

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOAN MARIE STARK and U.S. POSTAL SERVICE,
POST OFFICE, Lehigh Valley, PA

*Docket No. 98-1231; Submitted on the Record;
Issued January 27, 2000*

DECISION and ORDER

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

The issue is whether appellant has met her burden of proof in establishing that her claimed disability on or prior to February 29, 1996 is causally related to factors of her federal employment or causally related to her accepted April 17, 1993 cervical strain.

On May 10, 1993 appellant, then a 38-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 17, 1993 she sustained a strain to the left side of her head and neck. The Office of Workers' Compensation Programs accepted the claim (OWCP No. A03-0187015) for a cervical strain.¹

On September 25, 1996 appellant filed a claim for recurrence (Form CA-2a) alleging that she sustained a recurrence of disability commencing February 29, 1996, causally related to her accepted April 17, 1993 employment-related injury. By letter dated January 9, 1997, the Office advised appellant that on the CA-2a the description of the circumstances of the recurrence of disability would constitute a new injury, not a recurrence of the April 17, 1993 accepted injury. Appellant was advised that to pursue her claim she should submit a notice of occupational disease and claim for compensation, Form CA-2.

On February 12, 1997 appellant filed a claim for an occupational disease (Form CA-2) alleging that she suffered three herniated discs due to "The weight of the satchel pulling on my neck and shoulder for five and one-half hours caused tingling in both hands, neck pain and numbness," commencing on February 29, 1996 and continuing. On the reverse side of the form the employing establishment stated that on February 28, 1996 appellant was placed on limited duty consisting of filing and answering telephones and with no lifting more than 10 pounds and no carrying or casing mail.

¹ Appellant stopped work on April 26, 1993 and returned to work on May 10, 1993. She was on light duty from May 10 through June 24, 1993, and returned to full regular duty on June 11, 1993.

By letter dated April 9, 1997, the Office requested additional factual and medical information from appellant. By another letter also dated April 9, 1997, the Office requested additional factual information from the employing establishment.

By letter dated April 18, 1997, the employing establishment responded to the Office's April 9, 1997 request for information.

On April 30, 1997 the record was supplemented with March 17, 1997 office notes from Dr. Victor T. Ambruso, who specializes in neurological surgery. On August 7, 1997 the record was supplemented with June 17 and July 18, 1996 office notes by Dr. Ambruso.

By decision dated May 15, 1997, the Office denied appellant claim on the grounds that she failed to establish that she sustained an injury.

By letter dated May 27, 1997, appellant requested an oral hearing before an Office hearing representative, which was held on September 29, 1997.

By summary decision dated September 29, 1997, the hearing representative remanded the case for further development of the evidence. The hearing representative found that Dr. Ambruso's office notes raised an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office. The hearing representative also instructed the Office to combine case files A3-187015 and A3-224621 making A3-187015 the master file number, to prepare a statement of accepted facts and to refer it along with appellant's medical evidence to a Board-certified orthopedic surgeon with a list requesting information, specifically, to provide a definitive diagnosis, state his or her opinion as to the medical connection, if any, between the April 17, 1993 employment incident and appellant's present neck conditions as defined by Dr. Ambruso, state whether the condition is disabling and, if so, when did the disability cease or is expected to cease and provide a rationalized medical opinion as to whether surgical intervention is or was warranted.

By decision dated February 10, 1998, the Office, after further developing the evidence, denied appellant's claim finding that the evidence of record failed to establish that the claimed disability is causally related to the exposure on or prior to February 18, 1996 or the traumatic injury of April 17, 1993.

The Board finds that this case is not in posture for decision.

By summary decision the Office hearing representative remanded the instant case and instructed the Office to refer appellant to a Board-certified orthopedic surgeon for a second opinion evaluation. The record supports that the Office referred appellant to Dr. Joseph Sgarlat, that Dr. Sgarlat saw appellant on December 2, 1997 and that he provided a report to the Office. The record also supports that the Office requested an additional report from Dr. Sgarlat, which he provided. However, neither Dr. Sgarlat's initial report nor the additional report is in the record. Therefore, the record is incomplete and must be remanded for reconstruction.

The decisions of the Office of Workers' Compensation Programs dated February 10, 1998 and May 15, 1997 are set aside and the case is remanded for reconstruction of the record and issuance of a new decision.

Dated, Washington, D.C.
January 27, 2000

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member