

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CINDY ALLENDE and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

*Docket No. 97-738; Submitted on the Record;
Issued October 25, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained recurrences of disability on February 5 and 23, 1995 causally related to her accepted employment injury.

On August 4, 1988 appellant, then a 30-year-old mailhandler, filed an occupational disease claim alleging that she sustained a pinched nerve in her neck due to factors of her federal employment. The Office of Workers' Compensation Programs accepted appellant's claim for cervical strain, lumbosacral strain and a bulging lumbar disc at L3-4 and L4-5. Appellant returned to work following her employment injury until she sustained a recurrence of disability on July 10, 1991. Appellant stopped work until January 28, 1995, when she resumed limited-duty employment for six hours per day.¹

On February 9, 1995 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that on February 5, 1995 she sustained a recurrence of disability causally related to her accepted employment injury. Appellant stopped work on February 5, 1995 and returned to work on February 9, 1995. In a Form CA-2a dated March 7, 1995, appellant alleged that she sustained a recurrence of disability on February 23, 1995 due to her 1988 employment injury. Appellant stopped work on February 23, 1995 and did not return.

By decision dated May 22 1995, the Office denied appellant's claim on the grounds that the evidence failed to establish that she sustained a recurrence of disability due to her employment injury. In a decision dated June 13, 1995, the Office determined that appellant's

¹ In a report dated April 28, 1994, Dr. Jack Levine, a Board-certified orthopedic surgeon, who performed an impartial medical examination, diagnosed recurrent cervical spine strain and chronic lumbosacral strain causally related to employment. He found that appellant could return to part time and then to full-time employment with restrictions on lifting, bending and pulling. Dr. Levine further opined that appellant's "symptoms were not borne out by any objective findings" and that discrepancies on physical examination "strongly suggest there is no organic basis for these complaints."

position as a mailhandler represented her wage-earning capacity effective January 28, 1995 and reduced her compensation accordingly.

By letter dated June 16, 1996, appellant requested reconsideration of the Office's denial of her claim for a recurrence of disability. By decision dated July 11, 1995, the Office denied modification of its May 22, 1995 decision. Appellant again requested reconsideration, which the Office denied in a nonmerit decision dated January 19, 1996.

On June 26, 1996 appellant requested reconsideration. In a merit decision dated September 18, 1996, the Office denied modification of its May 22, 1995 decision.

The Board has duly reviewed the case record in the present appeal and finds that appellant has not met her burden of proof to establish that she sustained recurrences of disability on February 5 and 23, 1995 causally related to her accepted employment injury.

Where an employee, who is disabled from the job he or she held when injured on the account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.²

In the present case, the Office accepted that appellant sustained cervical strain, lumbosacral strain and a bulging lumbar disc at L3-4 and L4-5. Appellant subsequently returned to work in a limited-duty capacity. There is no evidence in the record establishing any change in the nature and extent of appellant's light-duty position as a cause of her claimed disability beginning February 1995.

Appellant further has not submitted sufficient medical evidence which would establish that she sustained a recurrence of disability causally related to her accepted employment injury. In support of her claim, appellant submitted a chart note dated February 27, 1995 from a physician who noted that appellant related that she "went to work and could not do her job." He diagnosed a "recurrence of neck [and] back strain" and recommended rest and physical therapy. The report is not, however, pertinent to the issue presented because the physician did not discuss the cause of the diagnosed condition or relate the condition to the accepted 1988 employment injury.

Appellant submitted numerous 1995 form reports from Dr. H.M. Parvatharaj, an orthopedic surgeon and her attending physician, in which he diagnosed chronic neck and low back pain with bulging cervical and lumbar discs and checked "yes" that the condition was caused or aggravated by employment. However, the opinion of a physician on causal relationship which consists only of checking "yes" to the form's question regarding the cause of

² *Terry R. Hedman*, 38 ECAB 222 (1986).

appellant's condition, without any explanation or rationale, has little probative value and is insufficient to establish causal relation.³

In a report dated February 27, 1995, Dr. Parvatharaj noted that appellant's symptoms persisted and requested authorization for a repeat magnetic resonance imaging (MRI) scan. As Dr. Parvatharaj did not find appellant disabled from employment, his opinion does not support a finding that she had a recurrence of disability.

In a report dated March 7, 1995, Dr. Parvatharaj noted that he currently treated appellant for "injuries she sustained working as a mailhandler" and that he had "advised bed rest due to exacerbation of pain and symptoms" since February 23, 1995. He, however, did not provide a diagnosis, a specific history of injury or relate appellant's increased pain to her 1988 employment injury. Thus, his report is of little probative value.

In a report dated June 17, 1995, Dr. Parvatharaj diagnosed chronic low back pain with bilateral radiculopathy, bulging discs at C4-5 and C5-6, and sciatica with bulging discs at L3-4 and L4-5. He stated:

"As a result of [appellant] taking bundles of mail from a baby carriage, while sitting down, turning the mail, removing the rubber bands and placing the mail on trays that were on top of a table, it caused [an] aggravation of the neck and back injuries and these are directly related to the original injury of June 30, 1988, which caused the reoccurrences [sic] of February 5 and of February 23, 1995."

"[Appellant] was seen in my office on February 27, 1995. During that visit, [she] stated that she had difficulty in using [p]ublic [t]ransportation. [Appellant] stated that she had gone back to work, however, she was not able to finish due to severe pains. Also, she stated that her arms felt numb."

