

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA A. MORTON and U.S. POSTAL SERVICE,
POST OFFICE, Duluth, Ga.

*Docket No. 96-888; Submitted on the Record;
Issued January 8, 1998*

DECISION and ORDER

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

The issue is whether appellant has met her burden of proof to establish that she sustained a recurrence of disability on or after January 18, 1994 causally related to her accepted March 1, 1993 employment injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to establish that she sustained a recurrence of disability on or after January 18, 1994 causally related to her accepted March 1, 1993 employment-related injury.

On May 25, 1993 appellant, a mail handler, filed an occupational disease claim (Form CA-2) alleging that she first realized that her back and wrist conditions were caused or aggravated by her federal employment in March 1993.¹ Appellant returned to limited-duty work on May 25, 1993.

By letter dated October 19, 1993, the Office of Workers' Compensation Programs accepted appellant's claim for lumbosacral sprain.

On March 9, 1994 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that she sustained a recurrence of disability after she was returned to full duty by Dr. Michael Grundy, a Board-certified orthopedic surgeon and appellant's treating physician.² Appellant stopped work on March 2, 1994.

By letter dated April 28, 1994, the Office advised appellant to advise whether she sustained a new injury after being released to return to her regular work on January 18, 1994 by

¹ Appellant accepted a modified mail handler position due to her back and wrist conditions.

² The record reveals that Dr. Grundy released appellant for return to her regular duties on a January 18, 1994.

her treating physician, and to submit additional factual and medical evidence supportive of her recurrence claim.

In a May 24, 1994 response, appellant stated that she had not sustained a new injury and noted the medical treatment that she received from Dr. Grundy.

On May 31, 1994 the employing establishment offered appellant the position of modified clerk due to her back condition. On that same date, appellant accepted the offered position.

By decision dated June 28, 1994, the Office found the evidence of record insufficient to establish that appellant's current back condition was causally related to the March 1, 1993 employment injury.

In a July 18, 1994 letter, appellant requested an oral hearing before an Office representative. By letter dated November 28, 1994, the Office found that appellant had abandoned her request for a hearing inasmuch as she failed to appear at the scheduled hearing.

By letter dated December 4, 1994, appellant advised the Office that she had received its October 20, 1994 letter and that she wished to still have an oral hearing. Appellant also provided her new address.

In a January 12, 1995 letter, appellant requested an oral hearing. By decision dated October 23, 1995, the hearing representative affirmed the Office's June 28, 1994 decision.

An individual 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 compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a qualified 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 supports that conclusion with sound medical reasoning.³

In this case, appellant has not submitted medical evidence sufficient to establish that she sustained a recurrence of disability on or after January 18, 1994 causally related to the March 1, 1993 employment injury. In support of her recurrence claim, appellant submitted the March 14, 1994 supplemental attending physician's report (Form CA-20a) of Dr. J.C. Serrato, an orthopedic surgeon and appellant's treating physician, revealing the diagnoses low back syndrome, lumbar disc disease and myofascial syndrome. Dr. Serrato ruled out disc herniation and indicated that it was undetermined as to the period of appellant's disability. Appellant also submitted Dr. Serrato's medical treatment notes covering the period January 28, 1994 through August 1, 1995. Dr. Serrato's CA-20a and treatment notes are insufficient to establish appellant's burden because they fail to discuss a causal relationship between appellant's current back condition and the March 1, 1993 employment injury. Dr. Serrato's May 26, 1994 medical report is also insufficient to establish appellant's burden. In this report, Dr. Serrato diagnosed

³ *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1989); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

traumatized disc with a ligament strain of the lumbosacral spine, opined that there was a causal relationship between appellant's condition and the March 1993 employment injury, and concluded that appellant would be released to return to work on May 31, 1994 with physical restrictions. Although Dr. Serrato opined that there was a causal relationship between appellant's current back condition and the March 1, 1993 employment injury, he failed to provide any medical rationale for his conclusion.

