

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BETTE CONNORS and U.S. POSTAL SERVICE,  
POST OFFICE, Baton Rouge, LA

*Docket No. 97-2550; Submitted on the Record;  
Issued October 25, 1999*

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DECISION and ORDER

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

The issue is whether appellant has met her burden of proof to establish a recurrence of disability on or after November 14, 1994 causally related to her accepted May 8, 1984 employment injury.

On May 8, 1984 appellant, then a 48-year-old distribution clerk, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she injured her left elbow while lifting sacks of mail. The Office of Workers' Compensation Programs accepted the claim for strain, left medial epicondyle surgical release and medial nerve entrapment. Appropriate benefits were paid.<sup>1</sup> She retired on disability effective February 7, 1989.<sup>2</sup> On September 19, 1994 she started working five hours per day.

On December 15, 1994 and April 24, 1995 appellant filed claims for a recurrence of disability commencing November 14, 1994 due to her accepted May 8, 1984 employment injury.<sup>3</sup>

In patient notes dated November 14, 1994, Dr. Lawrence J. Messina, appellant's attending Board-certified orthopedic surgeon, noted that, based upon a physical examination, appellant had swelling, complaints of pain and "loss of all the normal wrinkling in the hand and arm." Dr. Messina opined that, "if she is not even using the arm and she gets swelling just when she has it down, I really can[no]t recommend that she return to any type of gainful employment as she was off work for several years."

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<sup>1</sup> On February 8, 1988 the Office issued appellant a schedule award for an 11 percent permanent impairment of her left arm which was affirmed by an Office's hearing representative on May 10, 1989. The Office issued a loss of wage-earning capacity on February 11, 1987 for five hours per day.

<sup>2</sup> Appellant elected benefits under the Federal Employees' Compensation Act.

<sup>3</sup> The employing establishment noted that appellant worked 38 days after returning to work before stopping work.

In treatment notes dated December 14, 1994, Dr. Messina opined that, since appellant's swelling was down, it was "an indication that we probably should not have allowed her to return to work in the first place" and that the disability was due to her accepted 1984 employment injury.

In a letter dated February 21, 1995,<sup>4</sup> Dr. Messina, based upon a physical examination and history of the injury noted that appellant had a median nerve entrapment release. Dr. Messina noted:

"I saw her back after she was referred back to see me in the [f]all of 1994 because of problems with her arms. She told me that her arms would swell up twice their normal size and I asked her to come back and see me after she had been working with her hand. At that time I did not really identify the swelling, but she did have swelling at that time with loss of all normal wrinkling in her hand and arm and she did complain of pain. X-rays taken at that time were taken to be sure that she did not have bone changes consistent with reflex sympathetic dystrophy. We were not able to identify that. Based on the swelling, pain and discomfort that she had, it was my feeling that this was secondary to disuse disorder, that she had not used her arm for ten years and it would be unreasonable to think that the swelling and pain would resolve just because she returned to work. We stopped her working for a month and when she came back the swelling was down in her arm and was back to normal size. Because of this we felt that [appellant] should not try to return to her prior employment. For this reason we recommended that she return to [d]isability retirement."

In a decision dated August 18, 1995, the Office denied appellant's claim for a recurrence of disability as the evidence of record failed to establish that her disability was due to her accepted employment injury.

In a letter dated September 6, 1995, appellant requested a review of the written record by an Office hearing representative and submitted reports from Dr. Messina dated November 14 and December 14, 1994, February 21 and August 28, 1995 in support of her claim.

In treatment notes dated August 28, 1995, Dr. Messina indicated that appellant continued to have symptoms and was tender. Dr. Messina noted that his letters had been taken out of context in the Office's decision. He stated that he originally "saw no reason why she could n[o]t return to work. I let her go back to work and when she came back in she had swelling." Based upon appellant's swelling, he "recommended that she be returned to her disability status."

