

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIA CUNNINGHAM and U.S. POSTAL SERVICE,
POST OFFICE, Gary, Ind.

*Docket No. 96-1721; Submitted on the Record;
Issued December 16, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish a recurrence of disability on or after December 29, 1989 causally related to her accepted employment injuries.

This is the second time this case has been on appeal. In a January 17, 1995 decision, the Employees' Compensation Appeals Board found that appellant had not shown a change in the nature of her light-duty job and that the medical evidence was insufficient to sustain her burden of establishing that she sustained a recurrence of total disability on or after December 28, 1989 causally related to her accepted August 22 and September 18, 1987 and June 28, 1988 employment injuries which rendered her disabled for her light-duty job.¹

Following issuance of the Board's decision, appellant requested reconsideration of her claim by the Office on January 16, 1996. The Office received appellant's reconsideration request on January 18, 1996.

In support of her reconsideration request, appellant submitted a letter which summarizes, criticizes, and expresses her disagreement with the factual and medical evidence of record, complains about her medical condition and financial resources, accuses her past employer of submitting "false" information regarding her arrest and incarceration, etc.

Appellant submitted a May 24, 1995 medical report from Dr. John A. Hoehn, an osteopathic physician. Dr. Hoehn wrote that appellant had been his patient since July 9, 1991 for chronic low back pain/upper back pain with intermittent radiation of the pain down her left leg. Dr. Hoehn stated that appellant's low back pain syndrome is probably due to a central lumbar disc with a chronic lumbar strain pattern. Dr. Hoehn stated that since he did not evaluate appellant before July 9, 1991, he could not determine whether appellant's back pain was the result of work injuries, her car accident or as the result of some other type of trauma as stated in her disability file.

¹ A complete procedural history is set forth in the Board's January 17, 1995 decision.

Also submitted were copies of computerized tomography (CT) scans of the spine from 1988, 1990 and 1991 which reveal a herniated disc at L4-5 and office medical notes from the Orthopedic Centers and from Orthopedics, Inc. of Indiana for 1989 and 1990 which revealed examination findings pertaining to her lumbosacral condition.

In a decision dated February 5, 1996, the Office performed a merit review of the case and found that the evidence submitted in support of the reconsideration request was not sufficient to warrant modification of the decision dated January 17, 1995.

The Board finds that appellant failed to sustain her burden of proof in establishing that she sustained a recurrence of disability on or after December 29, 1989 causally related to her accepted employment injuries.

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 of establishing by the weight of the substantial, reliable and probative evidence that the disabling condition for which compensation is sought is causally related to the accepted employment injury 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 requirements.² This burden additionally includes the necessity of furnishing 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 the conclusion with sound medical reasoning.³ The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁴ Neither the fact that the condition became apparent during a period of employment nor the claimant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.⁵

In this case, the most recent merit decision of record denied appellant's claim for a recurrence of disability on or after December 29, 1989 as appellant did not show a change in the nature of her light duty and the medical evidence of record did not establish a change in the nature or extent of appellant's work-related lumbar strain which supports the claim for recurrence of total disability on or after December 29, 1989.⁶

Although Dr. Hoehn's May 24, 1995 report supports the fact that appellant suffers from a back condition, his report fails to render an opinion on whether appellant was disabled from her light-duty job beginning December 29, 1989 due to her accepted work injuries. Dr. Hoehn

² *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

³ *Herman W. Thorton*, 39 ECAB 875, 887 (1988); *Henry L. Kent*, 34 ECAB 361, 366 (1982); *Steven J. Wagner*, 32 ECAB 1446 (1981).

⁴ *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

⁵ *Bruce E. Martin*, 35 ECAB 1090, 1093 (1984); *Dorothy P. Goad*, 5 ECAB 192, 193 (1952).

⁶ It should be noted that appellant was terminated from her light-duty job on February 9, 1990 for misconduct.

specifically stated that he could not make a determination on the cause of appellant's back pain as he did not evaluate her before July 1, 1991. Thus, Dr. Hoehn's May 24, 1995 report is insufficient to meet appellant's burden of proof.

Although the CT scans and office notes further support appellant's claim that she suffers from a back condition, they fail to shed light with regard to the issue of whether appellant had a recurrence of disability beginning December 29, 1989. Moreover, the information contained in the CT scans and office notes essentially reiterate material in the record which was previously considered at the time of the January 17, 1995 decision.

Thus, as none of the evidence appellant submitted on reconsideration contain an opinion explaining how or why appellant's total disability on or after December 29, 1989 is causally related to her accepted injuries or support a change in the nature of her light duty, appellant has failed to discharge her burden of proof.

The decision of the Office of Workers' Compensation Programs dated February 5, 1996 is affirmed.

Dated, Washington, D.C.
December 16, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member