

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EMMA McDONNELL and U.S. POSTAL SERVICE,  
POST OFFICE, Fort Worth, Tex.

*Docket No. 96-191; Submitted on the Record;  
Issued January 15, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether the appellant sustained a recurrence of disability beginning November 12, 1994 causally related to her accepted June 24, 1992 employment injury.

On July 22, 1992 appellant, a 42-year-old letter carrier, filed a Form CA-2 claim for benefits based on occupational disease, alleging that she experienced pain and numbness in her right shoulder and right arm due to the repetitive motions of lifting trays, carrying a mail bag and opening and shutting her mail truck door. Appellant stated that she began experiencing these symptoms on June 15, 1991, and that she believed they were causally related to employment factors as of June 24, 1992. Appellant was placed on light duty on June 24, 1992 and was diagnosed as having cervical radiculopathy secondary to disc herniation by Dr. Stephen E. Farmer, a neurologist and osteopath, on July 24, 1992, based on the results of a computerized axial tomography (CT) scan and a magnetic resonance imaging (MRI) scan.<sup>1</sup> Dr. Farmer stated:

“It would appear that [appellant’s] condition is without question aggravated by her present employment which consists of her lifting trays of mail and maneuvering these from one location to another.... The long term nature of this over approximately two years would additionally raise the question with [appellant] having previously been a letter carrier and the weight of the mail bag whether this may have played an initial role in the causation of the disc herniation; however, this is more difficult to ascertain.”

Appellant was referred to Dr. John D. Reeves, a Board-certified neurosurgeon, who performed a cervical discectomy on appellant on February 5, 1993. Dr. Reeves released

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<sup>1</sup> Appellant’s CT scan and MRI results indicated she had bulging of the annulus fibrosis at the C5-6 level with mild spinal stenosis as well as central moderate sized disc herniation at the C6-7 level. Dr. Farmer’s progress notes dated November 21, 1991 indicate that appellant underwent an MRI at that time which demonstrated some subtle disc herniation at the C6-7 level in the midline.

appellant to return to part-time work on March 22, 1993 and full-time work on July 13, 1993. In a report dated July 13, 1993, Dr. Reeves stated there was no way to tell with absolute certainty that her neck and shoulder problems were secondary to the duties of her job, but that with the repetitive arm motion associated with postal work as well as the fact that she carried a postal bag for two years, one could reasonably surmise that carrying a postal bag had something to do with her current set of complaints. Appellant attempted to return to work on light duty, but her restrictions were ultimately increased to the extent of permanency and the employing establishment discharged her on April 20, 1994 based on her physical inability to perform the duties of her position. The employing establishment stated that her restrictions were such that she was unable to meet the requirements of any other available position in the office. The employing establishment further stated that because appellant had been offered and had rejected disability retirement it had no alternative but to discharge her.

Appellant's claim was accepted by the Office on July 21, 1994 for a cervical strain and aggravation of degenerative disc disease.

Appellant subsequently filed 16 Form CA-8 claims, seeking compensation for wage loss on the following dates: September 3 to 16, 1994; September 17 to 30, 1994; October 1 to 14, 1994; October 15 to 28, 1994; October 29 to November 11, 1994; November 12 to 25, 1994; November 26 to December 9, 1994; December 10 to 23, 1994; December 24, 1994 to January 6, 1995; January 7 to 20, 1995; January 21 to February 3, 1995; February 4 to 17, 1995; March 4 to March 17, 1995; March 18 to 31, 1995; April 1 to 14, 1995 and April 15 to 28, 1995.<sup>2</sup>

By letters dated November 14, December 19, December 30, 1994, June 30 and July 3, 1995, the Office informed appellant that it required medical evidence supporting her claim that the claimed condition or disability allegedly occurring on the specified dates was causally related to employment factors.

