

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARMAINE D. BAILEY and U.S. POSTAL SERVICE,
POST OFFICE, Boston, MA

*Docket No. 98-666; Submitted on the Record;
Issued December 23, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she was totally disabled from November 16, 1994 to October 18, 1995 due to her November 16, 1994 accepted bilateral shoulder strain, low back strain and lumbosacral strain.

On November 16, 1994 appellant, then a 31-year-old letter carrier, filed a claim for a traumatic injury, alleging that on that day she sustained an injury to her back, neck and shoulders when she fell down stairs.¹ By decision dated January 27, 1995, the Office of Workers' Compensation Programs denied appellant's claim. The Office found that the evidence supported that the claimed incident occurred at the time, place and in the manner alleged, but failed to establish that an injury resulted from the employment-related incident.

On February 2, 1995 the record was supplemented with physical therapy progress notes covering the period December 6, 1994 through January 3, 1995.

By letter dated March 21, 1995, the Office requested that appellant have her physician complete an attending physician's report (Form CA-20), providing a complete history of injury as given to him by appellant. On April 7, 1995 the Office received a completed Form CA-20 and statement from appellant's physician, Dr. John Doyle. He indicated that, "[appellant] stated to me on November 18, 1995 [sic] that she had fallen down stairs delivering mail."²

By letter dated August 17, 1995, the Office accepted appellant's claim for right/left shoulder strain, low back strain and lumbosacral strain. At that time, appellant was advised that

¹ Medical evidence submitted with the claim revealed that appellant was diagnosed with low back, bilateral shoulder and lumbosacral pain and that she was returned to light duty effective November 21, 1994 and full regular duty on December 30, 1994. Appellant's term position with the employing establishment expired effective November 20, 1994.

² Dr. Doyle indicated that appellant was totally disabled from November 16 to December 30, 1994 when he returned her to regular duty. However, all previous reports by Dr. Doyle indicated appellant was able as early as November 21, 1994 to return to work with restrictions. Even on the CA-20 the doctor indicated that treatment provided included light-duty work.

if her absence from work exceeded 45 days, she could claim wage-loss compensation on Form CA-7.³

On October 18, 1995 appellant filed a claim for compensation on account of traumatic injury or occupational disease (Form CA-7) and claim for continuing compensation on account of disability (Form CA-8).⁴ She claimed total disability for work from November 16, 1994 through October 18, 1995.

By letter dated November 27, 1995, the Office requested additional information, specifically medical evidence establishing total disability for work during the period claimed.

On December 4, 1995 the record was supplemented with a November 20, 1995 attending physician's supplemental report (Form CA-20a) by Dr. Scott Boden, a Board-certified orthopedic surgeon. He indicated that he saw appellant on November 16, 1995, diagnosed cervical strain/shoulder strain and treated appellant with physical therapy and a cervical collar. Dr. Boden did not check the area concerning whether appellant's present condition was causally related to the accepted November 16, 1994 injury.

By decision dated February 5, 1996, the Office denied appellant's claim on the grounds that the evidence of medical record failed to establish total disability causally related to the November 16, 1994 accepted employment-related injury.

By letter dated February 19, 1996, appellant requested an oral hearing before an Office hearing representative. A hearing was scheduled and held on September 24, 1996.

On January 1, 1996 the record was supplemented with an October 21, 1996 report by Dr. Boden. He stated that appellant had been under his care since late 1995. Dr. Boden also stated:

“[Appellant] has a chief complaint of neck and shoulder pain which has been consistent since her initial visit in November of 1995. She states that this problem started when she fell down a flight of steps in November of 1994 in Boston as a mail carrier. On [appellant's] original examination in November of 1995 she had tenderness along the cervical spine throughout the paraspinal cervical muscles and trapezius. She had some increased pain with extension but had a full range of motion of the neck; the right shoulder also had a full range of motion, her gait was normal and neurologic examination was intact. [Appellant had] no objective finding and we gave her diagnosis of chronic neck and shoulder sprain. Since that time we have treated her with a variety of nonoperative measures including anti-inflammatories, physical therapy, soft cervical collar, a muscle relaxant and she had not responded.”

Dr. Boden further stated:

³ By another letter dated August 17, 1995, the Office advised the employing establish that it should continue pay for the period of disability not to exceed 45 days.

