

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEAN A. GUERIN and U.S. POSTAL SERVICE,
POST OFFICE, Lehigh Valley, PA

*Docket No. 98-2069; Submitted on the Record;
Issued March 15, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained a recurrence of disability causally related to her July 6, 1991 employment injury.

On July 17, 1991 appellant, then a 48-year-old letter carrier, filed a notice of occupational disease, alleging that she suffered a back injury in the course of her federal employment. She stated that she became aware of the disease on June 30, 1991 and that it was caused by her federal employment on July 8, 1991.

On July 10, 1991 appellant returned to work in a limited-duty position. Her limited-duty position involved lifting 10 pounds, sitting 1 to 2 hours, standing 2 to 4 hours, carrying small articles, occasionally climbing stairs and no squatting or bending.

On October 30, 1991 the Office of Workers' Compensation Programs accepted that appellant sustained a low back strain on July 6, 1991 in the performance of duty. On February 18, 1994 the Office accepted that appellant sustained mild degenerative disc disease.

On January 10, 1994 appellant filed a claim for a recurrence of disability due to her previously accepted employment injury. She alleged that her casing of mail caused pain in her back and neck. Appellant's supervisor indicated that appellant stopped working on December 22, 1993. In support of her claim, appellant submitted a Form CA-20 dated January 5, 1994 from Dr. Leroy Pelicci, a Board-certified psychiatrist and neurologist, and her treating physician, who diagnosed carpal tunnel syndrome, pain, anxiety, depression, cervical disc herniations at C5-4, C6-7 and lumbar disc herniation. He checked a box indicating that "yes" the condition found was caused or aggravated by the employment activity described, but he provided no further explanation. Dr. Pelicci indicated that appellant was disabled from December 22, 1993.

In a report dated March 13, 1994, Dr. Pelicci stated that a magnetic resonance imaging (MRI) scan showed that appellant had herniated discs in the cervical area and bulging and degenerative disc disease in the low back area along with bilateral carpal tunnel syndrome. He indicated that because appellant had no previous problems with her neck, low back and hands prior to the accident, he could state with a reasonable degree of medical certainty that the accident was the cause of her overall problem. Dr. Pelicci further stated that the weakened architecture of the low back with trauma caused bone to press the nerve and subsequently appellant had symptomatic arthritis along with a bulging disc.

In a March 16, 1994 letter, Dr. Pelicci stated that MRI scans showed herniated discs in the cervical area and bulging and degenerative disc disease in the low back area along with bilateral carpal tunnel syndrome. He stated that “[t]he patient has no previous history of any problems with the neck, low back or hands prior to the accident, therefore, with a reasonable degree of medical certainty, I can say that the accident was the cause of her overall problem.” Dr. Pelicci further stated that “the weakened architecture in the low back with trauma caused bone to press nerve and subsequently we have symptomatic arthritis along with a bulging disc.”

On May 9, 1994 the Office denied appellant’s claim for a recurrence because the evidence of record failed to demonstrate that the claimed recurrence was causally related to the original work injury. In an accompanying memorandum, the Office indicated that appellant failed to submit medical evidence demonstrating that the claimed recurrence of disability was caused, precipitated, accelerated or aggravated by the original work injury.

On May 19, 1994 appellant requested an oral hearing.

Dr. Pelicci stated on May 19, 1994 that appellant had spasms in her neck and back because of her job duties which required her to be seated for eight hours at a time. He stated that this aggravated underlying conditions including disc bulging/herniation at L4-5 and disc herniations at C5-6 and C6-7. He stated that appellant’s clinical picture changed after the December incident which corroborated her new complaints.

On October 26, 1994 Dr. Pelicci found that appellant was totally disabled due to “acute pain with a chronic neck and low back condition effecting motor, sensory and musculoskeletal abilities.”

At a hearing held November 3, 1994, appellant testified that when she returned to work she experienced spasms in her neck and lower back, and the time she spent casing mail was lowered. She stated that she then experienced burning up and down her spine and tingling in her right leg. Appellant indicated that she experienced more sensation in her leg as time passed and that in December 1993 she could not turn her head without chest pain. She stated that there were no other events precipitating these injuries besides her July 1991 accepted injury.

On December 15, 1994 Dr. Pelicci stated that appellant presented with persistent complaints referable to her neck since her initial visit in November 1991. He stated that his evaluations have been positive for neurological involvement emanating from the neck or cervical area. Dr. Pelicci stated with a reasonable degree of medical certainty that “the work-related incident of July 1991 resulted in traumatic herniated discs appreciated in the cervical area.”

