

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH DONALDSON and U.S. POSTAL SERVICE,
POST OFFICE, Long Beach, Calif.

*Docket No. 97-204; Submitted on the Record;
Issued September 28, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established a recurrence of disability causally related to her accepted March 22, 1990 lumbar strain.

On March 27, 1990 appellant, then a 30-year-old letter carrier, filed a notice of traumatic injury indicating that she injured her left leg and low back on March 22, 1990. The Office of Workers' Compensation Programs accepted the condition of lumbar strain as being work related. Appellant was placed in a permanent modified position effective January 11, 1992 consistent with her physical limitations.

In a July 20, 1994 letter, the Office advised appellant that they had received her Form CA-8, requesting to buy back leave used during the period May 20 through June 13, 1994 and the disability slips from Dr. Bart DeCoro, a Board-certified physician in physical medicine and rehabilitation. Appellant was advised that her case had been closed since February 12, 1993. Appellant was apprised of how the Office defines a recurrence and given a Form CA-2a, notice of recurrence of disability and a questionnaire to complete if she believed she sustained a recurrence. Appellant was given 30 days to submit the requested information.

On July 10, 1994 the Office received a completed attending physician's form report from Dr. DeCoro, which diagnosed myofascial pain and rendered appellant totally disabled for the period May 20 through June 13, 1994. Also submitted were medical reports from Dr. DeCoro noting treatment for carpal tunnel syndrome.

By decision dated January 19, 1995, the Office denied appellant's claim finding that the evidence of record failed to establish a recurrence of disability causally related to the March 22, 1990 work injury.

In a letter dated March 24, 1995, appellant, through her authorized representative, the National Association of Letter Carriers, requested reconsideration and submitted a February 15,

1995 letter from Dr. DeCoro to clarify the medical file. In the February 15, 1995 letter, Dr. DeCoro stated that the terms of lumbosacral strain and myofascial pain essentially mean the same thing. The lumbar strain relates to a myofascial type of pain in the lower back. Dr. DeCoro additionally stated that he reviewed the 1990 treatment notes in this case and that the problem was indicated as “resolving” at that time, which indicates symptoms were still present although they were improving.

By decision dated April 19, 1995, the Office denied modification of the January 19, 1995 decision.

On April 1, 1996 appellant, through her authorized representative, requested reconsideration. Additional medical evidence was submitted, to include: January 5 and February 9, 1996 statements from Dr. DeCoro an August 14, 1995 neurosurgery consult from Dr. Daniel J. Won a Board-certified neurosurgeon; an April 28, 1995 lumbar magnetic resonance imaging (MRI) scan and a March 1995 lumbosacral x-ray report reading “no significant abnormality noted.”

In his January 5, 1996 report, Dr. DeCoro noted that appellant had been under the care of the Physical Medicine Department at Kaiser since June 1990 and under his care since October 1990. Her history had been a March 22, 1990 work fall, which was diagnosed as a lumbosacral strain. He noted that appellant had been pregnant at that time. He noted no other history of trauma and negative findings on lumbar x-rays. He referenced the April 28, 1995 MRI scan as revealing degenerative disc disease at L4-5. Dr. DeCoro also referenced the neurosurgical consult and referral to anesthesiology for epidural injections. He opined that the degenerative changes were caused or aggravated by the lumbar strain.

In his February 9, 1996 statement, Dr. DeCoro noted that appellant had “complaints of low back pain secondary to degenerative changes.” He also noted the lumbar strain had not resolved, indicating symptoms were still present with minimal improvement.

In an August 14, 1995 report, Dr. Won noted complaints of low back and bilateral leg pain, right worse than left, with a history of this pain having continued since the 1990 injury. He noted a history of bilateral carpal tunnel syndrome and that appellant had stopped work in April 1995 due to low back pain. He noted his examination findings and referred appellant for epidural injections and recommended weight loss. Disability certificates until December 1995 were also submitted.

