

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of SHIRLEY A. TOSCA and U.S. POSTAL SERVICE,  
BENJAMIN ROAD ANNEX, Tampa, Fla.

*Docket No. 96-397; Submitted on the Record;  
Issued February 13, 1998*

---

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant sustained a recurrence of disability for the period May 15, 1991 through February 10, 1992 causally related to her April 15, 1991 employment injury.

This is the second appeal in this case.<sup>1</sup> By decision issued April 22, 1994, the Board affirmed the Office of Workers' Compensation Programs' October 15, 1992 decision denying wage-loss benefits but reversed the Office's November 17, 1992 decision terminating appellant's medical benefits. The facts of this case are more fully set forth in that decision of the Board and are herein incorporated by reference.

On April 15, 1991 appellant, then a 41-year-old automated markup clerk, sustained a lumbosacral strain in the performance of duty. Her claim for a recurrence of disability for the period May 15, 1991 to February 10, 1992 was denied by the Office and she appealed to the Board.

By letter dated November 21, 1994, following the Board's April 22, 1994 decision, appellant requested reconsideration of the denial of her claim for lost wages for the period May 15, 1991 to February 10, 1992 and she submitted additional medical evidence.

In a disability certificate dated February 10, 1992, Dr. Francisco B. Gomes, a Board-certified neurosurgeon, indicated that appellant was able to return to full duty.

By decision dated January 10, 1995, the Office denied modification of its April 22, 1994 decision.

By letter dated February 23, 1995, through her congressional representative, appellant requested reconsideration of the denial of her claim. She submitted no new evidence.

---

<sup>1</sup> See Docket No. 93-835.

By decision dated March 17, 1995, the Office denied appellant's request for further merit review of her claim.

By letter dated April 29, 1995, appellant requested reconsideration of the denial of her claim and submitted additional evidence.

In a form report dated April 3, 1995, Dr. Mouradi B. Elchahal, a Board-certified internist, indicated that appellant was able to perform her regular work.

By decision dated August 31, 1995, the Office denied appellant's request for further merit review of her claim.

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a recurrence of disability for the period May 15, 1991 through February 10, 1995 causally related to her April 15, 1991 employment injury.

As used in the Federal Employees' Compensation Act,<sup>2</sup> the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of the injury.<sup>3</sup> When an employee claims a recurrence of disability due to an accepted employment injury, he has the burden of establishing by the weight of the reliable, probative, and substantial medical evidence that the recurrence claimed is causally related to an accepted employment injury.<sup>4</sup> As part of this burden, the employee must submit rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the current disabling condition and the accepted employment injury.<sup>5</sup> Causal relationship is medical in nature and can be established only by medical evidence.<sup>6</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>7</sup>

In this case, appellant sustained an employment-related lumbosacral strain on April 15, 1991 and subsequently claimed that she sustained a recurrence of disability for the period May 15, 1991 to February 10, 1992 which she attributed to her April 15, 1991 employment injury. Following the Board's decision dated April 22, 1994 affirming the Office's denial of appellant's claim of a recurrence of disability for the period May 15, 1991 to February 10, 1992,

---

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 20 C.F.R. § 10.5(17); *Richard T. DeVito*, 39 ECAB 668, 674 (1988); *Frazier V. Nichol*, 37 ECAB 528, 540 (1986).

<sup>4</sup> 20 C.F.R. § 10.121(a); *see also Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

<sup>5</sup> *E.g., Kevin J. McGrath*, 42 ECAB 109, 116 (1990); *Herman W. Thornton*, 39 ECAB 875, 887 (1988); *Dennis E. Twardzik*, 34 ECAB 536, 542 (1983); *see* 20 C.F.R. § 10.110(a).

<sup>6</sup> *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

<sup>7</sup> *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

only two new medical reports were submitted by appellant. Because the Board has considered the previous medical evidence in its prior decision, only the two new medical reports will be addressed in this Board decision.

In a disability certificate dated February 10, 1992, Dr. Gomes, a Board-certified neurosurgeon, indicated that appellant was able to return to full duty. As Dr. Gomes did not address the issue of whether appellant sustained a recurrence of disability for the period May 15, 1991 to February 10, 1992 causally related to her April 15, 1991 employment injury, this report is not sufficient to establish that appellant sustained an employment-related recurrence of disability for that period.

In a form report dated April 3, 1995, Dr. Elchahal, a Board-certified internist, indicated that appellant was able to perform her regular work. As Dr. Elchahal did not address the issue as to whether appellant had any employment-related disability for the period May 15, 1991 to February 10, 1992, this report is insufficient to establish that she sustained an employment-related recurrence of disability.

The decisions of the Office of Workers' Compensation Programs dated August 31, March 17 and January 10, 1995 are affirmed.

Dated, Washington, D.C.  
February 13, 1998

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member