

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WENDY N. FULLMAN and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Philadelphia, Pa.

*Docket No. 97-1244; Submitted on the Record;
Issued July 13, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established an employment-related disability on or after February 13, 1989.

The case has been before the Board on prior appeals. In a decision dated October 31, 1990, the Board affirmed a January 27, 1989 decision, of the Office of Workers' Compensation Programs, which had terminated appellant's compensation effective February 12, 1989.¹ By decision dated June 5, 1992, the Board affirmed a July 11, 1991 Office decision, finding that the evidence submitted on a request for reconsideration was insufficient to warrant reopening the claim for merit review.² The history of the case is set forth in the Board's prior decisions and is incorporated herein by reference.

In a decision dated May 19, 1994, the Office denied a claim for a recurrence of disability commencing January 18, 1989. An Office hearing representative affirmed the denial by decision dated August 8, 1995. Following a request for reconsideration, the Office reviewed the case on its merits and denied modification in a decision dated March 6, 1996. By decision dated June 7, 1996, the Office found that appellant's request for reconsideration was insufficient to warrant reopening the claim for merit review.

The Board has reviewed the record and finds that appellant has not established an employment-related condition or disability after February 12, 1989.

In the present case, appellant had filed a claim for a recurrence of disability (Form CA-2a) commencing January 18, 1989. Although appellant had briefly returned to work for a few hours on January 18, 1989, this date has no significance because, as the Board noted in its prior

¹ Docket No. 90-804.

² Docket No. 91-1714.

decisions, the Office found that appellant continued to be entitled to compensation through February 12, 1989 for her accepted injury of lumbosacral strain/sprain. The Board affirmed the termination of compensation benefits as of February 12, 1989 on the grounds that the medical evidence established that residuals of the injury had ceased. Therefore, the relevant date for any claim for continuing compensation is February 13, 1989. It is well established that after termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability which continued after termination of compensation benefits.³ Accordingly, the issue presented is whether appellant has met her burden of proof in establishing an employment-related condition on or after February 13, 1989, and if so, whether she has established any periods of disability causally related to an employment injury.

It is noted that the Board has reviewed, in its prior decisions, medical evidence submitted after February 12, 1989. For example, the Board found in its October 31, 1990 decision, that a report dated August 31, 1989, from Dr. Steven Mandel, a neurologist, briefly stating that the diagnosis of lumbar radiculopathy was causally related to the employment injury, was of little probative value without medical rationale or discussion of relevant diagnostic testing. On this appeal the Board will limit its review to medical evidence that was not previously considered by the Board.

The record indicates that Dr. Mandel continued to submit reports regarding appellant's condition, but none of the reports contain a reasoned opinion establishing that appellant had a lumbar radiculopathy or other condition causally related to her employment injury. In a report dated September 24, 1990, he stated that appellant required a functional capacity evaluation and opined "she has a work-related injury." Dr. Mandel does not provide additional medical reasoning or explanation. In subsequent reports Dr. Mandel diagnosed lumbar radiculopathy, without offering an opinion on causal relationship. The most recent report of record was dated October 13, 1995, in which Dr. Mandel noted that appellant had been seen from 1988-1992. Dr. Mandel indicated that electrical studies showed evidence of mild right L5 radiculopathy, but again no reasoned opinion on causal relationship was provided.

The Board finds there is insufficient medical evidence containing a reasoned opinion, based on a complete and accurate background, that establishes a condition or disability after February 12, 1989 causally related to the November 15, 1987 employment injury. Accordingly, the Board finds that appellant has not met her burden of proof in this case.

³ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

The decisions of the Office of Workers' Compensation Programs dated June 7 and March 6, 1996 are affirmed.

Dated, Washington, D.C.
July 13, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member