

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MAUREEN SHIPLEY and U.S. POSTAL SERVICE,  
POST OFFICE, Richmond, Calif.

*Docket No. 97-1898; Submitted on the Record;  
Issued March 25, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for compensation for the period commencing November 26, 1993.

The Board has duly reviewed the case record and concludes that the Office properly denied appellant's claim for compensation for the period commencing November 26, 1993.

Appellant, then a 39-year-old mailhandler, filed a claim for a traumatic injury, Form CA-1, alleging that on November 26, 1993, she injured her spine, right elbow and inner left calf when she fell backwards over a bicycle. A medical record of her emergency visit to the hospital on November 26, 1993 stated that appellant had soft tissue injuries and could return to work. The Office accepted appellant's claim for soft tissue injuries to her low back, right elbow and left calf. After the November 26, 1993 work incident, appellant worked light-duty work for three days and on December 4, 1993 was in a nonwork-related car accident. Appellant was unable to work for three months, returned to light-duty work and stopped working in October 1995.

On December 30, 1994 appellant filed a claim, CA-20, for disability compensation from November 26, 1993 through March 2, 1994. By letter dated January 23, 1996, the Office requested additional medical evidence from appellant. Dr. Lynn F. Shafer, a Board-certified orthopedic surgeon and appellant's treating physician, documented her treatment of appellant for the November and December 1996 accidents from December 7, 1993 through February 7, 1995. In her final report dated February 11, 1995, Dr. Shafer considered appellant's history of injury and stated that she initially diagnosed repetitive and sequential cervical and lumbar strain, that appellant was disabled from working for approximately three months and returned to light-duty work in March 1994. Based on the records of "Dr. Ahlborn" that are not in the record, Dr. Shafer stated that immediately after the November 26, 1993 work accident, appellant was diagnosed as having a cervical and lumbar strain and was released to light-duty work. Dr. Shafer also stated that after the December 4, 1993 car accident appellant told her that she felt

significantly worse than before the car accident. She concluded that absent the December 1993 car accident, appellant would have been able to return to full-duty work by January 4, 1994 and the December 4, 1993 car accident compromised her ability to return to work. Dr. Shafer opined that appellant's current residuals were solely the result of the December 4, 1993 car accident.

By decision dated March 10, 1995, the Office denied the claim stating that appellant had failed to establish a period of compensable disability causally related to the November 23, 1993 employment injury. The Office also stated that appellant's medical treatment after January 5, 1994 for a back injury was related to the December 4, 1993 nonwork-related car accident and therefore was not compensable by the Office.

On April 7, 1995 appellant requested an oral hearing before an Office hearing representative which was held on December 19, 1996. At the hearing, she described the history of her November 26 and December 4, 1996 injuries and how they affected her employment and health. Appellant submitted another report from Dr. Shafer dated November 11, 1996 in which she noted that appellant sustained an exacerbation of her neck and back discomfort on May 2, 1995 when she was transferred to a job that required standing eight hours a day. She stated that her opinion regarding appellant's disability was unchanged from her February 11, 1995 report.

By decision dated February 6, 1997, the Office hearing representative affirmed the Office's March 10, 1995 decision.

Appellant has the burden to establish continuing disability due to a work-related injury.<sup>1</sup> In the present case, Dr. Shafer's February 11, 1995 report does not establish that appellant was disabled from a work-related injury for the period from November 26, 1993 to March 2, 1994. Rather, she opined that, had the December 4, 1996 car accident not occurred, appellant would have returned to full duty by January 1, 1994. Dr. Shafer also stated that appellant's current back and neck condition was due solely to the December 4, 1996 car accident. On November 11, 1996 she stated that her opinion regarding appellant's disability was the same as in her February 1995 report. Dr. Shafer based her opinion on appellant's history of injury, Dr. Ahlborn's records of appellant's condition immediately after the November 26, 1993 accident and her own numerous examinations of appellant. Her opinion is well rationalized and uncontroverted. It is a well-accepted principle of workers' compensation law that once an employee's work-related condition is accepted, 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.<sup>2</sup> Dr. Shafer's opinion establishes that appellant's condition worsened due to a nonindustrial cause, *i.e.*, the car accident and appellant's current back and neck condition is not work related. Appellant has therefore failed to establish that she is entitled to disability compensation for the period from November 26, 1993 to March 2, 1994.

The decision of the Office of Workers' Compensation Programs dated February 6, 1997 is hereby affirmed.

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<sup>1</sup> *Donald Leroy Ballard*, 43 ECAB 876, 882 (1992).

<sup>2</sup> *Charlet Garrett Smith*, 47 ECAB 562, 564 (1996).

Dated, Washington, D.C.  
March 25, 1999

Michael J. Walsh  
Chairman

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member