

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY P. CHANDANAIS and U.S. POSTAL SERVICE,
POST OFFICE, Grand Rapids, Mich.

*Docket No. 97-755; Submitted on the Record;
Issued January 11, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on or after November 14, 1991 causally related to the accepted April 1, 1991 lumbosacral strain (claim number A9-354374); and (2) whether appellant has established that she sustained an injury in the performance of duty on April 11, 1994 (claim number A9-391438).

In the instant case, the record reflects that the Office of Workers' Compensation Programs adjudicated several claims filed by appellant. On April 1, 1991 appellant, then a 43-year-old letter carrier, suffered a low back injury while lifting a tray of magazines in the performance of duty. The claim was accepted for lumbosacral strain and adjudicated by the Office under file number A9-354374. On June 3, 1991 appellant's treating physician, Dr. Prasad Kommareddi, a Board-certified internist, completed a Form CA-17 indicating that appellant could perform her regular work full time. On July 12, 1991 Dr. Kommareddi stated in a certificate: "No restrictions for work." On November 18, 1991 appellant filed a Form CA-2a, claiming a recurrence of disability causally related to her April 1, 1991 injury. Appellant noted that the claimed recurrence of disability began on November 14, 1991 and that she experienced lower back pain in the same place it was when she was previously hurt. Appellant was off work from November 15 through November 19, 1991. In describing the circumstances of the recurrence of disability, appellant stated: "My lower back at the dimples, above the buttocks hurts the same place as it did in the other times it was hurt."

By letter dated December 30, 1991, the Office requested appellant to submit medical and factual information in connection with her claimed recurrence of disability. Appellant was advised that, if she was claiming that her condition was due to a new injury or set of employment factors, she should submit either form CA-1 or CA-2. Appellant was additionally advised what was needed to establish entitlement to compensation in a recurrent disability situation.

In a February 11, 1992 letter, appellant noted that her back was hurt in the same area that goes back to an injury prior to April 1, 1991. Appellant stated that her back problems began in 1983 or 1985 when she tried to open her postal jeep and fell on some ice, striking her tailbone on the curb. She stated that she felt the recurrence could be traced back further than the injury of April 1, 1991. Appellant additionally advised that she was back to her regular letter carrier duties.

The medical evidence submitted in connection with the claimed recurrence of disability included a certificate dated November 18, 1991 from Dr. Kommareddi with the following comments: "Has neck, shoulder, [and] back pain. Driving a jeep would be easy on her." On a Form CA-17, duty status form, completed on November 18, 1991, Dr. Kommareddi provided a diagnosis of sciatica and indicated that appellant was totally disabled from November 15 through November 16, 1991, and partially disabled from November 18 through November 29, 1991. On December 2, 1991 Dr. Kommareddi indicated that he referred appellant to Dr. Ahmad Hadied, a Board-certified orthopedic surgeon.

In a December 5, 1991 letter, Dr. Hadied noted that he had previously seen appellant for back problems (while she was hospitalized in April 1991) and that she recently had some pain over the two dimpled areas in the lower lumbar back area. He noted that Dr. Kommareddi had given her some medication. Dr. Hadied described the results of his physical examination and stated that "most likely she has some kind of inflammation over the muscle there." He indicated that he gave appellant an injection on both sides. On December 9, 1991 Dr. Hadied provided a certificate which stated "back to regular duty [December 16, 1991]."

By decision dated April 11, 1995, the Office determined that appellant failed to demonstrate that the claimed recurrence of disability was causally related to the injury of April 1, 1991. In the accompanying memorandum, the Office noted that it advised appellant that, if she was claiming that her condition was due to a new injury or a new set of employment factors, she should either file a Form CA-1 or CA-2. Appellant was also advised that, in order to establish that her medical condition and disability beginning in November 1991 was due to the April 1, 1991 injury, she should submit a report from her physician containing a well-reasoned medical opinion on the issue of the causal relationship between her current condition and the work injury of April 1, 1991.

In a January 28, 1992 letter, Dr. Kommareddi stated that appellant had been under his care since April 3, 1991. He noted that appellant was injured at work on April 1 and September 27, 1991. Dr. Kommareddi stated that on November 15, 1991, appellant developed back and shoulder pains while delivering mail. He further noted that appellant was seen in the office on December 2, 1991 for low back pains worsened by twisting. Dr. Kommareddi stated that he instructed appellant to find a different job due to recurrent problems related to her work.

By decision dated April 15, 1996, an Office hearing representative affirmed the April 11, 1995 decision denying the November 14, 1991 recurrence of disability as not causally related to the work injury of April 1, 1991.

