

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANICE CUMMINGS and U.S. POSTAL SERVICE,
IRVING PARK PROCESSING & DISTRIBUTION CENTER,
Chicago, IL

*Docket No. 99-1595; Oral Argument Held May 18, 2000;
Issued July 21, 2000*

Appearances: *Janice Cummings, pro se; Paul J. Klingenberg, Esq.,*
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has established that her March 21, 1997 employment injury resulted in disability for work.

On March 21, 1997 appellant filed a claim for an injury to her low back sustained that day when a coworker bumped into her back with a skid. At the time of this injury appellant was performing light duty making letter trays and facing a letter opening unit; her limitations were 15 pounds of lifting, 20 pounds of pushing and no walking or standing over 2 hours per day. Appellant stopped work on March 21, 1997, returned to work on March 27 and 28, 1997 did not work on March 29 or 30, 1997 then interspersed days of work with days not worked until June 12, 1997, when she stopped work and did not return. On the days that appellant worked during this period she was assigned to the safety training office, with restrictions against lifting over 15 pounds, pushing over 30 pounds and walking, standing, bending, stooping, kneeling or climbing.

By letter dated June 9, 1997, the Office of Workers' Compensation Programs advised appellant that it had accepted that she sustained a contusion of the lower back on March 21, 1997 and that she may be eligible to receive continuation of pay or compensation for wage loss. On August 16, 1997 appellant's employment at the employing establishment was terminated for being absent without leave since June 16, 1997.¹ On September 5, 1997 appellant filed a claim for compensation for the period March 21, 1997 to "present." By decision dated November 24, 1997, the Office found that appellant had not established that she was totally disabled for any

¹ At oral argument before the Board, appellant noted that this termination was rescinded by the employing establishment.

period following her March 21, 1997 employment injury. Appellant requested a hearing, which was held before an Office hearing representative on June 22, 1998. By decision dated August 20, 1998, this Office hearing representative found that appellant had established that she sustained a lower back contusion on March 21, 1997 in the performance of duty, but that the medical evidence failed to establish that this injury resulted in any disability for work. Appellant requested reconsideration and submitted additional medical evidence. By decision dated April 7, 1999, the Office found that the additional evidence was not sufficient to warrant modification of its prior decision.

Appellant has the burden of proving by the preponderance of the reliable, probative, and substantial evidence that he or she is disabled for work as a result of an employment injury or condition. This burden includes the necessity of submitting medical opinion evidence, based on a proper factual and medical background, establishing such disability and its relationship to employment.²

The Board finds that appellant has not established that her March 21, 1997 employment injury resulted in disability for work.

Appellant was examined on March 21, 1997, the date of her employment injury, by Dr. Nader Beshay, who stated in a March 24, 1997 report that “The patient was advised to continue on light duties, including no lifting more than 15 pounds. And pushing and pulling should not exceed 30 pounds. No stooping or bending.” As this report indicates appellant could continue to perform the light duty she was performing at the time of her March 21, 1997 injury, it does not support that appellant was disabled for work. Dr. Beshay referred appellant to Dr. Thomas Rodts, who first examined appellant on March 27, 1997 and stated in a March 28, 1997 report that, “Given the disability which this patient has due to her chronic back pain condition, overall, I feel that she should be allowed to perform sedentary activities using a chair with an appropriate back rest and also with an adjustable lumbar support. She should not climb ladders and engage in overhead activities or perform any stooping or bending activities. Appellant can lift or carry up to 10 pounds. And push or pull up to 15 pounds.” In a report dated April 21, 1997, Dr. Rodts stated, “I would recommend this patient continue with her current restricted work duties which are not changes. In a report dated May 9, 1997, Dr. Rodts stated, “She is able to continue working at the same level of restricted duty as previously specified.” These reports also do not support that appellant was disabled for work, as they state she could continue to perform light duty.

In a report dated July 18, 1997, Dr. Robin D. Snead stated that appellant was unable to go to work until she was treated by a therapist, but this proposed treatment was not for the back contusion accepted by the Office but instead for a stress/anxiety syndrome and panic attacks. The case record does not contain a claim for employment-related psychological or emotional

² *David H. Goss*, 32 ECAB 24 (1980).

condition, and the Office's decisions did not adjudicate such a condition. As the Board's jurisdiction is limited to review of final decisions of the Office,³ the Board cannot adjudicate this issue on appeal. In disability certificates dated August 1 and December 30, 1997, Dr. Snead indicated that appellant was totally disabled beginning May 16, 1997, but these certificates do not delineate whether the disability was due to anxiety and depression or to a low back condition. These certificates thus do not show disability causally related to appellant's March 21, 1997 employment injury, nor does a January 6, 1999 report from Dr. Snead. In this report, Dr. Snead stated that appellant's severe low back pain prohibited her from prolonged walking, standing or sitting without pain. This report does not support disability for work because it does not show that appellant could not continue to perform the light duty she was performing at the time of her March 21, 1997 employment injury, and because it does not attribute the restrictions to that injury. Appellant has not established that her March 21, 1997 employment injury resulted in disability for work.⁴

The decisions of the Office of Workers' Compensation Programs dated April 7, 1999 and August 20, 1998 are affirmed.

Dated, Washington, D.C.
July 21, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

³ 20 C.F.R. § 501.2(c) states in pertinent part: "The Board has jurisdiction to consider and decide appeals from the final decision of the Office in any case arising under the Act."

⁴ At a hearing held on June 22, 1998 appellant contended that the employing establishment sent her home because it did not have light duty available. Appellant, however, has not submitted any evidence to corroborate this contention.