The April 28, 1995 MRI report of the lumbar spine revealed findings of spinal stenosis, mild and dural sac compression due to bulging disc at L4-5. The report stated that the significance of the findings should be evaluated in conjunction with clinical findings.

By decision, dated June 28, 1996, the Office denied modification of its prior decisions. The Office found Dr. DeCoro did not provide sufficient rationale explaining how appellant’s degenerative disc disease at L4-5 was caused or aggravated by her back strain in 1990.

The Board finds that appellant has failed to establish a recurrence of disability causally related to her accepted March 22, 1990 lumbar strain.

Where an employee alleges that he sustained a recurrence of disability due to an accepted employment-related injury, the employee has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disabling condition, for which compensation is sought is causally related to the accepted employment injury.¹ As part of this burden, the employee must submit rationalized medical evidence based upon a complete and accurate factual and medical background showing a causal relationship between the current disabling condition and the accepted employment-related condition.²

Although Dr. DeCoro opined that appellant's degenerative changes were caused or aggravated by the March 22, 1990 lumbar strain he has not provided medical explanation for his conclusion on causal relation. In this case, the record indicates that appellant's disability at the time of the March 22, 1990 injury was predicated solely on her complaint of low back pain. Initial medical reports indicated mild low back tenderness, but full range of motion in the lumbosacral spine and no neurologic deficit. It was further noted that appellant was pregnant at the time. The record is devoid of clinical findings to support any degenerative back condition and appellant bears the burden of proof on this point. Although Dr. DeCoro has stated that the conditions of back strain and degenerative disease could exist concurrently, he has failed to explain the effect of the 1990 injury on the degenerative disease process, which was not diagnosed until testing several years later. Additionally, Dr. DeCoro has not explained how the changes revealed in the 1995 MRI scan came about, nor has he provided a complete history addressing all risk factors. A July 27, 1991 lumbar computerized tomography (CT) scan for the L3 through L5-S1 interspace noted that "evidence to indicate disc bulging or herniation is not displayed. Neural foramina appear patent." The record further indicates that appellant has had other factors possibly affecting the degenerative condition, which the 1995 MRI revealed, which might include weight, pregnancy (and subsequent child care inferred after the delivery of her child in April 1990) and intervening traumas, which resulted from an April 1993 work injury.³ Since the 1990 work incident predated the essentially negative 1991 CT scan, Dr. DeCoro has not explained the basis for changes in the 1995 MRI. Dr. DeCoro's medical opinion lacks probative value as it does not provide a medically reasoned opinion on causal relationship.

The July 16, 1990 fitness-for-duty medical report from Dr. Geoffrey M. Miller, a Board-certified orthopedic surgeon, which the Office received June 28, 1996, noted no significant physical findings and anticipated appellant's return to usual duties in about 4 to 6 weeks with therapy or 60 days without treatment, following a period of limited-duty work. Dr. Miller noted no preexisting disease and no medical evidence to the contrary. While Dr. Miller did note that significant pain could be present without physical findings, the Board has held that symptoms of pain unsupported by clinical findings are insufficient to support disability.⁴ Moreover, as this

¹ *Kevin J. McGrath*, 42 ECAB 109 (1990).

² *Herman W. Thorton*, 39 ECAB 875, 887 (1988); *Henry L. Kent*, 34 ECAB 361, 366 (1982); *Steven J. Wagner*, 32 ECAB 1446 (1981).

³ The Office had accepted an April 16, 1993 work injury for lumbar sprain, left foot and ankle contusions.

⁴ *John L. Clark*, 32 ECAB 1618 (1981); *Charles D. Wallace*, 21 ECAB 347 (1970).

fitness-for-duty report predates appellant's alleged recurrence, of disability it is not relevant to the issue at hand.

As appellant has not submitted the necessary rationalized medical evidence to substantiate that her May 24, 1994 recurrence of disability is causally related to her March 22, 1990 work injury, appellant has not met her burden of proof in this case.

The decision of the Office of Workers' Compensation Programs dated June 28, 1996 is hereby affirmed.

Dated, Washington, D.C.
September 28, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member