

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA D. KELLY and U.S. POSTAL SERVICE,
POST OFFICE, Erie, PA

*Docket No. 98-729; Submitted on the Record;
Issued October 26, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained a recurrence of disability on January 5, 1996 based on her January 26, 1994 work-related injury.

On January 26, 1994 appellant, then a 47-year-old rural letter carrier, filed a claim for compensation alleging that she injured her back while in the performance of duty.

On June 20, 1994 the Office of Workers' Compensation Programs accepted appellant's claim for subluxation of L5 and cervical and lumbosacral strain.

On February 1, 1996 appellant filed a claim for recurrence of disability, (Form CA-2a), alleging that on January 5, 1996 she sustained a recurrence of disability. Appellant described her recurrence as an "ongoing continuous injury," with increasing severe pain. In support of her claim appellant submitted a January 18, 1996 medical report from Dr. Joseph Markovich, appellant's treating chiropractor, who stated that appellant had sustained a recurrence of pain in the lumbar region. Dr. Markovich stated that appellant related intermittent pain and discomfort since her January 26, 1994 work-related injury and that her symptoms were permanent and chronic.

By letter dated April 16, 1996, the Office advised appellant that she needed to submit additional information regarding her claim for recurrence of disability, including a detailed narrative medical report regarding the causal relationship between appellant's current condition to her accepted condition of subluxation of L5 and cervical and lumbar strain sustained on January 26, 1994.

On May 13, 1996 the Office denied appellant's claim.

On May 21, 1996 appellant responded to the Office's April 16, 1996 request for information and stated that since her initial January 26, 1994 work-related injury she has been in constant pain and has been under constant medical care for her back condition and arthritis

which settled in the injured area. Appellant further stated that her arm had swollen and that she had pain in her back and legs. Appellant also requested an oral hearing.

In a medical report dated January 24, 1997, Dr. Michael M. Rezaian, who is Board-certified in internal medicine as well as rheumatology, stated that Dr. Rezaian had been treating appellant since February 6, 1995, as a referral based on a positive test for lupus, at which time she related a history of pain and stiffness in extremities and lower back. He noted appellant's history of injuries particularly her January 1993 injury and her January 1994 vehicular accident as well as a September 1994 arm condition. Dr. Rezaian noted appellant's symptoms during treatment as enthesopathy, peripheral joint tenderness with right knee effusion as well as tenderness along the spine and sacroiliac joints, pitting in her nails, right elbow swelling, persistent right lateral and medial epicondylitis, paraspinal and sacroiliac joint tenderness. He noted that appellant had an exacerbation of her symptoms due to increased work load in January 1996. Based on a positive anti-nucleic acid (ANA) finding at 1:640, normal erythrocyte sedimentation rate (ESR) and negative rheumatoid factor, Dr. Rezaian determined that appellant had psoriatic arthritis, a form of inflammatory arthritis that affects the spine and sacroiliac joints in the lower back. He also noted that psoriatic arthritis can be triggered by physical injury, which he opined occurred in appellant's January 1994 work-related incident which was significantly exacerbated in a January 1996 incident.

On January 28, 1997 a hearing was held. On May 29, 1997 the hearing representative found that appellant's medical evidence, although not sufficient to establish that her medical condition was causally related to her work-related injury, raised an uncontroverted inference of causal relationship sufficient to warrant further development by the Office and remanded the case to the Office. The hearing representative advised the Office to prepare a statement of accepted facts and to refer appellant to a Board-certified orthopedic surgeon, for the purposes of determining whether appellant's condition was causally related to her January 26, 1994 work-related injury.

On July 24, 1997 the Office referred appellant's case record along with a statement of accepted facts to Dr. Robert M. Yanchus, who is Board-certified in orthopedic surgery, for a second opinion regarding whether appellant's condition was causally related to her work-related injury.¹

In an August 25, 1997 medical report, Dr. Yanchus stated that he had examined appellant and reviewed the medical evidence of record. He stated that appellant had "cervical sprain/diffuse degenerative disc disease lumbar sprains aggravating preexisting arthritic changes." In response to specific questions posed by the Office, Dr. Yanchus stated that there was no medical evidence to support a causal relationship between her current medical condition and her January 26, 1994 work-related injury and that the January 1996 incident appeared to be the consequence of working increased hours. He also noted that the diagnosis of psoriatic

¹ The Board notes that the statement of accepted facts requested the second opinion physician to state his opinion regarding the causal relationship between appellant's work-related injury and her January 26, 1994 incident as defined by appellant's chiropractor, Dr. Joseph P. Markovitch.

arthritis was not reasonable given the absence of a family history of skin/nail lesions and the total absence of any psoriatic skin or nail lesions on the claimant.²

By decision dated October 8, 1997, the Office denied appellant's claim on the grounds that the evidence of file failed to establish that her current medical conditions were causally related to her work-related injury.

In the present case, appellant has alleged that she sustained a recurrence of disability on January 5, 1996 causally related to her January 26, 1994 work-related injury. As part of appellant's burden of proof, she must submit rationalized medical evidence based upon a complete and accurate factual and medical background, showing a causal relationship between the injury claimed and her federal employment.³ To support her claim, appellant submitted a medical report from Dr. Rezaian, Board-certified in internal medicine and rheumatology, who stated that, based on a positive ANA test, a normal ESR and negative rheumatoid factor, appellant had psoriatic arthritis, which was triggered by physical injury which he opined occurred in appellant's January 1994 work-related incident. He further noted that appellant's symptoms were exacerbated by the January 1996 incident.

Dr. Yanchus, the second opinion physician and a Board-certified orthopedic surgeon, found that there was no medical evidence to support a recurrence of disability. Section 8123(a) of the Federal Employees' Compensation Act provides that where there is disagreement between the physician making the examination for the United States and the physician of the employee, the Office shall appoint a third physician who shall make an examination.⁴ Due to the conflict between Drs. Rezaian and Yanchus' opinions as to whether appellant sustained a recurrence of disability causally related to her work-related injury, the case must be remanded for referral of the case record and a statement of accepted facts to an impartial medical specialist to resolve this conflict.⁵ The Office should then develop the evidence as it deems necessary and issue an appropriate decision.

² The Board notes that Dr. Rezaian, Board-certified in rheumatology, stated that appellant indeed had pitting in her nails.

³ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994); *Steven R. Piper*, 39 ECAB 312 (1987).

⁴ 5 U.S.C. § 8123(a); *Esther Velasquez*, 45 ECAB 249, 252-53 (1993).

⁵ *Kathryn Haggerty*, *supra* note 3; *Carol A. Dixon*, 43 ECAB 1065, 1071 (1992).

The decision of the Office of Workers' Compensation Programs dated October 8, 1997 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
October 26, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member