

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEVERLY A. BLAKE and U.S. POSTAL SERVICE,
POST OFFICE, Alexandria, La.

*Docket No. 97-1662; Submitted on the Record;
Issued March 16, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant sustained a recurrence of disability causally related to her employment injury.

The Board has duly reviewed the case record and concludes that appellant has not met her burden.

The facts in this case, indicate that on September 7, 1988 appellant, then a 24-year-old temporary postal distributor, sustained an employment-related right wrist sprain. She stopped work on September 12, 1988 and has not worked at the employing establishment since that time. The Office of Workers' Compensation Programs later accepted that appellant sustained de Quervain's tenosynovitis as a result of the employment-related wrist injury. She was placed on the periodic rolls and by decision dated May 4, 1994, the Office found that appellant's actual earnings as a clerk/telephone operator¹ which met or exceeded her date-of-injury earnings reasonably represented her wage-earning capacity.² On March 29, 1995 appellant filed a claim, stating that she sustained a recurrence of disability on March 13, 1995 because she was unable to use her right hand very much.³

Following development of the record, by decision dated May 24 and finalized May 25, 1995, the Office denied the claim, finding that the evidence failed to establish that appellant's

¹ The record indicates that appellant returned to work on February 7, 1994 as a clerk/telephone operator at Lowe's.

² The record also contains a schedule award dated August 3, 1993, that was amended on March 24, 1994, in which appellant was granted an award for 16 percent permanent impairment of the right upper extremity. These decisions are not on appeal to the Board.

³ She stated that she was currently employed as a catering helper with job duties of helping to prepare food, deliver orders and run errands.

condition was causally related to the September 12, 1988 employment injury. On three occasions appellant requested reconsideration and submitted additional medical evidence. By decisions dated July 19, 1995, March 6 and September 3, 1996 the Office denied modification of the prior decision. Appellant again requested reconsideration and submitted additional medical evidence. By decision dated October 23, 1996, the Office modified the prior decision to grant appellant medical benefits but denied that she sustained a recurrence of disability. Appellant again requested reconsideration and, by decision dated March 26, 1997, the Office denied modification, finding that the March 1995 lifting incident constituted an intervening incident which broke the chain of causal relationship. The instant appeal follows.

The relevant medical evidence includes an April 21, 1995 report, from appellant's treating orthopedic surgeon, Dr. Michael C. Genoff, who noted her history of injury and complaints of pain, numbness and tingling of the right upper extremity. He advised that range of motion was difficult to determine secondary to pain. An April 26, 1995 bone scan revealed minimal degenerative or post-traumatic change with no evidence of reflex sympathetic dystrophy. In a June 5, 1995 report, Dr. Genoff advised that appellant could return to light duty but could not use her right hand. In a January 2, 1996 report, he advised that her current symptoms represented a recurrence of the prior post-traumatic condition and were causally related to the 1988 employment injury. In a July 19, 1996 report, in which he described the history of the 1988 employment injury and subsequent medical care, in describing the events of March 13, 1995, Dr. Genoff stated that appellant reinjured her wrist, while lifting a pot weighing approximately 40 pounds while employed at a catering business where she was required to take orders, answer the telephone and provide some assistance with cooking. He further advised that de Quervain's tenosynovitis could have a traumatic onset and concluded that appellant's current symptoms represented a recurrence of her post-traumatic condition which was causally related to the 1988 employment injury.

It is an accepted principle of workers' compensation law, and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.⁴

Once the work-connected character of any condition is established, "the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause." If a member weakened by an employment injury, contributes to a later fall or other injury, the subsequent injury will be compensable as a consequential injury, if the further medical complication flows from the compensable injury, *i.e.*, "so long as it is clear that the real operative factor is the progression of the compensable injury, with an exertion that in itself would not be unreasonable in the circumstances."⁵

⁴ See *Carolyn King Palermo (Travis Palermo)*, 45 ECAB 308 (1994).

⁵ *Id.*

The record in this case, indicates that on March 13, 1995 appellant reinjured her right wrist when she lifted a pot weighing approximately 40 pounds while working as a catering assistant. Thereafter, appellant filed a notice of recurrence of disability alleging that she could not work because she could not use her right hand. The issue, therefore, is whether her disability after March 13, 1995 is compensable as a “direct and natural” result of the September 7, 1988 employment injury. The evidence of record establishes that appellant returned to work on February 7, 1994 and continued to be gainfully employed until the March 13, 1995 incident.

Applying the principles noted above, the Board finds that the triggering episode for appellant’s claimed recurrence of disability was the March 13, 1995 lifting incident and her subsequent disability was not due to the “natural progression” of her prior condition; rather, the lifting incident constitutes an independent intervening nonindustrial cause of her claimed disability. As the worsening of her condition was produced by a cause other than the September 7, 1988 employment injury, her disability after March 13, 1995 is not compensable under the Federal Employees’ Compensation Act.⁶

The decisions of the Office of Workers’ Compensation Programs dated March 26, 1997 and October 23, 1996 are hereby affirmed.

Dated, Washington, D.C.
March 16, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member

⁶ 5 U.S.C. § 8101 *et seq*; see *Robert W. Meeson*, 44 ECAB 834 (1993).