

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEY L. FREELAND and U.S. POSTAL SERVICE,
POST OFFICE, Akron, Ohio

*Docket No. 97-909; Submitted on the Record;
Issued February 3, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established a recurrence of disability based on her September 15, 1988 work-related injury.

On September 26, 1988 appellant, then a 51-year-old motor vehicle operator, filed a claim for compensation alleging that on September 15, 1988, she injured herself while in the performance of duty. The Office of Workers' Compensation Programs, on September 30, 1988, notified appellant that her claim (A9-325503) had been accepted for multiple contusions and abrasions sustained while in the performance of duty on September 15, 1988.

On August 8, 1991 appellant filed a claim for recurrence of disability alleging that on April 24, 1991 she sustained a recurrence of disability based on her September 15, 1988 original injury.¹ Appellant stated that she began to feel pain around November 1990 after she returned to her position as vehicle operator, and that she had pain in the groin area which her doctors attributed to a deteriorating hip joint.

On June 22, 1992 appellant requested that the Office pay for medical bills under claim number 325503. Appellant submitted an August 8, 1991 medical bill for osteoarthritis of the left hip.

On July 1, 1992 the Office, in a letter decision, notified appellant that it was unlikely that her hip condition was related to the accepted multiple contusions and abrasions sustained on September 15, 1988 and denied her request for payment of medical expenses. Further, the Office notified appellant that an earlier claim for a left hip condition (A9-358241) had been denied by the Office on October 16, 1991.

¹ The Board notes that appellant indicated that her original injury was September 16, 1988.

On February 5, 1993 appellant filed a claim for recurrence of disability alleging that on January 24, 1991 and January 12, 1993 she sustained recurrences of her September 15, 1988 work-related injury. Appellant stated she remained on medication to treat symptoms associated with her original injury, and that she had injured her groin muscle at the time of the original injury, which remained symptomatic with pain. In support of her claim, appellant submitted medical reports from April 23, 1991 to January 12, 1993. In an April 23, 1991 medical report, Dr. Zouhair C. Yassine, appellant's treating physician and Board-certified in orthopedic surgery, stated that appellant had pain in the left hip for three years based on an industrial injury and that she currently had degenerative arthritis. In a July 30, 1991 medical report, Dr. Kenneth A. Greene, Board-certified in orthopedic surgery, stated that he examined appellant that day and noted that appellant had significant degenerative changes in the left hip, but that she appeared to be functioning well. He noted that her range of motion for her hip was "quite good with the exception of the loss of internal rotation." In a January 12, 1993 medical report, Dr. Greene stated that appellant had "osteoarthritis of the left hip and also her lower lumbar spine," which appeared to be work related. He also noted that appellant had sciatica on the left secondary to lumbar arthritic changes with decreased range of motion of the hip and pain from the hip to the foot. Dr. Greene noted work restrictions consisting of no lifting, pushing or pulling greater than 30 pounds.

By letter dated February 26, 1993, the Office advised appellant that she needed to submit additional information regarding her claimed recurrence of disability including a detailed narrative medical report containing a well-rationalized medical opinion as to the relationship between her September 1988 employment injury and her present condition. In a March 3, 1993 narrative, appellant stated that after she returned to work following her September 1988 injury she began "to have pain in my hip as I would walk." Appellant noted that with a light-duty assignment and pain medication she was able to continue with her job. She also noted that "compensation should pay" for her medication.

On April 21, 1993 the Office, in a decision, denied her claim on the grounds that the medical evidence of record failed to establish that her alleged January 12, 1993 recurrence of disability was causally related to the work-related injury of September 15, 1988.

On June 28, 1996 appellant filed a claim for recurrence of disability alleging that on January 12, 1993 she sustained a recurrence of disability based on her September 15, 1988 injury. The employing establishment noted that appellant had been assigned "at present eight hours light duty."

On July 30, 1996 the Office advised appellant regarding the type of information she would need in order to support her claim for a recurrence of disability.

On August 14, 1996 the Office, in a supplemental letter to its July 30, 1996 notice, advised appellant regarding the definitions and differences between a recurrence of disability and an occupational disease, and that if she believed that her medical condition was an occupational disease, she would be required to submit by September 1, 1996 medical evidence that would support a causal relationship between her employment and her condition.

In an August 26, 1996 narrative, appellant stated that she was “claiming injury from the September 1988 accident.” Appellant stated that although she had not missed work as a result of her September 1988 work-related injury, she had worked with pain during that time. She further notified the Office that she was scheduled for a hip replacement operation which she believed should “be covered by compensation.”

On September 19, 1996 the Office, in a decision, denied appellant’s claim on the grounds that the medical evidence of record failed to establish that her claimed recurrence of disability on January 12, 1993 was causally related to her September 1988 work-related injury.

The Board finds that appellant has failed to establish that she sustained a recurrence of disability causally related to her September 1988 work-related injury.

When an employee, who is disabled from the job she held when injured, returns to a light-duty position on account of work-related residuals, 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 substantial, reliable and probative 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 job requirement.²

In this case, the Office accepted that appellant had sustained multiple contusions as a result of a work-related injury on September 15, 1988. Appellant’s claim for recurrence of disability was based on a deteriorating hip condition which she alleged was causally related to her work-related injury. However, none of the medical evidence of record established a causal relationship between appellant’s work-related condition and her current medical condition. For example, Dr. Yassine stated that appellant had pain in her left hip as a result of an industrial accident, but failed to provide a rationalized medical opinion to support his conclusion. Dr. Greene also noted that appellant’s hip condition appeared to be work related, but did not provide a rationalized medical opinion in support of a causal relationship between the condition and appellant’s work-related injury. The medical evidence, therefore, is insufficient to establish that appellant sustained a recurrence of disability based on appellant’s September 15, 1988 work-related injury.³

² *Gus N. Rhodes*, 46 ECAB 518 (1995); *Terry R. Hedman*, 38 ECAB 222 (1986).

³ Appellant forwarded a medical report dated December 17, 1996 from Dr. Greene. However, since the report was received over three months after the issuance of the September 19, 1996 decision, the Board has no jurisdiction to review it; *see* 20 C.F.R. § 501.2(c).

The decisions of the Office of Workers' Compensation Programs dated September 9 and April 21, 1996 are affirmed.

Dated, Washington, D.C.
February 3, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member