⁴ The reverse side of the CA-7 was not completed.

“At this point, we have really no further treatment to offer [appellant] and I am quite puzzled as to what her actual diagnosis is or for any explanation as to why she is still having symptoms. In terms of disability for work, at present, on a medical basis other than the subjective complaint of pain it would be difficult to say that she would merit any actual disability. [Appellant] certainly has no neurologic deficits, decreases in range of motion or other deficits. With regards as to whether or not this is a result of her injury of November 1994, I have no way to know that since I was not there at the time other than to take her word for it and she states that these neck and shoulder problems began at that time.”

On February 29, 1996 the record was supplemented with November 13, 1995 and February 1, 1996 office notes by Dr. Boden. In the November 13, 1995 notes, he stated that appellant related complaints of neck and shoulder pain bilaterally since falling down a flight of stairs on November 16, 1994. Dr. Boden diagnosed chronic neck/shoulder sprain. In the February 1, 1996 office note he stated that appellant returned with complaints of neck and shoulder pain, that physical therapy had helped some and that x-rays of her cervical spine and shoulder did not reveal any significant abnormalities.

By decision dated December 11, 1996, the hearing representative affirmed the February 5, 1996 decision. The hearing representative found that the evidence did not establish that appellant was totally disabled for work for the period on or after November 21, 1994.

The Board finds that appellant has failed to meet her burden of proof in establishing that she was totally disabled from November 16, 1994 through October 18, 1995 due to her accepted November 16, 1994 right/left shoulder strain, low back strain and lumbosacral strain.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her disability for this period was due to her accepted employment-related condition. As part of this burden, she must present rationalized medical opinion evidence, based on a complete factual and medical background, demonstrating causal relation.⁵

In support of her claim for total disability from November 16, 1994 through October 18, 1995 appellant submitted a November 20, 1995 attending physician's supplemental report (Form CA-20a) by Dr. Boden. He indicated the period of compensation claimed as a result of pay loss was November 16, 1995 through January 16, 1996, diagnosed a cervical strain and shoulder strain and treatment provided was physical therapy and a cervical collar. The period of compensation claimed is different from that claimed on appellant's CA-7. Therefore, Dr. Boden's report failed to establish total disability for the period of compensation claimed by appellant. Also submitted was an October 21, 1996 report by Dr. Boden. He stated that appellant had been under his care since late 1995, almost a year after the November 16, 1994 employment-related injury and following the period claimed by appellant. Dr. Boden also stated that he could not explain why appellant was still having symptoms and what her actual diagnosis was. He also clearly stated that since he was not taking care of appellant for the November 16, 1994 employment-related injury he could not state that her current complaints were causally related to that injury. Therefore, Dr. Boden's October 21, 1996 report failed to provide a rationalized medical opinion that appellant was totally disabled for work from November 16,

⁵ *Minnie L. Bryson*, 44 ECAB 713 (1993).

1994 through October 18, 1995 as a result of the November 16, 1994 employment-related injury. Also submitted were November 13, 1995 and February 1, 1996 office notes by Dr. Boden. His November 13, 1995 office note noted a history of the November 16, 1994 injury, reported his findings on examination, diagnosed chronic neck/shoulder sprain and recommended a cervical collar and physical therapy. The February 1, 1996 office note noted that appellant had an x-ray of the cervical spine and shoulder that day which did not reveal any significant abnormalities and recommended continuation of physical therapy. The office notes failed to establish total disability for work for the period November 16, 1994 through October 18, 1995. In addition, the medical evidence of record submitted in support of appellant's traumatic injury claim supported that appellant was released to light duty as early as November 21, 1994 and regular duty on December 30, 1994. None of the evidence of record is sufficient to meet appellant's burden of proof to establish that she was totally disabled for work from November 16, 1994 through October 18, 1995.

In summary, appellant failed to submit sufficient rationalized medical opinion evidence opining that she was totally disabled from November 16, 1994 through October 18, 1995. The Office requested such evidence by letter dated November 27, 1995, but none was received. Appellant has failed to meet her burden of proof. Therefore, the Office properly denied his claim for compensation for the period November 16, 1994 through October 18, 1995.

The decision of the Office of Workers' Compensation Programs dated December 11, 1996 is affirmed.

Dated, Washington, D.C.
December 23, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member