

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA YOUNG and U.S. POSTAL SERVICE,
POST OFFICE, Hauppauge, NY

*Docket No. 98-2321; Submitted on the Record;
Issued April 13, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on April 15, 1996 causally related to her accepted employment injury.

The Board has duly reviewed the case on appeal and finds that appellant failed to meet her burden of proof in establishing that she sustained a recurrence of disability on April 15, 1996 causally related to her accepted employment injury.

Appellant, an office clerk, filed a claim that alleging on January 17, 1995 she injured her back in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for herniated disc L5-S1 on May 17, 1995. Appellant returned to light duty on January 30, 1995 working six hours a day. On April 15, 1996 appellant filed a claim for recurrence of disability alleging that she continued to experience pain in her back. By decision dated May 3, 1996, the Office terminated appellant's compensation benefits based on the report of the second opinion physician. By decision dated June 19, 1996, the Office denied appellant's claim for recurrence of disability. Appellant requested reconsideration on August 8, 1996, alleging that she began performing additional duties. The Office denied modification of its June 19, 1996 decision, on November 4, 1996. Appellant, through her representative, requested reconsideration of both the June 19, 1996 denial of recurrence of disability and the May 3, 1996 termination of compensation benefits decisions on April 2, 1997. By decision dated April 23, 1997, the Office denied modification of the June 19, 1996 decision.¹ Appellant, through her representative, requested reconsideration on March 5, 1998 of both the termination and denial of

¹ The Office did not address the May 3, 1996 termination decision. As the Office has not considered appellant's timely request for reconsideration of the May 3, 1996 decision, the Board will not consider this issue on appeal. 20 C.F.R. § 501.2(c); § 501.3(d)(2).

recurrence of disability decisions. By decision dated June 9, 1998, the Office denied modification of the June 19, 1996 recurrence of disability decision.²

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she 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 show that 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 requirements.³ Furthermore, appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence, a causal relationship between her recurrence of disability commencing April 15, 1996 and her January 17, 1995 employment injury.⁴ 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 employment factors and supports that conclusion with sound medical reasoning.⁵

In this case, appellant returned to work six hours a day on January 30, 1995. Appellant continued to work light duty lifting up to 20 pounds beginning in October 1995.⁶ Appellant stated that she began performing additional duties related to her job assignment in January 1996 as she was feeling better due to physical therapy. She stated that she began carrying trays of mail weighing 15 pounds and that her lower back pain returned as well as pain in her pelvic area. There is no evidence in the record that appellant's light-duty job requirements changed after October 1995. She has indicated that the trays were within her lifting restriction of 20 pounds.

Appellant has also submitted medical evidence in an effort to establish a change in the nature and extent of her condition. Appellant submitted a series of reports from Dr. Harris Feingold, an orthopedic surgeon. On April 15, 1996 Dr. Feingold stated that appellant was unable to work. In a report dated May 17, 1996, he noted appellant's history of injury and diagnosed musculo-ligamentous derangement of the lumbosacral spine with lower extremity radiculopathies. Dr. Feingold recommended bed rest and found that appellant was totally disabled. These reports are not sufficient to meet appellant's burden of proof as he did not provide an opinion on the causal relationship between appellant's diagnosed condition and her accepted employment injury. Dr. Feingold also failed to explain why appellant was no longer able to perform her light-duty position and how or why her condition deteriorated.

² Again the Office failed to address the May 3, 1996 termination decision.

³ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

⁵ *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁶ Appellant worked eight hours a day in October 1995, however, she apparently worked six hours a day for the remainder of the light-duty employment.

Appellant also submitted medical reports from Dr. Martin A. Lehman, a Board-certified orthopedic surgeon. On July 23, 1996 Dr. Lehman noted appellant's history of injury and medical history. He stated that following the employment injury appellant undertook new duties of carrying heavy trays of mail. Dr. Lehman diagnosed acute and chronic acute recurrent sprain of the lumbosacral spine with radiculopathy. He stated, "The patient was seen with continued marked disabilities causally related to the injury at work on January 17, 1995 and the additional recurrence causally related to the additional duties with sweeping and carrying mail...." Dr. Lehman provided work restrictions including lifting up to 20 pounds and intermittent periods of rest with no continuous standing. He opined that appellant's disability was causally related to the January 17, 1995 employment injury and the "additional recurrence with the additional work for which she had been removed from all work...." Dr. Lehman repeated his conclusions on July 2, 1996 and noted that a computed tomography scan revealed herniated disc at L5-S1 and degenerative disc disease at L5-S1. In a report dated March 7, 1997, Dr. Lehman repeated his previous findings and diagnoses. He stated that he believed appellant was disabled due to the employment injury and alleged additional duties in January 1996.

Although Dr. Lehman provided a history of injury and an opinion on the causal relationship between appellant's current condition and her accepted employment injury, he attributes appellant's condition to additional duties at work which have not been established as factual. Dr. Lehman further fails to provide any medical rationale explaining why the duty of carrying mail trays weighing 15 pounds would result in appellant's total disability for work, given that both he and her prior physicians indicated that she could lift up to 20 pounds. Without the necessary medical opinion evidence based on a proper factual background and including medical rationale to establish the causal relationship between appellant's diagnosed condition with resulting disability and her accepted employment injury, appellant has failed to meet her burden of proof and the Office properly denied her claim for a recurrence of disability.⁷

⁷ Following the Office's June 9, 1998 decision, appellant submitted additional new evidence. As the Office did not review this evidence in reaching a final decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

The June 9, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
April 13, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member