

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GAIL L. DEMERS and U.S. POSTAL SERVICE,  
POST OFFICE, Granby, MA

*Docket No. 98-2060; Submitted on the Record;  
Issued January 3, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability, commencing June 12, 1997, causally related to her May 25, 1996 employment injury.

On May 28, 1996 appellant, a 47-year-old rural letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 25, 1996 she sustained an injury to her lower back and attendant pain while lifting mail from a hamper. She stopped work on May 28, 1996, returned to limited duty on June 12, 1996 and resumed her regular duties on July 1, 1996. Based on the medical evidence appellant submitted, the Office of Workers' Compensation Programs accepted her claim for lumbosacral sprain.

On September 8, 1997 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that she stopped work on June 12, 1997, the date of her partial lumbar hemilaminectomy at L5-S1 on the left side with microdiscectomy, performed by Dr. Augusto G. Asinas, a neurosurgeon. She alleged that the surgery was necessitated by the effects of the May 25, 1996 employment injury. By decision dated December 11, 1997, the Office denied appellant's claim for a recurrence of disability on the grounds that the medical evidence she submitted failed to establish a causal relationship between the alleged recurrence and the employment injury. Appellant requested reconsideration by letter dated December 27, 1997, received by the Office on January 5, 1998, and submitted medical evidence previously of record and reviewed by the Office as well as submitted additional medical evidence. By decision dated March 18, 1998, the Office denied modification of its December 11, 1997 decision on the grounds that the submitted evidence was insufficient to warrant modification.

The Board has duly reviewed the record and finds that appellant has failed to meet her burden of proof in establishing that she sustained a recurrence of disability, commencing June 12, 1997, causally related to her May 25, 1996 employment injury.

Following the May 25, 1996 employment injury, appellant resumed her regularly assigned duties effective July 1, 1996. With respect to the alleged disability thereafter, appellant has the burden of establishing by the weight of the reliable, probative and substantive evidence that the recurrence of a disabling condition for which she seeks compensation was causally related to her employment injury. As part of such burden of proof, rationalized medical evidence showing causal relation must be submitted.<sup>1</sup>

Although Dr. Asinas, a neurosurgeon, reported on June 2, 1997 that appellant described the facts and circumstances surrounding the May 25, 1996 employment injury, he did not address whether the diagnosed condition of lumbar radiculopathy on the left side, “probably due to a ruptured disc at the level of L5-S1 with involvement of the S1 nerve root,” was somehow causally related to the accepted lumbosacral strain. On June 12, 1997 appellant underwent a partial hemilaminectomy at L5-S1 on the left side with microdiscectomy performed by Dr. Asinas, who reported in subsequent reports that appellant had improved and on August 14, 1997 reported that she would be able to return to work on September 8, 1997. However, he did not address whether appellant’s diagnosed condition and resultant surgery were causally related to the May 25, 1996 employment injury.

Dr. John E. McHugh, a Board-certified internist, reported on August 6 and 28 and September 15, 1997 that appellant had sustained an injury to her back in May 1996; that although she returned to work, she had continuously experienced pain in the same area; and that a magnetic resonance imaging (MRI) film was positive for disc disease. Dr. McHugh concluded that appellant’s “entire illness” was causally related to the May 25, 1996 employment injury. The Board finds that Dr. McHugh’s medical reports are insufficient to establish appellant’s claim as they do not contain a complete history of the May 25, 1996 employment injury and are devoid of a rationalized medical opinion relating disc disease to the accepted lumbosacral strain. That is, except for stating that appellant continued to experience pain following the May 25, 1996 employment injury, Dr. McHugh did not offer an explanation as to how the employment events culminating in the May 25, 1996 lumbosacral strain resulted in disc disease. As the Board has held, the fact that a condition manifests itself during a period of employment does not raise an inference of causal relationship between the two.<sup>2</sup> Moreover, the Board notes that disc disease was not accepted by the Office as resulting from the May 25, 1996 employment injury. Since the Office has not accepted disc disease as employment related, appellant has the burden of proof in establishing such a causal relationship by the submission of rationalized, substantive and probative medical evidence.<sup>3</sup> This she has failed to do. In his report of December 23, 1997, Dr. McHugh discussed the results of an MRI scan taken to discover the cause of appellant’s pain, noting that it revealed a moderately large herniation at L5-S1 with a mass effect on the nerve root. He, however, did not relate this finding to the May 25, 1996 employment injury.

As appellant has failed to submit any rationalized medical evidence establishing a causal relationship between the May 25, 1996 employment-related lumbosacral strain and the alleged

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<sup>1</sup> *Barbara J. Williams*, 40 ECAB 649 (1989); *James A. Long*, 40 ECAB 538 (1989).

<sup>2</sup> *Id.*

<sup>3</sup> *James A. Long*, *supra* note 1.

recurrence of disability, she has failed to meet her burden of proof. Accordingly, the Office properly denied her claim for compensation benefits.

The decisions of the Office of Workers' Compensation Programs dated March 18, 1998 and December 11, 1997 are hereby affirmed.

Dated, Washington, D.C.  
January 3, 2000

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member