

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DIANE HARRIS and U.S. POSTAL SERVICE,  
POST OFFICE, St. Louis, MO

*Docket No. 98-1227; Submitted on the Record;  
Issued March 27, 2000*

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DECISION and ORDER

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

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability commencing June 4, 1997 causally related to her accepted March 27, 1996 contusion of the head and left shoulder, cervical sprain and post-traumatic headaches (A11-0148475); and (2) whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty, as alleged (A11-0161666).

The Board has duly reviewed the case record in the present appeal and finds that appellant failed to meet her burden of proof in establishing that she sustained a recurrence of disability commencing June 4, 1997 causally related to her accepted March 27, 1996 contusion of the head and left shoulder, cervical sprain and post-traumatic headaches (A11-0148475) and that appellant failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty, as alleged (A11-0161666).

On March 27, 1996 appellant filed a traumatic injury claim for a neck, left shoulder, bump on the head injury, which the Office of Workers' Compensation Programs accepted on April 16, 1996 for closed head contusion, left shoulder contusion and cervical sprain.<sup>1</sup> On June 11, 1997 appellant filed a claim for recurrence of disability.<sup>2</sup> In this claim (A-110148475) appellant alleged that she sustained a recurrence of disability commencing June 4, 1997 causally related to her accepted March 27, 1996 employment-related injury. The Office denied appellant's claim on September 2, 1997, finding that the evidence of record failed to establish a causal relationship between the injury of March 27, 1996 and the claimed recurrence of June 4, 1997. By letter dated October 6, 1997, appellant requested a hearing before an Office hearing representative. By decision dated November 20, 1997, the Office's Branch of Hearings

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<sup>1</sup> Appellant was placed under a medical management program designed to expedite proper medical care for her accepted condition. The aim was to support recovery and assist her return to work.

<sup>2</sup> The record supports that appellant returned to full regular duty May 23 through June 4, 1997.

and Review denied appellant's request on the grounds that it was not filed within 30 days of the Office's last merit decision issued on September 2, 1997. The Office stated that it had considered the matter in relation to the issue involved and further denied appellant's hearing request on the basis that the case could be resolved by submitting additional evidence on reconsideration to establish that her claimed recurrence of disability is causally related to the accepted March 27, 1996 employment-related injury.<sup>3</sup> By letter dated December 8, 1998, appellant requested reconsideration of the Office's November 20, 1997. By decision dated February 27, 1998, after a merit review, the Office denied appellant's request for reconsideration finding the evidence insufficient to warrant modification of the prior decision.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>4</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>6</sup>

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the accepted employment injury and supports that conclusion with sound medical reasoning.<sup>7</sup>

The medical evidence submitted in support of appellant's claim for recurrence of disability commencing June 4, 1997 consists of two medical notes, a June 9, 1997 note from Dr. Carolyn Porter Small, a Board-certified internist, indicating that appellant was totally disabled from June 5 through June 8, 1997 and could return to work on limited duty June 9, 1997. The other dated June 26, 1997 from Dr. Denise Taylor, who specializes in neurology, indicating appellant could not carry mail until he was reevaluated on July 17, 1997. Neither note provided a physician's opinion with supportive rationale to explain a causal relationship between appellant's diagnosed condition in 1997 and her accepted March 27, 1996

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<sup>3</sup> The Board finds it unnecessary to address whether the Office properly denied appellant's request for a hearing in this claim, as appellant was advised he could request reconsideration with the Office, which he did and the Office, thereafter, conducted a merit review.

<sup>4</sup> 5 U.S.C. § 8101.

<sup>5</sup> *Joe Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>6</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> *Lourdes Davila*, 45 ECAB 139 (1993); *Louis G. Malloy*, 45 ECAB 613 (1994).

contusion of the head/left shoulder, cervical sprain and post-traumatic headaches. Therefore, the notes are insufficient to establish appellant's recurrence of disability claim.

By letter dated August 1, 1997, the Office advised appellant of the specific type of evidence needed to establish her recurrence of disability claim, but such evidence was not submitted. The Board finds that appellant failed to meet her burden of proof.

On October 28, 1997 appellant, then a 36-year-old letter carrier, filed an occupational disease claim, Form CA-2, (Claim No. A11-0101666) alleging that due to the weight of her mailbag on her back she suffered chest pain and severe headaches. Appellant stated that she became aware of her condition on March 27, 1996 and realized it was caused or aggravated by her employment on June 4, 1997. On the reverse side of the form, the employing establishment indicated that appellant had not stopped working. The Office denied appellant's claim on February 13, 1998, Office File No. A11-0161666.<sup>8</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant.

The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>9</sup>

The medical evidence in support of appellant's claim consists of October 30, 1997 and February 9, 1998 reports by Dr. Denise Taylor, a Board-certified.