The record reflects that appellant sustained a low back injury on August 22, 1993 when she slipped forward while holding a heavy tray of mail. The claim was accepted for lumbosacral

strain and adjudicated by the Office under file number A9-381037. The record reflects that appellant filed a notice of recurrence of disability on April 13, 1994 attributing her disability to the injury of August 22, 1993. By decision dated June 27, 1994, the Office denied the claim as the accepted medical and factual evidence failed to support a causal relationship between the alleged recurrence of disability and the accepted work injury of August 22, 1993.¹

The record further reflects that on June 18, 1994 appellant filed a notice of traumatic injury claiming that she injured her lower back on April 11, 1994. Appellant stopped work on April 13, 1994, used 45 days of continuation of pay, and returned to regular duty on July 12, 1994. Appellant submitted a Form CA-7, claim for compensation, for the period May 31 through July 11, 1994. The Office adjudicated this claim under file number A9-391438.

A CA-17 form dated July 1, 1994 from a medical doctor specializing in internal medicine (the physician's signature is illegible) indicated the date of injury as April 11, 1994 and that appellant was seen on June 30, 1994 and would see a surgeon on July 13, 1994. It was noted that appellant was able to resume modified work effective June 4, 1994. Other than a history noting heavy volume lifting, no other information was provided.

A CA-17 form dated July 18, 1994 from Dr. Harry Herkowitz, a Board-certified orthopedic surgeon, indicated that he examined appellant on July 13, 1994 and told her that she may have to consider a different job. He noted that appellant had degenerative changes in her back.

In a July 18, 1994 letter, Dr. Herkowitz noted that appellant was seen for lower back pain on July 13, 1994 and that he found no evidence of a lower disc problem on examination. He noted that appellant did have degenerative changes in her low back and felt that "this may be responsible for her discomfort." Dr. Herkowitz further noted that he had advised appellant that she may have to consider a different job. No reference was made to an April 11, 1994 work injury.

On June 22, 1995 appellant submitted a Form CA-7 claiming compensation for 232 hours of wage loss from May 31 through July 12, 1994.

In an August 7, 1995 letter, the Office advised appellant of the deficiencies in the medical evidence and afforded her the opportunity to provide clarifying, supportive medical evidence. By letter dated August 22, 1995, appellant's attorney was provided a detailed explanation of the deficiencies in the medical evidence.

By decision dated September 8, 1995, the Office determined that appellant had not established fact of injury. In the accompanying memorandum, the Office noted that appellant was advised of the deficiencies in the medical evidence on August 7, 1995 and her attorney was provided a detailed explanation on August 22, 1995. Appellant was afforded the opportunity to provide clarifying, supportive medical evidence. The Office found that the medical evidence of

¹ The Board's scope of review is limited to those final decisions issued within one year of the filing of the appeal. 20 C.F.R. § 501.2(c). Because appellant filed her notice of appeal on December 10, 1996, the Board does not have jurisdiction over the Office's decision of June 27, 1994.

record was insufficient to demonstrate that the claimed condition or disability was caused, precipitated, accelerated or aggravated by the April 11, 1994 employment incident. Thus, the Office denied the claim for compensation for the reason that the evidence failed to demonstrate that the claimed condition and disability was causally related to the employment incident of April 11, 1994.

Appellant requested a hearing and testified as to her condition. She also submitted two additional letters from Dr. Herkowitz dated September 29, 1995 and December 6, 1996. Dr. Herkowitz indicated that appellant had been treated for disc degeneration in her lower back. He stated that appellant should have permanent restrictions of no lifting over 15 pounds, no excessive bending, stooping, reaching and no repetitive overhead reaching. He stated that these restrictions were due to her back condition.

By decision dated April 15, 1996, an Office hearing representative affirmed the Office's September 8, 1995 decision finding that appellant failed to meet her burden of proof in establishing a fact of injury as none of the medical evidence contained any history of the April 11, 1994 employment activities and that none of the medical evidence contained an opinion concerning a causal relationship between appellant's back condition and the April 11, 1994 employment activities.

Appellant requested reconsideration of the April 15, 1996 decisions and submitted extensive factual and medical documentation which she believed supported both her recurrence of disability of November 1991 and her alleged injury of April 11, 1994.

Appellant submitted admission records from St. Joseph's Hospital for April 3 to April 10, 1991. These records reflected a history of the April 1, 1991 job injury with a diagnosis of acute back pain, sciatica.

