

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE MERRITT and U.S. POSTAL SERVICE,
POST OFFICE, Wilmington, Del.

*Docket No. 97-1248; Submitted on the Record;
Issued March 12, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant's medical treatment after December 27, 1995 is causally related to her June 11, 1994 employment injury.

The Office of Workers' Compensation Programs accepted that appellant's June 11, 1994 employment injury resulted in a low back strain. Appellant received medical treatment for this injury but did not file a claim for compensation for any specific periods of time missed from work. The evidence indicates she worked four hours per day during August 1994 and six hours per day until late September 1994.

On January 2, 1996 appellant filed a claim for recurrence of disability. She listed the date of the recurrence as December 27, 1995 and indicated that she had not stopped work. By decision dated March 12, 1996, the Office found that the evidence failed to demonstrate that the claimed condition or disability was causally related to her employment injury. Upon appellant's requests for reconsideration, the Office denied modification by decision dated June 5, 1996 and denied reconsideration by decisions dated January 6 and April 11, 1997.

The Board finds that further development of the medical evidence is necessary in order to properly determine whether appellant's medical treatment after December 27, 1995 is causally related to her June 11, 1994 employment injury.¹

The basis of the Office's decisions that appellant's condition after December 27, 1995 was not causally related to her June 11, 1994 employment injury is medical evidence from treating physicians that the effects of this injury had resolved. In a report dated May 23, 1995, Dr. Vaneeta Kubal, a Board-certified pediatrician, who first examined appellant on July 5, 1994,

¹ As shown by her claim form for a recurrence of disability, appellant continued to work after December 27, 1995. As she has not filed a claim for compensation for time lost from work after December 27, 1995, her claim must be for medical expenses incurred after this date.

stated: “At this point, I do not feel that she has any residual effects from the [June] 11, [19]94 injury. The lumbar strain she had on [June] 11, [1994] is expected to resolve.” Regarding her ability to work, Dr. Kubal stated: “I feel that she should be able to function at her preinjury level -- the injury in [June] [19]94, and she should be able to return to her previous ‘modified job’ -- the restrictions being: no outdoor work and no lifting more than 20 pounds.”² In a report dated December 21, 1995, Dr. John C. Dieck, an osteopath who is an associate of Dr. Kubal, stated that he first saw appellant “on November 7, 1995 for a complaint of lower back discomfort that radiated down her left leg with physical findings consistent with some sciatic irritation. In light of two prior physician evaluations indicating the patient’s return to her pre-June 1994 injury functional status,³ it follows that her present back discomfort and sciatica is related to her initial injury of October 1990, where she fractured her back and had surgical repair.”

While the reports from Drs. Dieck and Kubal indicate that the effects of appellant’s June 11, 1994 employment injury ended, appellant submitted medical evidence that her low back condition after December 27, 1995 continued to be related to her June 11, 1994 employment injury. In a report dated February 26, 1996, Dr. Yakov U. Koyfman, a neurosurgeon, stated: “It is quite possible the patient has lumbar radiculopathy as a result of nerve root compression with instrumentation. This is definitely a recent development since immediately after the [1990] surgery and for approximately four years after the surgery the patient had been free of symptoms.” In a report dated March 9, 1996, Dr. Anthony J. Curci, an osteopath, after reviewing appellant’s history and his findings on examination, concluded:

“In summary, we have a 36-year-old ... female who had enjoyed reasonable good health despite undergoing L2 lumbar surgery in 1990, and had remained essentially pain-free and quite functional up until her work-related injury sustained on June 11, 1994. Since her injury sustained on that date, the patient has experienced constant and daily lower back pain associated with left lower extremity weakness and numbness, causing her to alter her daily activities including her work schedule. Henceforth, it is my opinion that [appellant] still does and continues to suffer from the effects of her 1994 injury sustained on June 11[,] [1994] while performing her work duties and is currently in the process of further investigation and evaluation of her radiculopathy....”

The reports of Drs. Koyfman and Curci are not sufficient to meet appellant’s burden of proof, given the contrary conclusion of Drs. Kubal and Dieck. There are, however, aspects in the reports of Drs. Kubal and Dieck that lessen their probative value. Dr. Kubal’s May 23, 1995 report states that appellant’s “subjective symptoms of low back discomfort on and off may be related to obstetrics/gynecology problems rather than the injury she had in [June] [19]94.” Appellant’s gynecologist, Dr. William A. Hohman stated in a May 6, 1995 report that appellant’s

² At the time of her June 11, 1994 employment injury, appellant was performing light duty related to October 1990 back surgery for a nonwork injury.

³ Portions of this report not quoted here make it clear Dr. Dieck is referring to the reports of Dr. Kubal and Dr. Julio Navarro, a Board-certified family practitioner who is an associate of Drs. Dieck and Kubal. The case record, however, does not contain a report from Dr. Navarro stating that appellant had returned to her preinjury status.

“slight menstrual irregularity or recent pregnancy are not thought to be related to” the “chronic problem with spasm in her lower legs and back.” Dr. Dieck is the only physician who attributed appellant’s low back problems after December 27, 1995 to her October 1990 nonwork injury and surgery, but the basis of his opinion was that other physicians indicated she had returned to her status before the June 1994 injury. He, however, imposed a new work tolerance limitation -- sitting one-half hour during each eight-hour shift -- that was not present before the June 1994 injury, which seems contrary to a conclusion that appellant could again function at her preinjury level. Dr. Dieck did not indicate whether this limitation was prophylactic in nature or due to residuals of the accepted injury. Given these aspects in the reports of Drs. Dieck and Kubal, the reports of Drs. Koyfman and Curci are sufficient to require the Office to further develop the medical evidence.⁴

The decisions of the Office of Workers’ Compensation Programs dated April 11 and January 6, 1997 and June 5, 1996 are set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
March 12, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

⁴ See *Lloyd M. Williams*, 34 ECAB 1034 (1983); *Julius Mitchell*, 30 ECAB 706 (1979).