

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEY WALDRON and U.S. POSTAL SERVICE,
POST OFFICE, Newark, NJ

*Docket No. 98-2345; Submitted on the Record;
Issued March 6, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant has established a recurrence of disability commencing January 11, 1994 causally related to her November 8, 1993 employment injury.

In the present case, appellant filed a claim alleging that, on November 8, 1993, she sustained injury to her right arm and back when she fell to the floor while attempting to sit in a chair. The Office of Workers' Compensation Programs accepted the claim for lumbosacral myositis. Appellant returned to a light-duty position on December 13, 1993, and then filed a claim for a recurrence of disability commencing January 11, 1994. She returned to work on May 9, 1994.

By decision dated May 17, 1994, the Office denied appellant's claim for a recurrence of disability. An Office hearing representative remanded the case, directing the Office to request a supplemental report from appellant's attending physician, Dr. Philip Brien, a specialist in rehabilitation medicine.¹

In a decision dated December 13, 1996, the Office denied the claim for a recurrence of disability commencing January 11, 1994. By decision dated January 22, 1998, an Office hearing representative affirmed the December 13, 1996 decision. In a decision dated June 3, 1998, the Office denied modification.

The Board has reviewed the record and finds that appellant has not established a recurrence of disability commencing January 11, 1994.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of

¹ The hearing representative's decision was dated August 3, 1996.

reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, 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

The Board notes that the Office's procedures indicate that, when a recurrence of disability is claimed within 90 days of a return to work, the focus is on disability rather than causal relationship.³ In this case, however, appellant's attending physician, Dr. Brien, diagnosed a disc herniation, which is not an accepted condition. Under these circumstances, appellant must submit probative medical evidence that contains a reasoned opinion as to causal relationship between the disabling condition and the employment injury, and establishes a specific period of disability for the light-duty job.

In a report dated July 18, 1994, Dr. Brien diagnosed disc herniation L5-S1 on the right, stating that it was "highly probable" that the disc herniation was causally related to the employment injury, and noting that a magnetic resonance imaging (MRI) scan from February 1992 did not show a disc herniation. In a report dated December 24, 1996, Dr. Brien stated that a disc herniation was found in an MRI dated February 25, 1994. He does not provide any additional explanation for his opinion on causal relationship.⁴ Moreover, the record does not contain a clear description as to the nature and extent of any disability during the period January 11 to May 8, 1994. Dr. Brien stated in his July 18, 1994 report that appellant stated that she had a recurrence of back and leg pain on January 11, 1994, and "considering this patient has a long history of low back pain with sciatica, it is understandable that she had a recurrence or aggravation of her symptoms." He does not explain the relationship between a recurrence of pain and the employment injury. Dr. Brien stated that "prior to the recurrence, patient had spasm and tenderness and 70 degrees of straight leg raising on the right and the same findings were observed on January 13, 1994." The record does not appear to contain treatment notes for January 13, 1994, and the description provided by Dr. Brien does not show a material change in the employment-related condition commencing January 11, 1994.

The record does not contain contemporaneous medical evidence showing a change in the nature and extent of the injury-related condition on January 11, 1994. It also fails to contain a reasoned medical opinion establishing a disc herniation as employment related and causing disability for the light-duty position during the period January 11 to May 8, 1994. Accordingly, the Board finds that appellant has not met her burden of proof and the Office properly denied the claim.

² *Terry R. Hedman*, 38 ECAB 222 (1986).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.6 (January 1995).

⁴ A diagnostic test does not itself establish causal relationship with employment; there must be sufficient medical rationale to support the opinion offered; *see Linda L. Mendenhall*, 41 ECAB 532 (1990).

The decisions of the Office of Workers' Compensation Programs dated June 3 and January 22, 1998 are affirmed.

Dated, Washington, D.C.
March 6, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member