In response, appellant submitted a December 8, 1994 medical report from her treating physician, Dr. Hulen J. Cook, a Board-certified family practitioner, who examined appellant on November 17, 1994. Dr. Cook stated that appellant complained of neck pain which radiated down her right arm with associated headaches; appellant also stated that when she stayed still at home she felt better but that increased activity caused increased pain. Dr. Cook noted that while appellant's condition had temporarily improved following surgery she "has had more trouble recently." Dr. Cook saw appellant on December 5, 1994 for a follow-up examination, and noted that her head and neck examination was much improved. Dr. Cook diagnosed a headache and

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<sup>2</sup> Appellant filed 2 Form CA-2a claims for recurrence of disability on April 20 and May 3, 1994, although this was 2 to 3 months prior to the Office's July 21, 1994 acceptance of the claim. The employing establishment noted on the form dated May 3, 1994 that it was unclear why appellant was submitting the form because the original claim was still open. In an inter-office memorandum dated June 27, 1994, the employing establishment reiterated its confusion regarding appellant's submission of the Form CA-2a, and stated it was resubmitting the form to the Office for processing. Appellant subsequently filed a Form CA-7 on September 13, 1994, seeking to buy back intermittent leave without pay from June 24, 1992 through September 2, 1994. In a letter dated October 17, 1994, the Office advised appellant that "[i]f you have not returned to work and you lose pay or will enter a leave without pay status in the future, you should file claim for compensation on Form CA-8." The Office ultimately developed this case as a recurrence claim.

neck ache with cervical spine degenerative disc disease syndrome, postoperative. Dr. Cook's report, however, offered no opinion on the work relatedness of appellant's cervical condition other than stating that "appellant underwent a lot of therapy for her neck and shoulder for the workers' compensation injury to her cervical spine."

Appellant also submitted a July 17, 1995 letter from Dr. Cook in which he stated that on April 21, 1995 appellant had neck pain and tenderness associated with headache, and responded satisfactorily to the treatment. Dr. Cook opined that "[I]t is felt that these visits were worker's compensation associated."

By decision dated August 15, 1995, the Office rejected appellant's claim, finding that the medical evidence appellant submitted was not sufficient to establish causal relationship between her accepted June 24, 1992 employment injury and the claimed disability or condition from November 12, 1994 to April 15, 1995. In an accompanying memorandum, the claims examiner stated that appellant's claim had been accepted for cervical strain and aggravation of degenerative disc disease, and that appropriate benefits had already been paid. The claims examiner specifically noted that appellant had submitted the December 8, 1994 medical report from Dr. Cook, but that continuing total or partial disability (related to employment factors) was not indicated on the report. The claims examiner concluded that appellant had failed to provide adequate medical documentation supporting disability as a result of the accepted cervical condition. The Office therefore denied compensation from November 15, 1994 through April 15, 1995.

The Board finds that appellant has not sustained a recurrence of disability from November 12, 1994 through April 15, 1995 causally related to the June 24, 1992 employment injury.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury, and who supports that conclusion with sound medical reasoning.<sup>3</sup>

The record contains no such medical opinion. Indeed, appellant has failed to submit any medical opinion that relates her disability for work from November 12, 1994 through April 15, 1995 to her June 24, 1992 employment injury. For this reason, she has not discharged her burden of proof to establish the claim that she sustained a recurrence of disability as a result of her accepted employment injury.

The only medical evidence which appellant submitted was the December 8, 1994 medical report and July 17, 1995 letter from Dr. Cook, both of which noted appellant's condition but did not provide a rationalized medical opinion regarding whether appellant's condition from November 12, 1994 through April 15, 1995 was caused or aggravated by her work injury of

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<sup>3</sup> *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

June 24, 1992. As there is no medical evidence addressing and explaining why the claimed condition and disability from November 12, 1994 through April 15, 1995 was caused or aggravated by her June 24, 1992 employment injury,<sup>4</sup> appellant has not met her burden of proof in establishing that she sustained a recurrence of disability.<sup>5</sup>

The August 15, 1995 decision of the Office of Workers' Compensation Programs is therefore affirmed.

Dated, Washington, D.C.  
January 15, 1998

George E. Rivers  
Member

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>4</sup> Although appellant filed 4 Form CA-8 claims, in addition to the 12 claims from November 12, 1994 through April 15, 1995 mentioned in the Office's decision, dating back to September 3, 1994, the Office did not refer to these other claims in its decision. The Board finds that this error is harmless, however, as the Office properly found that appellant failed to submit any probative medical evidence supporting her claim that she suffered continuing cervical injury or disability subsequent to the period for which she received compensation pursuant to the accepted injury.

<sup>5</sup> The Board notes that appellant sought compensation for wage loss for periods in which she was no longer employed by the employing establishment. Appellant was separated from the employing establishment on April 20, 1994, and indicated in each of her Form CA-8's she submitted from November 12, 1994 to April 15, 1995 that she was working as a real estate salesperson.