

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH E. SYKES and U.S. POSTAL SERVICE,
PHILADELPHIA BULK MAIL CENTER, Philadelphia, Pa.

*Docket No. 97-1748; Submitted on the Record;
Issued June 11, 1999*

DECISION and ORDER

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

The issue is whether appellant has met her burden of proof in establishing that she had a recurrence of disability causally related to her August 9, 1985 employment injury.

On August 9, 1985 appellant, then a 29-year-old mail handler, was lifting sacks of mail when she developed pain in her lower back and left side. She stopped working that day and received continuation of pay for the period August 9 through September 22, 1985. She returned to light-duty work on November 18, 1985. The Office of Workers' Compensation Programs accepted appellant's claim for lumbar sprain and strain and paid temporary total disability compensation for the period September 23 through November 17, 1985 and for intermittent periods thereafter. She stopped work again on October 22, 1986. In an October 27, 1988 letter, the Office offered appellant a light-duty position as a mail handler with the employing establishment. She returned to work on November 19, 1988. On May 9, 1988 appellant underwent surgery for a laminectomy and discectomy of a herniated L4-5 disc. The Office did not accept appellant's claim for a herniated disc, noting that it had not authorized the surgery.

On November 26, 1995 appellant filed a claim for recurrence of disability. She indicated that the date of recurrence was October 28, 1995. She stopped working on November 22, 1995 and returned to work on November 25, 1995. She indicated that she continued to have back pain while sitting with pain radiating down her left leg. In an April 15, 1996 decision, the Office denied appellant's claim for compensation on the grounds that the evidence of record failed to demonstrate a causal relationship between the employment injury and the recurrent condition. In a March 12, 1997 decision, an Office hearing representative indicated that appellant had testified and a medical report had indicated that appellant had a recurrence of back pain while bending over at home on October 28, 1995. He found, therefore, that appellant's disability was due to an independent, recurring event and, therefore, was a new injury, not a recurrence of disability. She, therefore, affirmed the Office's April 15, 1996 decision.

The Board finds that appellant has not met her burden of proof in establishing that she had a recurrence of disability causally related to the August 9, 1985 employment injury.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition, for which she seeks compensation was causally related to her employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.¹

Appellant submitted medical records in support of her claim for a recurrence of disability. In a November 22, 1995 office report, Dr. Mark R. Foster indicated that appellant had been incapacitated by increasing pain over the past few weeks. He noted that appellant was hospitalized and a myelogram and computerized tomography (CT) scan was performed. Dr. Foster noted that she had been treated for prior back problems. He reported that the myelogram and CT scan showed an extradural defect at L4-5 which did not look typical. Dr. Foster suggested that there might be some intrathecal component of arachnoiditis. He diagnosed herniation at L4-5, post surgical laminectomy syndrome, arachnoiditis and a possible recurrent or retained disc. In a November 30, 1995 report, Dr. Foster noted appellant's history of back pain while unloading trucks at work in August 1985. He reported that on October 28, 1995, appellant was bending and had a sudden onset of pain after which she had been unable to do work. Dr. Foster indicated that a magnetic resonance imaging scan did not show any significant disc herniation but showed degenerative disc disease and postoperative scarring. He diagnosed lumbar sprain. Dr. Foster noted appellant had underlying scar and deterioration of the discs, which was consistent with the pain but had not been a problem until approximately four months previously. He concluded that appellant had an exacerbation of the underlying condition. In subsequent reports, Dr. Foster diagnosed segmental instability of L4-5.

Dr. Foster's reports indicated that appellant had degenerative disc disease, postoperative scarring and segmental instability. However, he did not specifically discuss whether these conditions were causally related to appellant's August 9, 1985 employment injury in any way and, if so, how the employment injury would cause a recurrence of disability 10 years later. Dr. Foster noted that appellant had post-surgical scarring. This comment was an apparent reference to appellant's May 9, 1988 surgery. However, the Office did not accept that appellant's back surgery or the herniated disc reportedly found in the surgery on that date was causally related to the employment injury. Dr. Foster stated that appellant's current condition was an exacerbation of the underlying condition. However, he did not describe how appellant's underlying condition was causally related to the August 9, 1985 employment injury. Dr. Foster's reports, therefore, have little probative value because they do not contain any detailed, physiological description on whether the August 9, 1985 employment injury caused a herniated lumbar disc, for which

¹ *Dominic M. DeScala*, 37 ECAB 369 (1986).

appellant underwent surgery and subsequently caused scarring or other conditions which resulted in a recurrence of disability. Appellant, therefore, has not met her burden of proof.²

The decision of the Office of Workers' Compensation Programs, dated March 12, 1997, is hereby affirmed.

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

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

² The Office hearing representative found that appellant did not have a recurrence of disability because the October 28, 1995 incident at home was an independent, intervening cause of her disability. However, the hearing representative did not consider whether the October 28, 1995 incident was a consequential injury related to the August 9, 1985 employment injury. The Office must consider whether a incident represents a consequential injury before it can determine whether the incident represents an independent, intervening cause of disability.