

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUNOMIA A. HAINES and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, Pa.

*Docket No. 97-1416; Submitted on the Record;
Issued January 20, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has established a recurrence of disability on or after September 5, 1996 as causally related to her accepted July 27, 1994 employment injury; and (2) whether appellant is entitled to wage-loss compensation for the period May 9 through May 15, 1995 and July 3 through July 6, 1995.

The Board has given careful consideration to the issues involved, the contentions of appellant on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office of Workers' Compensation Programs dated and finalized on December 13, 1996 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.

The decision of the Office of Workers' Compensation Programs dated December 13, 1996 is affirmed.

Dated, Washington, D.C.
January 20, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

MEMORANDUM

TO: THE BOARD

FROM: Maureen Degnan

DATE: November 19, 1998

RE: In the Matter of SUNOMIA A. HAINES and U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, Pa.; *Docket No. 97-1416*

This memorandum is submitted in support of adoption by the Board of the findings and conclusions set forth in the December 13, 1996 decision of the Office of Workers' Compensation Programs hearing representative which affirmed as modified a February 28, 1996 (R 156-161) decision of the Office. A copy of the decision dated December 13, 1996 (R 210-218) is attached hereto. The facts of the case are accurately set forth in detail in the December 13, 1996 decision and the reference numbers have been inserted for your convenience.

Briefly, the facts of the case involve appellant's allegation that she sustained a recurrence of disability on or after September 5, 1995 causally related to her accepted July 27, 1994 employment injury. (R 134)

The hearing representative considered all the relevant evidence and correctly stated the relevant law in his decision regarding the recurrence of disability. The record contains a January 7, 1996 medical opinion by Drs. P Dina F. Capalongo, an attending physician, a June 18, 1996 report by Dr. Gary W. Muller, a Board-certified orthopedic surgeon,¹ a July 3, 1995 report by Dr. Jonathan T. Abrams and an reports dated September 26 and August 5, 1996 by Dr. Stephen J. Bosacco, and a magnetic resonance imaging test dated August 20, 1996. (R 154-155, 166-173, 205-208, 221-222) Dr. Capalongo noted that appellant was treated on September 8, 1995 for back pain and opined that "all of her present complaints and findings are due to solely to her accident on 7/27/94." (R 154-155) Dr. Muller opined that there was no objective evidence to support appellant's subjective complaints and that she has reached maximum medical improved and no further medical treatment is indicated for her July 1994 employment injury. (R 166-173) The July 3, 1995 report by Dr. Abrams and the August 5, 1996 report by Dr. Bosacco are irrelevant to appellant's claim for a recurrence of disability on or after September 5, 1996 as they proceed the date of recurrence. (R 221) Dr. Bosacco's September 26, 1996 report notes that he saw her on September 26, 1996 because of various subjective complaints. Dr. Bosacco's September 26, 1996 report is insufficient to meet appellant's burden as he does not discuss how appellant's condition on or September 5, 1996 is related to her accepted July 27, 1994 employment injury. The hearing representative discussed all of the medical evidence, that appellant was in a modified position and noted that none of the physicians provided a rationalized opinion linking a recurrence of disability on or after September 5, 1996 to appellant's accepted employment injury of July 27, 1996. Dr. The hearing representative correctly noted the standard for a recurrence of disability to be established.

¹ The employing establishment referred appellant to Dr. Muller for a fitness for duty examination. (R 163)

Next, the issue is whether appellant is entitled to wage loss compensation for the period May 9 to May 15, 1995 and July 3 to July 6, 1995.

Appellant filed claims for continuing compensation on account of disability (Form CA-8) for the period May 9 to May 15, 1995 and for the period² July 3 to July 6, 1995. (R 130)

Regarding appellant's claim for wage-loss compensation for the period May 9 to May 16, 1995 and July 3 to July 6, 1995, the record contains a May 9, 1995 report from Dr. Jerry D. Levitt and a May 18, 1995 report from Dr. Joyce R. Rubins, appellant's treating physician. (R 128-129). Dr. Levitt noted that he gave appellant an epidural steroid injection. (R 128) In her May 17, 1995 report, Dr. Rubins states she is awaiting appellant's response to the recent epidural steroid injection and noted continued restrictions for appellant. (R 129) As the hearing representative correctly stated appellant was disabled due to her epidural steroid injection and she has not submitted any evidence linking the injection to her accepted employment injury.

Accordingly, since I believe the Office hearing representative has already carefully set out for appellant her burden of proof regarding the recurrence of disability and her request for wage-loss compensation and explained how she has failed to meet that burden, I do not believe any further beneficial purposed would be accomplished by a full decision and order. However, if following your review of this case, you find that a decision and order is more appropriate, I would be happy to draft such.

Dated, Washington, D.C.
January 20, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

² Appellant noted on the form that she was unable to work due to epidural injections. (R 130)