

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VALERIE K. FRICKE and U.S. POSTAL SERVICE,  
POST OFFICE, Des Moines, IA

*Docket No. 98-1644; Submitted on the Record;  
Issued December 23, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on or after October 11, 1996 causally related to her May 17, 1994 employment injury.

The Board has duly reviewed the case on appeal and finds that appellant has failed to establish that she sustained a recurrence of disability.

Appellant, a mail carrier, filed a claim alleging that on May 17, 1994 she injured her back in the performance of duty. The Office of Workers' Compensation Programs accepted her claim for low back strain and herniated disc L4-5. Appellant returned to work in a permanent light-duty position on May 3, 1996 in accordance with her physician's restrictions. By decision dated November 8, 1996, the Office determined that this position represented appellant's wage-earning capacity and that she had no loss of wage-earning capacity due to her accepted employment injuries. Appellant filed a notice of recurrence of disability on November 14, 1996 alleging that on October 11, 1996 she sustained a recurrence of disability causally related to her accepted employment injury. By decision dated February 10, 1997, the Office denied appellant's claim finding that she had not established a change in the nature or extent of her accepted condition or her employment duties. Appellant requested reconsideration on August 15 and January 14, 1997. The Office denied modification of its February 10, 1997 decision, on October 29, 1997 and February 4, 1998, respectively.

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 established 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. As part of this 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 requirements.<sup>1</sup> Furthermore, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability commencing October 11, 1996 and her May 17, 1994 employment injury.<sup>2</sup> 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 employment factors and supports that conclusion with sound medical reasoning.<sup>3</sup>

In this case, appellant submitted a narrative statement noting that she slipped and fell on October 6, 1996. She stated that while at work on October 11, 1996 she experienced severe pain in her back while “pushing a latch on a shower stall/APC at arm level.”

Dr. William R. Pettit, an osteopath, completed a report on October 11, 1996 and stated that appellant fell at the river<sup>4</sup> on October 6, 1996 injuring her tailbone and lower back. He stated that appellant had experienced increased pain since the fall. Dr. Pettit diagnosed sacral pain and low lumbar pain presumably from a fall. In a report dated January 9, 1997, he noted the October 6, 1996 fall and stated that the fall caused a material worsening of appellant’s symptoms.

A recurrence of disability is defined as a spontaneous material change in the employment-related condition without an intervening injury.<sup>5</sup> Dr. Pettit’s reports indicated that appellant sustained a new injury on October 6, 1996 when she fell at the river. Therefore, the worsening in appellant’s condition was not due to a spontaneous material change, but to a specific intervening event, the fall. As such, any disability resulting from the October 6, 1996 fall is not due to a recurrence of the original employment injury, but due to the intervening event, the fall, and is not compensable unless it is established that the fall was a consequence of appellant’s accepted employment injury. Although appellant attributed her fall to symptoms from her employment injury, she has submitted no medical evidence in support of her contention that the October 6, 1996 fall was a consequential injury.

In a report dated January 20, 1997, Dr. Sinesio Misol, a Board-certified orthopedic surgeon, diagnosed degenerative disc disease L4-5. He noted that appellant had experienced a recent aggravation treated conservatively. Dr. Misol concluded that appellant’s condition was related to her employment. This report is not sufficient to meet appellant’s burden of proof as it does not appear to be based on a proper factual background. He does not mention the October 6, 1996 fall. Dr. Misol does not explain why he believes appellant’s increased symptoms are a spontaneous worsening rather than attributable to this intervening incident, his reports are not sufficient to meet appellant’s burden of proof.

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<sup>1</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>2</sup> *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

<sup>3</sup> *See Nicolea Brusio*, 33 ECAB 1138, 1140 (1982).

<sup>4</sup> The employing establishment stated that appellant was not at work on October 6, 1996.

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(1) (January 1995).

As appellant has failed to submit the necessary medical opinion evidence to establish a spontaneous change in the nature and extent of her employment-related condition, or a change in her light-duty requirements, she has failed to meet her burden of proof and the Office properly denied her claim.

The decisions of the Office of Workers' Compensation Programs dated February 4, 1998 and October 29, 1997 are hereby affirmed.

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

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member