Dr. Parvatharaj noted that an MRI scan obtained on October 10, 1990 was normal but the MRI scan on May 9, 1995 revealed "straightening of normal lordosis, suggestive of muscle spasm and bulging discs at C4-5 and C5-6."⁴ He found that appellant was totally and permanently disabled from employment. Dr. Parvatharaj, however, did not adequately explain the medical mechanics of how appellant's 1988 employment injury caused a resumption of total disability on February 5 and 23, 1995. Instead, he related appellant's disability to bending and twisting while performing the duties of her employment. In a recurrence of disability, generally no event other than the previous injury accounts for the disability.⁵ A recurrence of disability is a spontaneous return to disability due to the original employment injury with no intervening causes involved.⁶ Thus, Dr. Parvatharaj's report does not constitute rationalized medical

³ *Robert J. Krstynen*, 44 ECAB 227 (1992).

⁴ An MRI scan obtained on February 9, 1995 revealed "straightening of [the] normal lordosis suggestive of muscle spasm" and "small posterior disc bulges at C4-5 and C5-6."

⁵ *See William R. Lance*, 18 ECAB 422 (1967).

⁶ *Id.*

evidence sufficient to establish that appellant sustained a recurrence of her 1988 employment injury resulting in disability on or after February 1995.

In a report dated June 1, 1996, Dr. Parvatharaj discussed his treatment of appellant for her employment injury since November 1988. He indicated that an examination of the back and neck on May 23, 1996 revealed a muscle spasm. Dr. Parvatharaj attributed appellant's recurrences of disability on February 5 and 23, 1995 to performing repetitive motion at work, including "constantly twisting her neck and back and reaching above her neck to get mail, and having to put it on trays...." He noted that an MRI scan and computerized tomography (CT) scan obtained after appellant returned to employment showed bulging cervical and lumbar discs. Dr. Parvatharaj diagnosed chronic neck with bilateral radiculopathy, low back pain with sciatica, and bulging discs at C4-5, C5-6, L3-4, and L4-5. He concluded that appellant was totally and permanently disabled because she "is unable to walk, sit and stand for a long period of time, she is unable to bend or lift objects, she has difficulty in changing positions due to the numbness in her arms and hands, that radiate down from the neck, she has a weak grip in both hands." Dr. Parvatharaj did not describe how appellant's original employment injury worsened in February 1995 such that she was totally disabled. Rather, he implicated appellant's work duties as causing her recurrence of disability rather than her prior employment injury. As discussed above, a recurrence of disability does not include any stoppage in employment caused by a new injury. Additionally, in his reports Dr. Parvatharaj focused primarily on a diagnosed condition of bulging cervical discs, which has not been accepted by the Office as employment related.

In a report dated June 11, 1996, Dr. Shlomo Piontkowski, a Board-certified orthopedic surgeon, stated that appellant related that she sustained an employment injury on February 23, 1995 and had a previous 1988 employment injury. He diagnosed "cervical derangement and radiculopathy with a possible herniated disc as per the MRI scan of May 1995. She also had signs of low back derangement with sciatica with a possible herniated disc." Dr. Piontkowski opined that appellant's "complaints of pain and discomfort starting January 28, 1995 and which then culminated in a final cessation of work on February 23, 1995 are directly related to her original injury which occurred on June 30, 1988." He provided as rationale for his finding the fact that appellant did not "fully recover" from her original injury, continued to receive treatment from physicians and worked limited duty. In reaching his conclusions, Dr. Piontkowski relied on an inaccurate history of injury, that of appellant sustaining an employment injury on February 23, 1995 and thus his opinion is of diminished probative value.⁷ Further, the fact that appellant had limitations from her original employment injury is insufficient to explain how and why her symptoms worsened such that she was unable to perform the duties of her part-time limited-duty position as of February 5 or 23, 1995.

The remaining reports of record from Dr. Jeffrey Spivak, an orthopedic surgeon and Dr. Tito Muscchio, do not contain an opinion as to whether appellant's current condition or disability was causally related to her accepted employment injury and thus these reports are insufficient to meet appellant's burden of proof.

⁷ *Geraldine H. Johnson*, 44 ECAB 745 (1993).

Moreover, the record contains evidence which supports a finding that appellant is not disabled due to her June 1988 employment injury. In a report dated July 26, 1996, received by the Office on August 8, 1996, Dr. Michael F. Busch, a Board-certified orthopedic surgeon, discussed appellant's history of injury and findings on examination. He noted that he needed to review appellant's x-rays and MRI scan prior to rendering a specific finding. Dr. Busch diagnosed cervical and lumbar pain and stated:

“Her pain and disability seems to be way out of proportion to her physical findings. Bulging discs on an MRI [scan] is a very common finding and is in no way pathognomonic of any major pathology. Also, the fact that her back pain occurred three months after the injury would make this not a work[-]related injury.”

In a report dated August 6, 1996, received by the Office on August 19, 1996, Dr. Scott Naftulin, an osteopath, discussed appellant's medical history, listed findings on examination and reviewed the objective studies of record, including the May 1995 MRI scan of the cervical spine and an MRI scan of the lumbar spine, which he found were essentially normal. He indicated that appellant “displays abnormal illness behaviors throughout the evaluation.” Dr. Naftulin diagnosed “[c]hronic mechanical neck and back pain without objective neurological deficit or nerve root tension signs present[.] [F]rom history it appears that the neck pain is a work[-]related injury. I cannot relate the back pain to a work[-]related injury.” He found no “clear-cut objective neurologic deficit” but possible “significant psychosocial components” and opined that appellant “can work at least at a sedentary position four to eight hours daily. These limitations are based predominately on subjective complaints.” Dr. Naftulin referred appellant to a psychologist.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.⁸ Appellant failed to submit rationalized medical evidence establishing that her claimed recurrences of disability were causally related to the accepted employment injury and, therefore, the Office properly denied her claim for compensation.

⁸ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

The decisions of the Office of Workers' Compensation Programs dated September 18 and January 19, 1996 are hereby affirmed.

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

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member