

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAPHNE ADAMS and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Cleveland, OH

*Docket No. 99-812; Submitted on the Record;
Issued July 14, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that she sustained recurrences of disability from August 10 to 18, 1994 and from September 27 to October 3, 1994 causally related to her May 25, 1991 employment injury.

The Office of Workers' Compensation Programs accepted that appellant's May 25, 1991 employment injury, in which she was struck by a tow motor, resulted in contusions to the hip and knee, and in an acute lumbar strain. Appellant received continuation of pay from May 29 to July 12, 1991. She returned to work for four hours per day on July 18, 1991, and on August 2, 1991 resumed working eight hours per day. The Office paid compensation until July 31, 1991.

On August 19, 1994 appellant filed a claim for a recurrence of disability from August 10 to 18, 1994 due to her May 25, 1991 employment injury. On October 3, 1994 appellant filed a claim for a recurrence of disability from September 27 to October 3, 1994 due to her May 25, 1991 employment injury.

By decision dated January 11, 1995, the Office found that the evidence failed to demonstrate a causal relationship between appellant's injury and the claimed recurrences of disability. Appellant requested a hearing, which the Office scheduled for June 20, 1995. By decision dated July 10, 1995, the Office found that appellant had abandoned her request for a hearing. Appellant appealed to the Board; in a decision and order dated November 17, 1997, the Board found that the Office improperly found that appellant abandoned her request for a hearing, and remanded the case for rescheduling of a hearing.¹ Following a hearing held on June 23, 1998, an Office hearing representative, in a decision dated August 21, 1998, found that appellant had not met her burden of establishing that her claimed recurrences of disability were causally related to her May 25, 1991 employment injury.

¹ Docket No. 95-3006.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which she claims compensation is causally related to the accepted injury.² This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.³

The Board finds that appellant has not met her burden of proof.

In a note dated August 18, 1994, Dr. Barry M. Gordon diagnosed low back strain and question of herniated disc and indicated appellant was unable to work from August 10 to 18, 1994. This report is not sufficient to meet appellant's burden of proof because it does not indicate appellant's disability from August 10 to 18, 1994 was related to her May 25, 1991 employment injury. In a report dated October 3, 1994, Dr. Susan Arceneaux stated that appellant had been off work the last few days because she stated her pain was worse at night. Not only does this report fail to address the possible relationship between appellant's alleged disability and her May 25, 1991 employment injury, but its statement on disability consists of the doctor's reiteration of appellant's complaint that she hurt too much to work, which is not a basis for payment of compensation. Dr. Arceneaux indicated that appellant was able to work when she saw her on October 3, 1994.⁴

Dr. R. Brad Watters indicated in notes dated November 11, 1994 that appellant was totally disabled from August 10 to 17, 1994 and from September 28 to October 2, 1994 due to a low back strain. Dr. Watters, however, did not indicate in these notes whether this disability was related to appellant's May 25, 1991 employment injury. In a narrative report also dated November 11, 1994, Dr. Watters noted that he had not seen appellant between June 30 and August 30, 1994, and that an MRI scan showed small focal disc protrusions at L4-5 and L5-S1. Dr. Watters stated, "Although she did have some pain that antedated her May 25, 1991 injury, this pain seems to have been exacerbated by this injury. At the present time she continues to have pain and this pain is exacerbated by work." This report is insufficient to meet appellant's burden of proof, because it is speculative with regard to causal relation and because it does not directly relate appellant's disability to her May 25, 1991 employment injury. The case record contains no rationalized medical opinion that appellant's disability from August 10 to 18, 1994 and from September 27 to October 3, 1994 is causally related to her May 25, 1991 employment injury. Appellant has not met her burden of proof.

The decision of the Office of Workers' Compensation Programs dated August 21, 1998 is affirmed.

Dated, Washington, D.C.

² *John E. Blount*, 30 ECAB 1374 (1974).

³ *Frances B. Evans*, 32 ECAB 60 (1980).

⁴ *John L. Clark*, 32 ECAB 1618 (1981).

July 14, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member