

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY D. HANSFORD and U.S. POSTAL SERVICE,
POST OFFICE, Merrifield, Va.

*Docket No. 96-350; Submitted on the Record;
Issued May 19, 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 in establishing that she sustained a recurrence of disability after June 3, 1993 causally related to her September 20, 1985 accepted employment injury of chronic lumbosacral strain and a torn ligament of the left hip.

On September 20, 1985 appellant, then a 44-year-old custodian, injured her lower back and left hip while in the performance of duty. The Office of Workers' Compensation Programs accepted her claim for chronic lumbosacral strain and a torn ligament of the left hip. Appellant received continuation of pay and appropriate compensation for intermittent periods of temporary total disability and recurrence of disability until she returned to a modified-duty position on September 3, 1991. On November 15, 1988 appellant received a schedule award for a 10 percent loss of use of her left leg for 28.80 weeks of compensation covering the period June 6 to December 24, 1988. On September 23, 1993 appellant filed a claim, alleging that she sustained a recurrence of disability on June 2, 1993. She stopped work on June 3, 1993 and returned to work on August 2, 1993. On October 6, 1993 the Office requested additional "bridging" information in relation to appellant's claim for recurrence of disability. By decision dated April 6, 1995, the Office denied appellant's claim for recurrence of disability on the grounds that the evidence was insufficient to establish a causal relationship between the accepted injury and the claimed disability. By decision dated May 30, 1995, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of the Office's prior decision.

The Board has carefully reviewed the entire case file and finds that this case is not in posture for decision.

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 medical evidence of record establishes that she can perform the work of a light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of

total disability and to show that she cannot perform such light duty. As part of the burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.¹

In the present case, appellant submitted medical report evidence from Dr. Earl C. Mills, a Board-certified neurosurgeon. On duty status form reports dated March 29 and May 24, 1993, Dr. Mills diagnosed chronic low back pain syndrome and left lower extremity radiculopathy but indicated that appellant could continue her permanent light-duty work. In a duty status form report dated June 14, 1993, Dr. Mills found that appellant was temporarily totally disabled after reiterating his prior diagnoses and checked a box which indicated that the diagnosed conditions were related to the history of injury. In a form report dated June 28, 1993, Dr. Mills diagnosed chronic low back pain syndrome, left lower extremity radiculopathy and carpal tunnel syndrome on the right and reiterated that appellant was temporarily totally disabled. However, he did not check the corresponding box or otherwise indicate that the diagnosed conditions were related to appellant's previously accepted injury. In duty status reports dated September 13 and November 15, 1993, and for subsequent dates through September 19, 1994, Dr. Mills repeated his diagnosis of chronic low back pain syndrome and noted that appellant could continue with her permanent light-duty work. Appellant also submitted a narrative report dated May 1, 1995 by Dr. Mills. He reported that appellant's continuing disability was related to her September 20, 1985 employment injury and noted that she suffered from severe low back pain and muscle spasms which resulted in her being placed on permanent light duty. Dr. Mills then stated that "the nature of [appellant's] light-duty job which still involves some bending, lifting and carrying from time to time will produce a flare-up of her already existing problem," and that this was what happened between June 3 to July 31, 1993, the period of alleged recurrence of disability.

While the reports by Dr. Mills are not sufficient to establish that appellant had a recurrence of disability that was causally related to her accepted employment injury, the Board finds that these reports, given the absence of evidence to the contrary, are sufficient to require further development of the evidence. The Board notes that when an employee initially submits supportive factual and/or medical evidence which is not sufficient to carry the burden of proof, the Office must inform the claimant of the defects in proof and grant at least 30 calendar days for the claimant to submit the evidence required to meet the burden of proof. The Office may undertake to develop either factual or medical evidence for determination of the claim.² It is well established that proceedings under the Federal Employees' Compensation Act are not adversarial in nature,³ and while the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.⁴ The Office has the obligation to see that justice is done.⁵

¹ *Jackie B. Wilson*, 39 ECAB 915 (1988); *Terry R. Hedman*, 38 ECAB 22 (1986).

² 20 C.F.R. § 10.11(b); *see also John J. Carlone*, 41 ECAB 354 (1989).

³ *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985); *Michael Gallo*, 29 ECAB 159 (1978).

⁴ *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

⁵ *William J. Cantrell*, 34 ECAB 1233 (1983).

In the present case, as there was an uncontroverted inference of causal relationship, the Office was obligated to request further information from appellant's treating physician. On remand the Office should further develop the evidence by providing Dr. Mills with a statement of accepted facts, including the physical requirements of appellant's limited-duty work, and requesting that he submit a rationalized medical opinion on whether appellant sustained a recurrence of disability causally related to her accepted injury. After such development as the Office deems necessary, a *de novo* decision shall be issued.

The decisions of the Office of Workers' Compensation Programs dated May 30 and April 6, 1995 are set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
May 19, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member