationalized medical opinion evidence linking her alleged recurrence as of June 14, 1996 to her accepted employment injury of September 21, 1990. The medical reports of Drs. Foley, Olinger and Qaisi do not discuss the alleged recurrence or worsening of appellant's condition. Dr. Weems opined that appellant's increasing difficulty with her lumbar spine is the result of the injury which occurred on September 21, 1990. However, he does not mention any recurrence as of June 14, 1996. Dr. Galyon admitted that he did not know if there was any material worsening of appellant's condition since June 14, 1996. He did note that appellant was not able to perform the duties of her modified job at the time she stopped working in June 1996; however, he made no reference to a worsening of her condition. He further opined that appellant's obesity was a major factor in the persistence of her back pain. Dr. Galyon indicated that he did not believe that appellant's new restrictions were imposed because of a worsened back injury but rather due to a persistent back condition. Therefore, he does not affirmatively demonstrate that appellant sustained a

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<sup>2</sup> *Jose Hernandez*, 47 ECAB 288, 293-94 (1996).

<sup>3</sup> *Helen K. Holt*, 50 ECAB 279, 282 (1999).

recurrence of her injury on June 14, 1996. Finally, Dr. Hurley does not mention any recurrence in 1996.

**CONCLUSION**

Under the circumstances described above, the Board finds that the Office properly determined that appellant had not proven that she sustained a recurrence of her September 21, 1990 employment injury commencing June 14, 1996.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 13, 2003 is affirmed.

Issued: March 16, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member