

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDITH OROPALLO and U.S. POSTAL SERVICE,
POST OFFICE, Mineola, N.Y.

*Docket No. 95-2736; Submitted on the Record;
Issued June 18, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant sustained a recurrence of disability beginning April 12, 1993 causally related to her accepted December 16, 1989 employment injury.

On December 16, 1989, appellant, a window clerk, suffered a fractured coccyx and lumbosacral strain when she slipped and fell down on a patch of ice in the employing establishment's parking lot. Appellant filed a Form CA-1 claim for benefits on December 18, 1989, and the claim was accepted by the Office of Workers' Compensation Programs for a fractured coccyx by letter dated January 17, 1990.

Appellant was released to return to work on January 16, 1990 by her treating physician, Dr. Peter Langan, a Board-certified orthopedic surgeon, for 4 hours per day on limited duty, and she returned to limited duty for 8 hours per day on March 2, 1990.

Appellant gave birth to a child on February 18, 1992, and returned to work in April 1992 for 4 hours per day because, she claimed, she was unable to obtain a babysitter. In November 1992, she increased her work hours to 8 hours per day at her regular duties as a window clerk.

In a treatment note dated April 8, 1993, Dr. Langan stated that he had reexamined appellant on that date for her ongoing back pain and had advised her to cut back to working four hours per day for the next month, at which time he was to reevaluate her.

On April 12, 1993, appellant submitted a Form CA-2 claim for recurrence of disability, stating that since the date she returned to work following her back injury, she has not been able to sit or stand for long periods of time due to the pain in her lower back and spine. Appellant stated that when she went into labor the pain in her spine became so intolerable that she had to undergo a Cesarian procedure. Appellant also alleged that the pain in her lower back and hip area became so extreme that she consulted a gynecologist in April 1993 and underwent a

sonogram procedure to ensure that there was nothing else wrong with her. Appellant alleged that these pains were attributable to the work injury of December 16, 1989.

In a letter to the Office dated June 4, 1993, the employing establishment controverted the claim, contending appellant had not submitted sufficient evidence to establish that her claimed condition or disability was causally related to the December 16, 1989 accepted employment injury. The employing establishment rejected the notion of a causal relationship between appellant's Cesarian delivery, which it characterized as a normal childbirth process, and her accepted condition of a fractured coccyx, which had occurred four years earlier. The employing establishment asserted that it had allowed her to work on a part-time basis until November 1992 because she had been unable to obtain a babysitter, not because of any claimed condition causally related to her accepted December 16, 1989 employment injury.

By letter dated June 18, 1993, the Office requested that appellant submit additional information in support of her recurrence claim, including a medical report and opinion from a physician, supported by medical reasons, as to how the reported work incident caused or aggravated the claimed injury. The Office further requested that appellant submit a detailed description of how the recurrence of her employment injury occurred. The Office stated that appellant had 30 days in which to submit the requested information.

In support of her claim appellant submitted numerous treatment notes and form reports from Dr. Langan, none of which contained a rationalized medical opinion indicating that her claimed condition or disability had been caused or aggravated by the accepted December 16, 1989 employment injury.¹

By decision dated September 27, 1993, the Office rejected appellant's claim, finding that the medical evidence appellant submitted was not sufficient to establish causal relationship between her accepted December 16, 1989 employment injury and the claimed disability or condition. In an accompanying memorandum, the Office noted that appellant had not submitted any rationalized medical evidence addressing how her disability beginning April 12, 1993 was due to the December 16, 1991 employment injury.

In a letter dated September 29, 1993, the employing establishment arranged an examination for appellant with John C. Killian, a Board-certified orthopedic surgeon, for October 20, 1993. In a report dated October 25, 1993, Dr. Killian stated that he had reviewed x-rays of appellant's lumbar spine which were done at Dr. Langan's office on April 8, 1993. Dr. Killian stated that the AP views of the lumbar spine showed no abnormality, and the lateral views showed minimal loss of the normal lumbar lordosis. Dr. Killian stated that it was clear appellant had recovered fully from her December 16, 1989 employment injury and was able to return to work at her normal capacity, and that there was no indication she had sustained any subsequent injury or other aggravation of her condition. Dr. Killian further stated that her physical examination was remarkable for subjective complaints of tenderness mainly over the sacrum, the lumbar examination was normal with a full range of motion and no evidence of

¹ In a follow-up report dated July 1, 1993, Dr. Langan stated that "I do not believe that there has been an essential recurrence and the symptoms have never entirely remitted."

muscle spasm, and the neurological examination of her lower extremities was normal as well. Dr. Killian concluded:

"Based on these findings I would conclude that [appellant] has fully recovered from the injuries she sustained. There is no indication that there was any subsequent aggravation. There are no objective physical findings to indicate any residual impairment or disability. I do feel that she is capable of returning to work full-time at her normal capacity. I do not feel that there is any need for further orthopedic evaluation, follow-up or treatment."

In a December 27, 1993 letter to the Office, the employing establishment stated that it terminated appellant based on the results of an investigation of appellant's extra-curricular activities which indicated that she had been working full time at another job, at the same time she was claiming to be partially disabled from her work activities. Accompanying the letter was the investigative report dated December 1, 1993.