In a decision dated February 9, 1995, the Office hearing representative found that appellant provided no medical evidence to support a causal relationship between her neck condition and her December 22, 1993 work stoppage. The Office hearing representative indicated that, although Dr. Pelicci reported disc herniations in the cervical area, he provided no probative medical rationale in support of his position that the July 8, 1991 accepted injury caused an injury to appellant's cervical area. It noted that Dr. Pelicci stated in his December 15, 1994 report that the accepted injury resulted in the traumatic herniated disc which appreciated in the cervical and caused a disabling neurological condition, but that he again failed to provide a probative medical rationale to support his position. The Office hearing representative, therefore, affirmed the Office's May 6, 1994 decision denying the claim.

On March 13, 1995 appellant's representative requested an appeal.

On March 28, 1995 Dr. Pelicci indicated that appellant had a lot of spasm in the cervical, mid and lumbosacral area. He also recorded complaints of pain starting in the back and radiating to the breast. Dr. Pelicci's examination and electromyography on June 13, 1995 showed a progression in the lower extremity on the right side, nerve roots L4-5 and S1. He also stated that nerve roots C5-6 and C7 were involved in the cervical area. On September 29, 1995 Dr. Pelicci treated appellant for spasm and limitation of movement in the cervical and lumbosacral area. He indicated that there was evidence of nerve root irritation at C6-7 and L5 on October 21, 1995. On November 27, 1995 Dr. Pelicci again noted spasm and pain in the cervical and lumbosacral area. On February 26, 1996 he noted that appellant had severe pain in the cervical area with limitation of movement. Dr. Pelicci stated that the pain radiated from the neck into the shoulders and from the low back into the legs. He stated that it was more right sided in nature. Dr. Pelicci stated that she dropped objects and that her right leg had been giving way like paresthesias. On May 31 and August 20, 1996 he indicated that appellant's symptoms were worsening on the right side. On July 22, 1996 Dr. Pelicci stated that his infrared vascular thermogram showed evidence of nerve root irritation at C6-7 and L5-S1 bilaterally. He conducted an examination and an electromyography on August 20, 1996 and found that the nerve roots C5-6, C7, L4-5 and S1 showed right side predominance with progression.

By decision dated December 1, 1997, the Board found that Dr. Pelicci's reports were insufficient to discharge appellant's burden of establishing that by the weight of the reliable, substantial and probative medical evidence that the December 22, 1993 alleged recurrence was causally related to appellant's 1991 accepted injuries.¹ The Board found, however, that Dr. Pelicci's reports constituted sufficient and uncontradicted evidence in support of appellant's claim so as to require further development of the record by the Office. It, therefore, set aside the Office's February 9, 1995 decision and remanded the case to the Office so that it could obtain a well-rationalized medical opinion addressing the causal relationship between appellant's accepted injuries from July 6, 1991 and his current conditions.

The Office subsequently referred appellant to Dr. James J. Heintz, a Board-certified orthopedic surgeon, for a second opinion examination. On May 7, 1998 Dr. Heintz reviewed appellant's history and completed a physical examination. He noted that appellant complained

¹ Docket No. 95-1625.

