

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DULCE M. LANNING and U.S. POSTAL SERVICE,
POST OFFICE, Miami, Fla.

*Docket No. 97-1501; Submitted on the Record;
Issued March 23, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on or after January 1996 is causally related to her October 10, 1994 employment injury.

On October 10, 1994 appellant, then a 34-year-old mail processor filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she pulled muscles in her abdomen while lifting a full tray of mail. The Office of Workers' Compensation Programs accepted the claim for abdominal strain and authorized surgery for hernia repair. Appellant returned to light-duty work on August 11, 1995. The Office issued a notice of proposed termination of benefits on December 8, 1995, which was finalized on January 8, 1996.

By letter dated May 13, 1996, the Office advised appellant as to the definition of a recurrence of disability and requested that appellant submit a detailed report from her attending physician with supporting explanation as to the causal relationship between her current disability and the October 10, 1994 injury.

On July 2, 1996 appellant filed a recurrence claim alleging that her herniated discs in her back and back surgery on January 8, 1996 were due to her accepted October 10, 1994 employment injury.¹

By letter dated September 3, 1996, the Office advised appellant again that there was no medical evidence in the record showing that her back surgery and disability were causally related

¹ Appellant filed a Form CA-1 stating the date of the notice was October 10, 1994 while signing and dating the form as July 2, 1996. Appellant lists her injuries a muscle pulled and sprain in her abdomen, numbness in her legs and side to lower back as well as three herniated discs in her lower back.

to her accepted October 10, 1994 employment injury. The Office noted that appellant did not allege a back injury when she filed her claim in October 1994.

By fax transmittal dated September 19, 1996, appellant submitted a request for lumbar physical therapy from Dr. Jose L. Joy, appellant's attending Board-certified neurological surgeon, medical reports dated January 5 and August 14, 1996, by Dr. Joy, and operative notes dated January 8 and 9, 1996, detailing appellant's back surgery by Dr. Joy.

In the report dated January 5, 1996, Dr. Joy, based upon a physical examination, history of the injury and x-ray interpretation, diagnosed severe intractable left radiculopathy and lumbar discogenic disease with extruded disc herniation at L4-5 and small disc herniations at L3-4, L4-5. Dr. Joy opined that "the main cause of her symptoms is the large L4-5 herniated and possible extruded disc" and recommended surgery. Dr. Joy noted in his report that her lumbar spine was not evaluated at the time of her October 10, 1994 injury and that her symptoms were attributed to her abdominal strain.

In a report dated August 14, 1996, Dr. Joy noted appellant returned to a light-duty position and is doing well.

By letter dated September 24, 1996, the Office rejected appellant's request for lumbar physical therapy and advised her that the medical evidence submitted was insufficient to support her claim for a recurrence of disability.

By letter dated October 23, 1996, appellant submitted an October 14, 1995 report, from Dr. Joy. In the October 14, 1996 report, Dr. Joy states:

"This is to certify that [appellant] was diagnosed with a left L4-5 herniated disc and underwent laminectomy and discectomy on January 9, 1996. [Appellant] did have a history of low back pain as far back as 1992, according to notes that I have in my chart and at one point was diagnosed with an acute lumbar strain. She injured herself in October 1994 at work and was diagnosed with a ventral abdominal strain and also with a muscle sprain. However, soon after the hernia repair she continued with back and leg pain and was eventually diagnosed with a lumbar disc herniation. It is my impression that it is very plausible that [appellant] did have an underlying lumbar condition prior to her injury in October 1994 and that this may have been exacerbated at that point and even correlating with her disc herniation."

By decision dated February 5, 1997, the Office denied appellant's claim for a recurrence of disability. In the attached memorandum, the Office noted that appellant had not mentioned a back injury at the time of her original injury. The Office also found the medical evidence insufficient to establish a causal connection between her back condition and her accepted employment injury.

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability on or after January 9, 1996 causally related to her October 10, 1994 employment injury.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability commencing January 8, 1996 and her October 10, 1994 employment injury. This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.²

In the instant case, in support of her claim for disability on or after January 1996, appellant has submitted several medical reports from Dr. Joy. In his January 5, 1996 report, Dr. Joy diagnosed disc herniations and recommended surgery without stating the cause of appellant's disc herniations. In the August 14, 1996 report, Dr. Joy reported that appellant was doing well in her light-duty position. In his October 14, 1996 report, Dr. Joy noted the history of appellant's employment injury and opined that "it is very plausible" that appellant had an underlying lumbar condition which might have been exacerbated by her October 1994 employment injury. Dr. Joy's reports dated January 5 and August 14, 1996, do not conclude that appellant's current condition was causally related to her accepted October 10, 1994 employment injury. Dr. Joy's October 14, 1996 report, is similarly insufficient to meet appellant's burden as the report is speculative. In his October 14, 1996 report, Dr. Joy states it is plausible that appellant might have had a preexisting back condition which might have been exacerbated by her accepted employment injury. In addition, Dr. Joy again failed to offer any medical reasoning to explain or support the conclusion that appellant's accepted abdominal strain resulted in a herniated disc. Dr. Joy's opinions are thus insufficient to meet appellant's burden of proof to establish a recurrence of disability.

As appellant has failed to submit the necessary medical evidence, complete with medical rationale, to establish that her current disabling condition is causally related to her October 10, 1994 employment injury as alleged, she has failed to meet her burden of proof.

² *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

The decision of the Office of Workers' Compensation Programs dated February 5, 1997 is hereby affirmed.

Dated, Washington, D.C.
March 23, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member