Appellant also submitted the May 16, 1994 functional capacities assessment report of Douglas E. Smith, a physical therapist, indicating appellant's physical restrictions, a recommendation that appellant should perform overhead work activities on an occasional basis, and conclusion that appellant had a five percent impairment due to her lumbar spine condition. The Board finds that this report of appellant's physical therapist is of no probative value inasmuch as a physical therapist is not a physician under the Federal Employees' Compensation Act and therefore is not competent to give a medical opinion.⁴

Further, appellant submitted Dr. Serrato's disability certificates indicating that appellant was disabled from work due to a spinal condition. These certificates are insufficient to establish appellant's burden because they merely provided that appellant had a spinal condition and fail to discuss whether or how the condition was caused by appellant's March 1, 1993 employment injury.⁵ Appellant also submitted a disability certificate from Dr. Serrato indicating that appellant was released to return to work on May 31, 1994 with physical limitations until June 30, 1994. This certificate is insufficient to establish appellant's burden inasmuch as it failed to indicate a diagnosis and to discuss whether or how the diagnosed condition was caused by appellant's March 1, 1993 employment injury.⁶

Additionally, appellant submitted a March 3, 1994 chest x-ray report of Dr. D. Wade Wallace, a Board-certified radiologist, which revealed a normal chest. The record reveals the results of a lumbar nerve block performed on March 4, 1994 by Dr. Gilbert Maulsby, a Board-certified radiologist, which indicated bilateral paraspinal needles at the L5 pedicle level. The March 5, 1994 results of a lumbar nerve block performed by Dr. Wallace indicated that a set of localizing needles were in place and that needle tips were projecting in the region of the L3-4 facet joints bilaterally. Dr. Wallace's March 7, 1994 results provided that a set of localizing needles were in place and that needle tips were projecting in the region of the L1-2 facet joints bilaterally. The March 8, 1994 results of a lumbar nerve block performed by Dr. Michael P. Postma, a Board-certified radiologist, revealed bilateral paraspinal needles at the L1 pedicle level. Dr. Postma's March 10, 1994 results revealed bilateral paraspinal needles at the L5-S1 level. Dr. Maulsby's March 11, 1994 results of a lumbar nerve block indicated bilateral paraspinal needles at the T2 and T3 pedicle level and that no complicating features were observed. The March 12, 1994 results of Dr. Elizabeth Cotter, a Board-certified radiologist, revealed bilateral paraspinal needles at T12 and L1 pedicle levels and no complicating features.

⁴ 5 U.S.C. § 8101(2); *see also Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jane A. White*, 34 ECAB 515 (1983).

⁵ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

⁶ *Id.*

Additionally, appellant submitted Dr. Maulsby's results of a March 3, 1994 computerized tomography (CT) scan of the lumbar and cervical spine which revealed that appellant had a protruding abnormal disc on the left at L4-S1 possibly representing lateral herniation and that there was no significant compression of the neural structures. Appellant submitted Dr. Wallace's March 3, 1994 lumbar and cervical myelogram which were normal. Appellant also submitted Dr. Postma's March 9, 1994 magnetic resonance imaging (MRI) of the lumbar spine indicating a normal lumbar spine. The chest x-ray reports, and the results of the lumbar nerve blocks, CT scan, myelograms and MRI are insufficient to establish appellant's burden because they fail to address a causal relationship between appellant's current back condition and March 1, 1993 employment injury.

The medical evidence of record does not contain rationalized medical opinion evidence establishing that appellant sustained a recurrence of disability on or after January 18, 1994 causally related to the March 1, 1993 employment injury. Although the Office advised appellant of the type of medical evidence needed to establish her claim for a recurrence of disability, appellant failed to submit medical evidence responsive to the request.

Accordingly, the Board finds that appellant has not established that she sustained a recurrence of disability on or after January 18, 1994 causally related to the March 1, 1993 employment injury.⁷

⁷ Subsequent to the issuance of the hearing representative's October 23, 1995 decision, the Office received a November 14, 1995 duty status report of a physician whose signature is illegible. The Board may not review evidence for the first time on appeal that was not before the Office at the time of its final decision; *see* 20 C.F.R. § 501.2(c).

The October 23, 1995 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
January 8, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member