In the October 30, 1997 report Dr. Taylor stated:

"I have been following [appellant] since April, 1996. She is a thirty-six year old woman who presented for a neurological evaluation after the Jeep she was driving flipped onto its side. She developed headaches and neck discomfort. She was initially described by the emergency room as being slightly dazed at the scene of

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<sup>8</sup> Claim Nos. A11-016666 and A11-0148475 were combined by the Office on February 20, 1998, after the February 13, 1998 decision was issued.

<sup>9</sup> *Id.*

the accident although she denied any loss of consciousness. Over the time in which I have followed [appellant], she has continued to have daily headaches. The intensity of the pain has decreased somewhat from the initial visit, however, it remains chronic. She has tried various medications, some of which helped but most of which tend to make her drowsy and she is unable to take it at work and really function as well as she would like.”

Dr. Taylor also stated that “[Appellant’s] physical examinations have demonstrated no neurological deficit although she has had markedly increased tautness of the musculature of her cervical spine and shoulders.”

Dr. Taylor stated:

“My impression is that she has mixed headaches, vascular (migraine, without aura), post-traumatic and myofascial pain syndrome. Also as a result of these chronic headaches, I feel there is some element of depression. She followed through with the suggestions of physical therapy and evaluation by a psychologist and there has been some slight improvement, but again, the chronicity of the headaches remain.”

Dr. Taylor also stated that “It is still believed that [appellant] might benefit from evaluation at a pain center with the possibility of trigger point injections or nerve blocks for control of her pain.” Dr. Taylor also stated that “It is my opinion that [appellant] probably [will not] be able to work outdoors as she had in the past and a job that will allow her to take breaks if necessary to deal with her headaches will be most beneficial.”

In Dr. Taylor’s February 9, 1998 response to questions by the office she checked “yes” that in her opinion with reasonable medical certainty appellant’s headaches and cervical discomfort were caused or aggravated or precipitated by the March 28, 1996<sup>10</sup> motor vehical accident. The doctor diagnosed appellant’s cervical condition as myofascial pain syndrome, vascular headaches.

In her October 30, 1997 and February 9, 1998 reports, Dr. Taylor diagnosed chronic headaches, but failed to provide a rationalized medical opinion causally relating appellant’s chronic headaches to the identified factor of employment to which appellant attributes her condition, carrying a mailbag on her back. Therefore, Dr. Taylor’s reports are insufficient to establish appellant’s occupational disease claim.<sup>11</sup>

The Office also reviewed the medical evidence in appellant’s Claim No. A11-0148475 for a March 27, 1996 motor vehicle accident to see if the necessary medical evidence to support her occupational disease claim was in that record. The Office discussed a February 25, 1997 report by Dr. Gerlyn Friesenhahn, a Board-certified neurologist, who stated that he saw appellant for a fitness-for-duty evaluation. The doctor stated:

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<sup>10</sup> The record supports that the accident occurred on March 27, 1996.

<sup>11</sup> The Board notes that the Office reviewed the medical evidence in appellant’s claim A11-0148475.

“[Appellant] complains that she is continuing to get daily headaches, which are described as being in the right temple anterior to the area of her knot or head trauma. She describes it as a feeling of beating inside her head that frequently wakes her up in the morning and is present throughout the day.”

Dr. Friesenhahn also stated:

“This is a 35-year-old black female who complains of chronic daily localized temporal headache associated with photophobia, phonophobia and can be triggered by hunger. This complaint [appellant] dates to the onset of her head injury and may be a post-traumatic headache but at this point, I would be very concerned that her chronic analgesic use has caused a rebound headache syndrome and feel that she needs to be weaned from the Fiorinal and any chronic daily narcotic use....”

Dr. Friesenhahn also stated:

“It is my impression that the complaints of her chronic headaches and her low back pain may have etiologies other than her motor vehicle accident of March 27, 1996, but that there may be also significant contribution from the accident....”

Dr. Friesenhahn’s report failed to provide a rationalized medical opinion that the employing factor identified by appellant as the proximate cause of her headaches, *i.e.*, carrying a mailbag on her back, caused your chronic headaches. In fact, Dr. Friesenhahn discussed the cause as the March 27, 1996 vehicle accident or possibly another etiology such as rebound headache from medication. Dr. Friesenhahn’s February 25, 1997 report is insufficient to establish appellant’s occupational disease claim. By letter dated December 4, 1997, appellant was advised of the specific evidence needed to establish her occupational disease claim, but such evidence was not submitted. The Board finds that the evidence of record is insufficient to meet appellant’s burden of proof.

The decisions of the Office of Workers' Compensation Programs dated February 27, 1998 and September 2, 1997 in Claim No. A11-0148475 and February 13, 1998 in Claim No. A11-0161666 are affirmed.

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

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member