By decision dated January 27, 1997, the Office hearing representative affirmed the August 18, 1995 decision denying her recurrence claim.

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<sup>4</sup> The Office refers to a letter dated February 15, 1995 which is not in the record. The hearing representative refers to Dr. Messina's February 21, 1995 letter, but not to a February 15, 1995 letter. Based upon the Office's description of the February 15, 1995 letter, it appears that the February 21, 1995 letter is the letter referred to and a typographical error was made regarding the date.

In a letter dated March 11, 1997, appellant requested reconsideration and submitted a March 3, 1997 letter from Dr. Messina in support of her request. In the March 3, 1997 letter, Dr. Messina stated that “[e]verytime I have tried to get her back to work she will come back in with quite a bit of swelling in that arm which she says is quite painful. Certainly it would not be unusual to expect that to be the case.” He opined that appellant’s work injury had not ceased now or at any time in the past. Dr. Messina indicated that he saw appellant in 1994 and had informed appellant that “she probably could not return to gainful employment because of the injury to her hand unless some work could be found where she did not have to use that arm.”

By decision dated April 29, 1997, the Office denied appellant’s request for reconsideration.

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability on or after November 14, 1994 causally related to her accepted May 8, 1984 employment injury.

When an employee who is disabled from the job she held when injured because of employment-related residuals returns to a light-duty position, or the medical evidence of record establishes that she can perform the light-duty job, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability that prevents him or her from performing such light duty.<sup>5</sup>

As part of this burden, the employee must show a material 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.<sup>6</sup> Thus, the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition,<sup>7</sup> and supports that conclusion with sound medical reasoning.<sup>8</sup>

Appellant submitted several reports and treatment notes from Dr. Messina, which are insufficient to meet appellant’s burden. Dr. Messina, in a February 21, 1995 report, states that she was unable to return to work without giving a rationale for this opinion other than noting appellant’s subjective complaints of pain and swelling. Dr. Messina’s treatment notes of November 14 and December 14, 1994 are insufficient to meet appellant’s burden as they note appellant’s swelling and pain, but do not provide an opinion stating how appellant is disabled from her light-duty position. While Dr. Messina in his December 14, 1994 treatment note opined that appellant’s disability was due to her May 1984 employment injury, he provides no medical rationale to support his opinion. The August 25, 1995 treatment note is also insufficient as it fails to provide any medical rationale to support his opinion that appellant is disabled from

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<sup>5</sup> *Richard E. Konnen*, 47 ECAB 388 (1996).

<sup>6</sup> *Mary A. Howard*, 45 ECAB 646, 651 (1994), quoting *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>7</sup> *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

<sup>8</sup> *Lourdes Davila*, 45 ECAB 139, 142 (1993).

her light-duty work beyond noting that she had swelling upon her return to work. Lastly, Dr. Messina's March 3, 1997 report indicated that appellant's work injury had not ceased, but did not state how appellant was disabled or how the disability related back to the accepted employment injury. In his September 20, 1996 treatment notes, Dr. McTighe does note a continuation of significant abductor weakness in her left hip and her reporting increased pain, but does not state how appellant is disabled nor how the disability relates back to the accepted employment injury. An award of compensation may not be based on surmise, conjecture or speculation.<sup>9</sup> Furthermore, Dr. Messina has not presented any rationalized medical evidence to explain how appellant had a recurrence of disability because of her return to work. Appellant therefore has not met her burden of proof.

As noted above, it is appellant's burden to establish a claim for recurrence of disability. Appellant has not established a recurrence of disability commencing November 14, 1994 that is causally related to her May 8, 1984 employment injury. Accordingly, the Office properly denied her recurrence claim.

The decisions of the Office of Workers' Compensation Programs dated April 29 and January 27, 1997 are hereby affirmed.

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

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

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<sup>9</sup> See *Daniel D. Morehead*, 31 ECAB 188, 194-95 (1986).