Appellant submitted admission records for a hospital stay from August 24 to August 29, 1993 at Genesys Regional Medical Center. These records reflected a history of severe back pain after she was lifting heavy trays at work "yesterday." The diagnoses were listed as lumbar fifth sacral first herniated discs, lumbar spondylosis and primary hypothyroidism. The records note that after August 29, 1993, appellant was transferred to Beaumont Hospital.

Records from Genesys Regional Medical Center dated October 18, 1993, May 2 and June 13, 1994 deal with plans for physical therapy set up for a status post lumbar laminectomy on August 30, 1993. The history for the physical therapy of May 2, 1994 notes that the onset of current problems was around April 20, 1994 when appellant was again carrying a load and reinjured her back.

A December 31, 1994 emergency record from Genesys reflects that appellant came in with chest pain complaints. The diagnoses were thoracic and chest wall strain. The history was development of complaints about a week ago.

Notes from Genesys dated September 28 and November 8, 1995 pertain to physical therapy plans to address lower back complaints. The history offered was that of a job injury in

1985 with a slip and fall; in 1991 lifting at work and fall; in 1993 another lifting injury which resulted in surgery to the back; restricted duties after this time and then finally due to carrying mail bag with bending, appellant had to stop her job due to back pain in 1995.

Periodic reports from Dr. Herkowitz dated from September 14, 1993 to December 6, 1995 were submitted which describe clinical findings and restrictions.

A June 13, 1996 disability note from Dr. Sherry L. Viola, Board-certified in physical medicine and rehabilitation, indicated that permanent work restrictions were needed due to degenerative disc disease.

A May 9, 1996 summary report from Dr. Jacqueline G. Lockhart, Board-certified in physical medicine and rehabilitation, demonstrates that appellant was evaluated with a history of multiple medical problems which included the lower back. The chief complaints presented related to the lower back and left shoulder. On the lower back, the history is that of being hired at the employing establishment around 1983 with no restrictions and job duties which included outside duties and maximum weight required to deal with of around 25 pounds. Dr. Lockhart then reflects additional information about job duties as a letter carrier. There are also histories presented of back injuries at work in 1985; 1990 or 1991; 1992; August 1993 and April 1994. Dr. Lockhart then presented detailed clinical and examination findings in her report. The final impressions include post lumbar laminectomy syndrome; bilateral lower lumbar nerve root irritation per electromyogram; post-traumatic myofascial pain and dysfunction syndrome (left periscapular region); status post L5-S1 central disc herniation and lumbar degenerative disc disease. Based on these conditions, Dr. Lockhart relates work restrictions and consideration which have to be imposed.

Submitted along with the medical evidence were documents from appellant and the employing establishment. These relate to a May 15, 1996 notice to separate appellant due to medical inability to perform her duties as a carrier without restrictions due to the lower back. There was a request for light duty which the employing establishment denied and documentation that appellant was apparently separated from the employing establishment as of June 21, 1996.

By decision dated September 9, 1996, the Office denied modification of its April 15, 1996 decision finding that the evidence submitted on reconsideration was insufficient to establish whether any lower back condition subsequent to November 14, 1991 was caused or influenced by the work injury of April 1, 1991.

By decision dated September 10, 1996, the Office denied modification of its September 8, 1995 decision on the basis that the additional evidence submitted failed to demonstrate that any condition or period of disability was related to work duties performed on April 11, 1994.

The Board has reviewed the record and finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability on or after November 14, 1991 causally related to the accepted April 1, 1991 lumbosacral strain (claim number A9-354374).

An individual who claims a recurrence of disability due to an accepted employment injury has the burden of establishing by the weight of the reliable, probative and substantial evidence that the disability for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.² Where no such rationale is present, medical evidence is of diminished probative value.³

In the present case, the Office accepted that the April 1, 1991 lifting activity caused a lumbosacral strain. However, there is no medical evidence of record which provides the necessary causal relationship to establish that appellant's alleged recurrence of disability on or after November 14, 1991 was causally related to the accepted lumbosacral strain of April 1, 1991.

The medical evidence currently in the file fails to demonstrate that the claimed recurrence of disability of November 14, 1991 was causally related to the accepted employment injury of April 1, 1991. Appellant and her physician both discussed several different injuries. Appellant's physician further noted that appellant developed back and shoulder pain in November 1991 due to delivering mail. This, however, represents intervening factors which might support a new traumatic injury, not a recurrence of disability causally related to the April 1, 1991 accepted injury.