of lower back discomfort. Dr. Heintz stated that appellant could ambulate without difficulty, but that heavy activities or repetitive activities such as prolonged sitting, twisting or attempts to bend or lift caused increased back pain. He noted pain in both the thoracic and cervical spine. Dr. Heintz noted occasional pain in both arms with tingling and numbness as well as dysesthesias in the left shoulder posterior and in the dorsum of both hands without true radicular complaints of pain. He also indicated that there was chest wall pain radiating down the front of the waste and some numbness and tingling radiating down the posterior aspect of the right thigh and calf. On examination, Dr. Heintz found that appellant stood and walked with a normal gait and cadence. He indicated that appellant got on and off the table without significant evidence of lumbar spine or extremity dysfunction. Dr. Heintz found a near full range of motion of the cervical spine without spasm, but recorded that full flexion and extension resulted in complaints of posterior cervical spine discomfort, particularly at the base of the cervical spine and trapezial regions bilaterally. He found that internal rotation and bending was normal. Dr. Heintz further found a full range of motion of both upper extremities with the exception of her previously injured left elbow which lacked 20 degrees extension and 10 degrees of flexion due to defect in the medial antecubital region. He found no other deformity in the upper extremities. Dr. Heintz found that the thoracic spine was mildly tender over the paraspinous region from the infracapular region distally. He indicated that the lumbar spine was no particularly tender with no spasm. Dr. Heintz found pain on extension from 10 to 20 degrees and that flexion was 45 to 50 degrees. He noted that lateral bending was normal, but that extension from a flexed posture and full extension beyond 10 degrees resulted in mild increased discomfort. Dr. Heintz found that seated straight leg raising resulted in back pain only and that supine straight leg raising and flexion/rotation test resulted in some discomfort in the lower lumbar spine and S1 regions bilaterally. He found that motor strength and sensibility was intact in all extremities and that appellant could toe walk and heel walk without pain or weakness. Dr. Heintz opined that appellant remained moderately impaired in terms of heavy and medium activities. He stated that she is capable of light or sedentary activities with some modification, including change of position, use of a back support or supportive chair and a position that allows for frequent position changes. Dr. Heintz stated that appellant suffered from a continuation of two work-related injuries and superimposed degenerative changes in the cervical and lumbar spine, including disc, without evidence of radiculopathy.

By decision dated June 9, 1998, the Office denied appellant's claim for a recurrence of disability because the weight of the medical evidence demonstrated that she did not sustain a disabling recurrence of disability causally related to her work injuries.

The Board further finds that appellant has not sustained her burden of proof in establishing that she sustained a recurrence of total disability causally related to an employment injury or any other factor of her employment.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the

nature and extent of the light-duty requirements.² In the instant case, appellant has failed to establish either a change in the nature or extent of her light-duty requirements or a change in her accepted injury-related condition.

Appellant began performing a permanent light-duty position on July 10, 1991. On January 10, 1994 she alleged that she suffered a recurrence of disability.

There is no evidence of record establishing any change in the nature or extent of appellant's permanent light-duty position, which began in 1991, as a cause of appellant's claimed recurrence of disability.

The medical evidence is also insufficient to establish that appellant was disabled from her light-duty position due to a change in the nature or extent of her accepted back injuries. In support of her claim, appellant submitted medical reports from Dr. Pelicci, her treating physician and a Board-certified psychiatrist and neurologist. On January 5, 1994 Dr. Pelicci indicated that appellant was disabled from carpal tunnel syndrome, pain, anxiety, depression, cervical disc herniations at C5-4, C6-7 and lumbar disc herniation. He checked a box indicating that "yes" the conditions found were caused or aggravated by the employment activity described and indicated that appellant was disabled from December 22, 1993. Dr. Pelicci, however, failed to provide a medical rationale explaining his finding of total disability or any rationale explaining how appellant's total disability was related to her employment injuries. His opinion is therefore entitled to little weight.³ Dr. Pelicci also found that appellant was totally disabled in his October 26, 1994 report, but because this report also failed to contain any medical rationale it too is entitled to little weight.⁴ He did not address appellant's disability in his remaining reports of record.

In contrast, Dr. Heintz, a Board-certified orthopedic surgeon, provided a well-rationalized opinion supported by his thorough physical findings which indicated that appellant was capable of performing her limited-duty position duties. In this regard, he noted that appellant stood and walked with a normal gait and cadence. Dr. Heintz stated that appellant had no difficulty getting on and off the examining table. He found a near full range of motion of the cervical spine and that internal rotation and bending of this spine was normal. Dr. Heintz noted no employment-related dysfunction or deformity of the upper extremities. He found only tenderness of the thoracic spine muscles. Dr. Heintz's examination of the lumbar spine, including his range of motion tests, revealed no abnormalities other than some tenderness. Finally, he indicated that appellant could toe and heel walk without pain or weakness. Inasmuch as Dr. Heintz provided that only rationalized medical opinion evidence addressing whether appellant sustained a disabling recurrence of disability causally related to her work injuries, his opinion constitutes the weight of the medical evidence. Accordingly, appellant failed to meet

² See *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Stuart K. Stanton*, 40 ECAB 859, 864 (1989); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

³ *Cynthia M. Judd*, *supra* note 2.

⁴ *Id.*

her burden of proof of establishing that she sustained a recurrence of disability causally related to her accepted employment injuries.

The decision of the Office of Workers' Compensation Programs dated June 9, 1998 is affirmed.

Dated, Washington, D.C.
March 15, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member