In a letter dated March 2, 1994, appellant, through her representative, requested reconsideration of the Office's September 27, 1993 decision denying compensation. Accompanying the letter were October 22, 1993 and January 6, 1994 letters from Dr. Langan, and a January 4, 1994 letter from Dr. Maria Levada, Board-certified in obstetrics and gynecology. In his October 22, 1993 report, Dr. Langan stated that "I believe the exacerbation of April [1993] is related to the original episode and that she represents a partial disability at this point." Dr. Langan's January 6, 1994 report updated and provided findings regarding her low back condition, but provided no opinion regarding the causal relationship of her current condition to the accepted December 16, 1989 employment injury.

In her January 4, 1994 letter, Dr. Levada stated that "the back problems [appellant] has been having are in no way related to her pregnancy or delivery.... Clinically it was felt that her back problems did not stem from the pregnancy because they started after an accident in 1988 and recurred after her delivery. A sonogram in April 1993 further ruled out any pelvic pathology. She still persists with recurrent low back problems now almost 2 years. Since her delivery she cannot perform any strenuous physical activity without exacerbating the pain. Once again, since her back problems preceded the pregnancy by 4 years and continue now 2 years after delivery there is no evidence to support any relation to the pregnancy."

In a decision dated June 2, 1994, the Office rejected appellant's request for reconsideration, finding that appellant submitted insufficient medical evidence to warrant modification of its September 27, 1993 decision.

By letter dated October 10, 1994, appellant's representative requested reconsideration of the Office's June 2, 1994 decision. Accompanying the letter was an August 25, 1994 letter from Dr. Langan in which he essentially reiterated his earlier findings.

By decision dated January 5, 1995, the Office rejected appellant's request for reconsideration, finding that appellant submitted no rationalized medical evidence establishing that her current condition or disability was caused or aggravated by her employment-related injury of December 16, 1989.

In a letter dated April 28, 1995, appellant's representative requested reconsideration of the Office's January 5, 1995 decision. Accompanying the letter was a February 15, 1995 letter from Dr. Langan in which he stated that it was "medically proven" that her continued back pain was related to her injury of December 16, 1989, and an April 20, 1995 treatment note expressing no opinion regarding the causal relationship of appellant's claimed lower back condition to the accepted December 16, 1989 employment injury.

In a decision dated July 3, 1995, the Office rejected appellant's request for reconsideration, finding that appellant submitted no rationalized medical evidence establishing that she suffered from a disability caused or aggravated by her employment-related injury of December 16, 1989. In a memorandum to the Director the claims examiner found that Dr. Langan's February 15, 1995 letter, did not constitute medical evidence sufficient to warrant reconsideration of its prior decision. The claims examiner noted that Dr. Langan had stated in this letter that appellant's low back pain had worsened during the delivery of her baby, and that she currently experienced continued pain and spasms. The claims examiner, noting that appellant had returned to work on full-time duty following her injury, concluded that any exacerbation of appellant's current low back condition would be attributable to the birth of her child, an intervening cause.

The Board finds that appellant has not sustained a recurrence of disability beginning April 12, 1993 causally related to her December 16, 1989 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.²

The record contains no such rationalized medical opinion. Indeed, appellant has failed to submit a rationalized medical opinion that relates her claimed condition or disability beginning April 12, 1993 to her December 16, 1989 employment injury. The only medical evidence relating appellant's claimed condition on April 12, 1993 to her accepted employment injury of December 16, 1989 consists of treatment notes and progress reports from Dr. Langan containing one-sentence statements that her continued back pain was related to the injury of December 16, 1989. These statements, however, are unaccompanied by any rationalized, probative medical opinions. For this reason, she has not discharged her burden of proof to establish her claim that she sustained a recurrence of disability as a result of her accepted employment injury.

The Office requested that appellant submit additional medical evidence explaining how her claimed condition was due to her accepted employment injury of December 16, 1989, but appellant failed to submit such evidence. Appellant did submit medical reports from Dr. Levada and Dr. Langan prior to the January 5, 1995 and July 3, 1995 Office decisions, but none of these

² *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

reports constituted sufficient medical evidence demonstrating a causal connection between appellant's December 16, 1989 accepted employment injury and her claimed lower back condition as of April 12, 1993. Causal relationship must be established by rationalized medical opinion evidence. Neither Dr. Langan nor Dr. Levada, a gynecologist, described appellant's job duties in any detail or explained the medical process through which such duties would have been competent to cause the claimed lower leg condition; in fact, neither physician expressed an opinion regarding an alleged causal relationship between appellant's claimed condition as of April 12, 1993 and her accepted employment injury of December 16, 1989.

As there is no probative, rationalized medical opinion addressing and explaining why the claimed conditions and disability beginning April 12, 1993 was caused or aggravated by her December 16, 1989 employment injury, appellant has not met her burden of proof in establishing that she sustained a recurrence of disability.³

The January 5, 1995 and July 3, 1995 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
June 18, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

³ We note that, although the Office considered appellant's April 28, 1995 request for reconsideration of the Office's January 5, 1995 decision on the merits, it also found that the request letter from appellant's attorney was not accompanied by a signed statement from appellant, and that therefore appellant's attorney was not a "proper applicant." The Board finds that this finding by the Office was erroneous. The Office acknowledged in its July 3, 1995 decision that appellant obtained proper representation from an attorney on November 22, 1993, which, under the regulations at 20 C.F.R. § 10.143 and 10.144, was sufficient to constitute proper authorization for subsequent Office proceedings unless the claimant or authorized representative explicitly renounced the authorization.