Moreover, the evidence submitted on reconsideration is either silent on the issue of a recurrence of disability or proves that no relationship exists. The evidence confirms that appellant had a lumbar strain from the April 1, 1991 injury and received care in April 1991 through July 1991. This, however, was already accepted by the Office and is not the issue of denial for appellant's recurrence of disability in November 1991. The issue is whether appellant's problems in November 1991 can be medically related to the April 1, 1991 employment injury. The records supports that a new injury may have been sustained in November 1991 and that this might have taken place at the work site. However, appellant never submitted a claim for a traumatic injury in November 1991.

Although Dr. Lockhart's May 9, 1996 report is intended to establish that appellant's back conditions are related to the job injuries and employment duties as a carrier, this report is insufficient to establish a recurrence of disability in November 1991. As part of the general history, the report mentions a workers' compensation claim in 1990 or 1991 for a second lower back injury. The report itself, however, makes no reference to the April 1, 1991 injury and whether such an injury caused or influenced any condition subsequent to November 14, 1991.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of

² *Jerry A. Miller*, 46 ECAB 243 (1994); *Ezra D. Long*, 46 ECAB 791 (1995); *Ronald M. Cokes*, 46 ECAB 967 (1995).

³ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.⁴ Appellant failed to submit rationalized medical evidence establishing that her claimed recurrence of disability on or after November 14, 1991 was causally related to the accepted April 1, 1991 lumbosacral strain and, therefore, the Office properly denied her claim for compensation in its September 9 and April 15, 1996 decisions.

The Board further finds that appellant has not established that she sustained an injury in the performance of duty on April 11, 1994 (claim number A9-391438).

An employee seeking benefits under the Federal Employees' Compensation Act⁵ has the burden of establishing that he or she sustained an injury while in the performance of duty.⁶ In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally "fact of injury" consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.⁷

In the present case, the evidence of file does not support a medical condition resulting from the alleged work incident of April 11, 1994. None of the medical evidence submitted contains any history of the April 11, 1994 employment activities nor any opinion concerning the causal relationship between appellant's back condition and the April 11, 1994 employment activities. In the first CA-17 form dated July 1, 1994, Dr. Herkowitz notes the date of injury as April 11, 1994, but fails to provide a reasoned opinion relating the claimed condition to the employment activities as reported. The second CA-17 form dated July 18, 1994 and the subsequent letter dated July 28, 1994 from Dr. Herkowitz notes degenerative changes in appellant's back and advises appellant to consider a different job, but does not mention the April 11, 1994 activities nor address a causal relationship between appellant's back condition and the April 11, 1994 employment activities. Dr. Herkowitz's letters of September 29 and December 6, 1995 fail to mention the April 11, 1994 employment activities and do not address a causal relationship between appellant's back condition and the April 11, 1994 employment activities.

With respect to the evidence submitted on reconsideration, the reports and records covering the dates prior to April 11, 1994 are not relevant to the current claim.

The physical therapy notes which mention the work incident about one and a half weeks prior to onset on April 20, 1994 would seem to relate to the April 11, 1994 report. However,

⁴ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); see also 20 C.F.R. § 10.110(a).

⁷ See *John J. Carlone*, 41 ECAB 354, 357 (1989).

these entries are made from the history taken from appellant and prepared by a physical therapist. The Board has held that the evaluation of appellant's physical therapist is of no probative value as medical evidence as a physical therapist is not a physician under the Act and is not competent to give medical opinions.⁸

Of the medical notes from Dr. Herkowitz after April 11, 1994 (beginning July 19, 1984) most were previously considered and reviewed at the time of the previous decisions. Of the new medical notes, Dr. Herkowitz makes no mention of any work injury nor is there an opinion of causal relationship to work or any work injury event attempted in these notes.

Dr. Viola's note of June 13, 1996 makes no mention of the April 11, 1994 employment activities; nor does it offer an opinion of any causally related back complaints.

Dr. Lockhart's May 9, 1996 report refers to the April 11, 1994 claim as a workers' compensation claim for injury to the low back in 1994 for which no benefits were received. As this report makes little reference to any details of the April 11, 1994 work activities, it can not establish the essential question as whether any condition or period of disability is related to work duties performed on April 11, 1994.

Inasmuch as appellant was advised of the deficiencies in the factual and medical information and afforded the opportunity to provide clarifying and supportive evidence, the Board accordingly finds that appellant has not met her burden of proof in establishing she sustained an injury in the performance of duty on April 11, 1994 and, therefore, the Office properly denied her claim for compensation in its April 15 and September 10, 1996 decisions.

The decisions of the Office of Workers' Compensation Programs dated September 10, September 9 and April 15, 1996 are affirmed.

Dated, Washington, D.C.
January 11, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott

⁸ See 5 U.S.C. § 8101(2).

Alternate Member