

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLORIA J. WHITE and U.S. POSTAL SERVICE,
TWENTY-SECOND STREET STATION, Chicago, IL

*Docket No. 98-1195; Submitted on the Record;
Issued April 4, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained a recurrence of total disability on March 8, 1997 causally related to her November 28, 1988 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing.

The Board has duly reviewed the case record and concludes that appellant failed to establish that she sustained a recurrence of disability on March 8, 1997 causally related to her November 28, 1988 employment injury.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.¹ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.² Where no such rationale is present, medical evidence is of diminished probative value.³

On November 28, 1988 appellant, then a 44-year-old postal clerk, sustained a right ankle fracture in the performance of duty. She returned to work on April 3, 1989 but sustained a

¹ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

² *Mary S. Brock*, 40 ECAB 461, 471 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

³ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

recurrence of disability on June 3, 1993. On October 31, 1994 appellant sustained a left lateral tibial fracture and temporary aggravation of an L4-5 disc herniation,⁴ which the Office accepted as consequential injuries related to the 1988 employment injury. In a notice of recurrence of disability and claim for compensation dated April 1, 1997, appellant alleged that she sustained a recurrence of disability on March 8, 1997, which she attributed to her November 28, 1988 employment injury.

By decision dated August 8, 1997, the Office denied appellant's claim for a recurrence of disability on and after March 8, 1997.

By letter dated and postmarked September 9, 1997, appellant requested an oral hearing before an Office hearing representative. By decision dated November 10, 1997, the Office denied appellant's request for an oral hearing on the grounds that her request was not timely submitted within 30 days of the Office's August 8, 1997 decision and that the issue in the case could equally well be addressed by a request for reconsideration and the submission of additional evidence.

By letter dated February 7, 1998, appellant requested reconsideration of the denial of her claim and submitted additional evidence. By decision dated April 2, 1998, the Office denied modification of its August 8, 1997 decision.

In a report dated March 25, 1997, Dr. F. Todd Wetzel, an orthopedic surgeon of professorial rank, provided a history of appellant's condition and related her complaint of pain in her low back and right leg and weakness in her leg. He provided no findings on examination but diagnosed degenerative lumbar disc disease and possible disc derangement and lateral recess stenosis. However, he provided no opinion as to the cause of the condition and, therefore, this report is not sufficient to establish that appellant sustained a recurrence of disability on March 8, 1997 causally related to her November 28, 1998 employment injury.

In clinical notes dated April 15, 1997, Dr. Wetzel stated that appellant was temporarily totally disabled. However, he provided no opinion as to the cause of the disability and, therefore, these notes do not discharge appellant's burden of proof.

In a form report dated May 1, 1997, Dr. Wetzel indicated that appellant was temporarily totally disabled with a diagnosis of spinal stenosis and he indicated by checking the block marked "yes" that the condition was causally related to her 1988 employment injury. However, the Board has held that an opinion on causal relationship, which consists only of checking "yes" to a form report question on whether the claimant's disability was related to the history given is of little probative value.⁵ Without any explanation or rationale, such a report has little probative

⁴ In a report dated January 16, 1996, Dr. D. Dirk Nelson, appellant's attending orthopedic surgeon, opined that the temporary aggravation of her disc herniation had resolved as of July 1995 and her disability resulting from her tibial fracture ceased as of February 1995.

⁵ Donald W. Long, 41 ECAB 142, 146 (1989).

value and is insufficient to establish causal relationship.⁶ Therefore, this report is not sufficient to establish a work-related recurrence of disability.

In a report dated May 17, 1997, Dr. Carlos Bellabarba, an Office medical consultant, stated that there was little medical evidence to suggest that appellant's spinal stenosis was related to her employment injury. He stated that the medical evidence suggested a chronic condition of which any aggravation due to injury should be temporary and that the natural progression of her degenerative condition was the more likely cause of her current symptoms. As Dr. Bellabarba opined that appellant's back complaints were due to degenerative changes rather than to her employment injury, this report does not support appellant's claim for a recurrence of disability causally related to her 1988 employment injury.

By letter dated June 10, 1997, the Office referred appellant, together with copies of medical records and a statement of accepted facts, to Dr. Julie N. Wehner, a Board-certified orthopedic surgeon, for an examination and evaluation as to whether appellant had any continuing disability or medical condition causally related to her 1988 employment injury.

In a report dated July 2, 1997, Dr. Wehner provided a history of appellant's condition and course of treatment and findings on examination. She stated:

"The imaging studies do not show any clear-cut herniation. They show mostly some spinal stenosis at the present time. Therefore, the increasing subjective symptoms of complaint are more likely due to a degenerative process, which is a natural course of aging.... The L4-5 disc sprain that was accepted was most likely a temporary condition that has subsequently worsened due to normal degenerative processes. At the present time [appellant] has no objective findings. She has mostly subjective complaints of pain.... I do not think that the surgery [proposed by Dr. Wetzel] is the natural outcome of [the employment injury], but is more the outcome of a natural degenerative process."

As Dr. Wehner opined that appellant's back complaints were due to degenerative changes in the back attributable to the natural aging process rather than to her 1988 employment injury, this report does not support appellant's claim for a work-related recurrence of disability.

In a report dated February 19, 1998, Dr. R. Lawrence Ferguson, a neurosurgeon, stated that, if appellant had no back complaints prior to the employment-related fall in 1988 and had back complaints since that time, "it would suggest that there is a relationship." However, the Board has ruled that a physician's opinion that a condition is causally related to an employment injury because the employee was asymptomatic prior to the claimed injury is insufficient, without supporting rationale to establish causal relationship.⁷ As Dr. Ferguson did not provide specific findings and rationale explaining how appellant's back complaints in 1997 were causally related to her 1988 employment injury, this report does not establish that she sustained an employment-related recurrence of disability on March 8, 1997.

⁶ *Id.*

⁷ *Thomas D. Petrylak*, 39 ECAB 276, 281 (1987).

The Board further finds that the Office properly denied appellant's request for an oral hearing.

Section 8124(b) of the Federal Employees' Compensation Act provides that, before review under section 8128(a), a claimant for compensation who is not satisfied with a decision of the Secretary is entitled to a hearing on his claim on a request made within 30 days after the date of issuance of the decision before a representative of the Secretary.⁸ As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.⁹ As appellant's request for a hearing was dated September 9, 1997, more than 30 days after the Office's August 8, 1997 decision, appellant was not entitled to a hearing as a matter of right. The Office further considered appellant's request for an oral hearing and properly determined that the issue in the case, whether appellant sustained a recurrence of disability, could equally well be addressed by a request for reconsideration and the submission of additional evidence.

The decisions of the Office of Workers' Compensation Programs dated April 2, 1998, August 8 and November 10, 1997 are affirmed.

Dated, Washington, D.C.
April 4, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ See 5 U.S.C. § 8124(a).

⁹ See *Charles J. Prudencio*, 41 ECAB 499, 501 (1990).