

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA OLIVAS and U.S. POSTAL SERVICE,
POST OFFICE, Alhambra, Calif.

*Docket No. 96-590; Submitted on the Record;
Issued March 12, 1998*

DECISION and ORDER

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

The issues are: (1) whether appellant had any disability after September 29, 1994; and (2) whether appellant sustained a recurrence of disability commencing May 12, 1995 causally related to the April 18, 1985 employment injury and is entitled to compensation from May 15 through July 21, 1995.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a lumbosacral strain, a bulging disc resulting in spinal stenosis, and decompression at L4-5. In a statement dated June 26, 1995, appellant stated that after the May 12, 1995 employment injury she returned to work on limited duty for several years as a mail handler and then at her current job as a clerk. Appellant underwent a microhemilaminotomy at L4-5 and L5-S1 bilateral with foraminotomy and decompression on December 20, 1993. After her surgery appellant had acute flare-ups of aches and pain in her back which caused her to miss work. Appellant returned to light-duty work on August 22, 1995 with restrictions of no lifting over 10 pounds and no bending. Appellant submitted several claims for continuing compensation on account of disability, Forms CA-8, seeking compensation from September 30 through October 19, 1994 and from November 26, 1994 through March 3, 1995.

In a progress note dated August 5, 1994, Dr. Shafer stated that appellant could work full time subject to lifting and bending restrictions. In a report dated December 2, 1994, Dr. Shafer stated that appellant's condition had worsened and she should work six hours. In a report dated February 24, 1995, Dr. Shafer stated that appellant told him that she had a period of increased, severe back pain preventing her from working from September 30 to October 19, 1994. He stated that appellant had 75 percent of normal range of motion of the back but a normal neurologic and straight leg raising test and no muscle spasm. Dr. Shafer stated that appellant's period of increased symptoms resulting in her absence from work September 30 to October 19, 1994 constituted a "CHANGE IN THE NATURE AND EXTENT OF HER MEDICAL CONDITION – *i.e.*, increased, disabling subjective pain complaints." (Emphasis in

the original.) He also stated that appellant might be able to work an eight-hour shift if she could switch work activities from time to time as her symptoms required.

By letter dated November 29, 1994, the Office informed appellant's representative that additional medical evidence was necessary to indicate whether appellant had a change in the light-duty requirements of her job or a change in the nature and extent of her medical condition. By letter dated January 31, 1995, the Office informed appellant's representative that the attending physician's report appellant submitted did not address the relevant issues.

By decision dated March 24, 1995, the Office denied appellant's claim, stating that the medical evidence was insufficient to establish that she was disabled for the period claimed.

On May 25, 1995 appellant filed a notice of a recurrence of disability, Form CA-2a, allegedly occurring on May 12, 1995. Appellant stopped working on May 12, 1995. She submitted evidence to establish her claim. In an attending physician's report dated May 12, 1995, Dr. Shafer diagnosed status post laminectomy and stated that appellant was on light duty but could return to her regular work. He also indicated that a magnetic resonance imaging (MRI) scan was performed on May 3, 1995. That MRI was interpreted by Dr. Charles L. Taylor, a radiologist, as showing, *inter alia*, previous laminectomies at L4-5, L5-S1, evidence consistent with residual scar at L5-S1, and enhancement of the posterior annulus at L4-5 probably related to previous surgery. In his June 5, 1995 report, Dr. Shafer considered the MRI scan results, stating "usual post operative changes—no further disc herniation, obvious spinal or foraminal stenosis." He also found pain, restricted range of motion of the back at 25 percent of normal, normal neurological examination, and straight leg raising possible to only 70 degrees because of tightness in her hamstrings and glutei. In an attending physician's report dated June 5, 1995, Dr. Shafer recommended that appellant continue off work and needed epidural injections.

By letter dated June 14, 1995, the Office informed appellant that additional information was required to establish her claim including a narrative report from her physician explaining the causal relationship between the April 18, 1985 employment injury and her current condition. Appellant subsequently submitted a report from Dr. Shafer dated June 27, 1995 and her statement dated June 26, 1995. In his June 27, 1995 report, Dr. Shafer found that appellant's neurologic and straight leg raising test was normal but she had stiffness of the low back with 20 to 25 percent normal range of motion. He diagnosed chronic low back pain – "arachnoiditis [sic]" and probable fibromyositis. Dr. Shafer stated that appellant's condition was stationary. He also stated:

"[Appellant] never fully recovered from the original disability; this recurrence is apparently due to such as fibromyositis. It is not typical of lumbar disc disease. She attempted to return to limited duty. She feels she is unable to work because of her pain. There are no OBJECTIVE ORTHOPEDIC FINDINGS that prevent her from work." (Emphasis in the original.)

In her June 26, 1995 statement, appellant stated that her back had never been the same since the April 18, 1985 employment injury and that lately the pain in her back had worsened and made her unable to walk and stand.

The Office denied appellant's claim by a decision dated August 11, 1985.

The Board has duly reviewed the case record and finds that appellant has not established that she had any disability after September 29, 1994 or sustained a recurrence of disability commencing April 18, 1995 causally related to the April 18, 1985 employment injury entitling her to compensation from May 15 through July 21, 1995.

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.¹ 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 to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty.² As part of this burden, the employee must show a change in the nature and extent of the light-duty job requirements.³ This burden includes the necessity of 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 supports that conclusion with sound medical reasoning.⁴ An award of compensation may not be made on the basis of surmise, conjecture, or speculation or an appellant's unsupported belief of causal relation.⁵

In the instant case, appellant has not shown that her light-duty job requirements had changed and has not provided rationalized medical evidence showing that she is no longer able to perform the light-duty work. Because the Office was paying appellant compensation based upon submission of Forms CA-8 following appellant's return to work, appellant has the burden of establishing continuing entitlement to continuing disability which was related to the April 18, 1985 employment injury.⁶ The Board has held that where there are no objective findings to support a recurrence of disability, appellant has failed to meet her burden.⁷ In the instant case, Dr. Shafer's reports dated February 24 and June 27, 1995 establish that appellant had no objective evidence of disability. Dr. Shafer did not provide a rationalized medical opinion explaining how appellant's current condition or her work restrictions relate to the April 18, 1985 employment injury. There is no other medical evidence in the record to support appellant's claim. The Office provided appellant with opportunities to submit the requisite medical

¹ *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

² *George DePasquale*, 39 ECAB 295, 304; *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

³ *Id.*

⁴ *See Nicolea Brusio*, 33 ECAB 1138 (1982).

⁵ *See William S. Wright*, 45 ECAB 498, 503 (1994).

⁶ *Donald Leroy Ballard*, 43 ECAB 876, 882 (1992).

⁷ *See Samuel Theriault*, 45 ECAB 586, 589 (1994); *Sandra Dixon*, 44 ECAB 882, 884 (1993).

evidence but appellant did not respond. Appellant has therefore not met her burden of establishing that she was disabled after September 29, 1994 or sustained a recurrence of disability causally related to her April 18, 1995 employment injury.

The decisions of the Office of Workers' Compensation Programs dated August 11 and March 24, 1995 are hereby affirmed.

Dated, Washington, D.C.
March 12, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member