

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY L. GUERINGER and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

*Docket No. 99-324; Submitted on the Record;
Issued May 15, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on April 23, 1998 causally related to her accepted employment injury of bilateral ulnar neuritis.

On October 3, 1990 appellant, then a 33-year-old distribution clerk, filed an occupational disease claim alleging that she sustained tendinitis and radiculopathy of both hands due to factors of her federal employment. Appellant indicated that she became aware of her condition on April 16, 1989. The Office of Workers' Compensation Programs accepted appellant's claim for ulnar neuritis of both wrists. On October 10, 1991 Dr. James C. Butler, a Board-certified orthopedic surgeon, performed an ulnar nerve transposition of the left elbow. Appellant returned to limited-duty employment for eight hours per day on January 13, 1992.

By decision dated May 27, 1993, the Office granted appellant a schedule award for a 15 percent permanent impairment of her left arm.

On October 17, 1994 appellant filed a claim for continuing compensation on account of disability (Form CA-8) requesting wage-loss compensation for temporary total disability from September 28 to October 17, 1994. On December 8, 1995 appellant filed a Form CA-8 requesting compensation for intermittent periods of temporary total disability from September 22 through December 8, 1995.

In a decision dated January 11, 1996, the Office denied appellant's claim for compensation for temporary total disability from September 28 to October 17, 1994 on the grounds that the evidence did not establish that she was disabled from work due to her accepted April 16, 1989 employment injury.

By letter dated January 11, 1996, the Office acknowledged appellant's claim for compensation for dates between September and December 1995, informed her of the definition

of a recurrence of disability and requested that she submit a claim for either a new injury or a recurrence of disability.

In a letter dated July 2, 1996, appellant requested that her claim be reopened and her CA-8s adjudicated.

By decision dated July 30, 1996, the Office denied appellant's claim for compensation from September 22 through December 8, 1995 on the grounds that the medical evidence was insufficient to establish disability due to her accepted employment injury.

On August 22, 1996 appellant filed a Form CA-8 requesting compensation from July 19 through 24, 1996 and August 19, 1996 alleging that medication made her too drowsy to attend work. In a letter dated September 18, 1996, the Office informed appellant that it would not pay compensation for the dates requested and that she should file a claim for either a recurrence of disability or a new injury. The Office noted that the current medical evidence addressed the conditions of C8 radiculopathy and carpal tunnel syndrome rather than the accepted condition of ulnar neuritis.

In a decision dated March 6, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence was insufficient to warrant review of the July 30, 1996 decision.

On April 15, 1997 appellant filed an occupational disease claim and, in a statement accompanying her claim, related that she had previously filed a claim for the same injury. Appellant stated that originally she had pain only in her hands and wrists but that the pain now extended to her arms and shoulders. She described the requirements of her limited-duty employment and indicated that, "[b]ecause of the constant movement on the job, the pain increased dramatically." Appellant submitted medical evidence previously of record from her accepted ulnar neuritis claim and current medical reports, in which a physician diagnosed her condition as, *inter alia*, bilateral C8 radiculopathy.

By letter dated June 16, 1997, the Office informed appellant that her prior claim accepted for bilateral ulnar neuritis was open for medical care. The Office notified appellant that the Form CA-2 she had submitted on April 15, 1997 was insufficient to warrant the creation of a new claim as the medical evidence submitted duplicated that in her current claim.

On July 15, 1997 appellant filed a Form CA-8 requesting compensation from May 16 through July 5, 1997. In a letter dated July 24, 1997, the Office advised appellant to file either a claim for a recurrence of disability or for a new injury.

Appellant submitted a notice of a recurrence of disability on April 23, 1998 causally related to her accepted employment injury. Appellant stopped work on April 23, 1998 and did not return. She further filed a Form CA-8 requesting compensation from April 23 to May 22, 1998.

In letters dated June 19, 1998, the Office advised appellant of the evidence needed to establish a recurrence of disability. The Office further authorized a magnetic resonance imaging (MRI) study of appellant's cervical spine.

By decision dated August 21, 1998, the Office denied appellant's claim on the grounds that the evidence did not establish that she had any current medical condition or disability causally related to her accepted employment injury. The Office noted that the medical evidence submitted from March to July 1998 addressed appellant's cervical disc herniation rather than the accepted condition of ulnar neuritis. The Office indicated that it had repeatedly advised appellant to file a claim for a new injury along with a description of employment factors alleged to have caused the injury and rationalized medical evidence addressing the cause of the claimed condition. The Office noted that appellant had filed an occupational disease claim on April 15, 1997 but that as her statement and the medical reports addressed her bilateral ulnar neuritis, it was not sufficient to create a new claim.

The Board has duly reviewed the case record on appeal and finds that appellant has not established that she sustained a recurrence of disability on April 23, 1998 causally related to her accepted employment injury of bilateral ulnar neuritis.

Where an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.¹

In the present case, the Office accepted that appellant sustained bilateral ulnar neuritis causally related to factors of her federal employment. Appellant underwent an ulnar nerve transposition of the left elbow in October 1991. She subsequently returned to work in a limited-duty capacity. There is no evidence in the record establishing any change in the nature and extent of appellant's light-duty position as a cause of her claimed disability beginning April 23, 1998.

In support of her claim, appellant submitted a work status report dated April 29, 1998, from Dr. Gregory W. Stewart, a Board-certified physiatrist and her attending physician, who indicated that she was not able to work due to bilateral C8 radiculitis. As Dr. Stewart did not address the cause of the diagnosed condition, his report is of little probative value.

In a form report dated June 2, 1998, Dr. Stewart noted findings of neck and arm pain but did not render a diagnosis. He checked "yes" that the condition was caused or aggravated by employment. In an accompanying duty status report of the same date Dr. Stewart found appellant unable to work. As he did not make a diagnosis his report is insufficient to meet appellant's burden of proof. Further, the Board has held that a causation finding which consists

¹ *Terry R. Hedman*, 38 ECAB 222 (1986).

only of checking “yes” to a form question, without any explanation or rationale, has little probative value and is not sufficient to establish causation.²

In a form report dated July 14, 1998, Dr. Stewart diagnosed radiculopathy and checked “yes” that the condition was caused or aggravated by an employment activity. In an accompanying office visit note of the same date, he noted that an MRI revealed central disc herniations at C5-6, C4-5 and C3-4. Dr. Stewart diagnosed a cervical disc herniation. As discussed above, a physician’s checkmark indicating causation, without further explanation, is insufficient to meet appellant’s burden of proof.³ The Board further notes that the Office did not accept appellant’s claim for a cervical disc herniation and thus appellant has the burden of proof in establishing that the condition is causally related to employment factors.⁴ The opinion of a physician supporting causal relationship must be supported by affirmative evidence, address the specific factual and medical evidence of record and be explained by medical rationale.⁵

In a report dated July 21, 1998, Dr. James E. Ricciardi, a Board-certified orthopedic surgeon, noted that appellant’s “slight disc bulges which are mostly central at 3-4, 4-5 and 5-6” were not causing “nerve root impingement or significant spinal cord encroachment.” He did not recommend cervical surgery. As Dr. Ricciardi did not address the cause of appellant’s neck condition, his opinion is of diminished probative value.

As appellant failed to submit rationalized medical evidence establishing that her condition and disability is due to the April 23, 1998 employment injury, the Office properly denied her claim for a recurrence of disability.

The Board notes that appellant filed an occupational disease claim on April 15, 1997. The Office found that appellant had submitted factual and medical information in support of her April 15, 1997 claim, which duplicated the evidence submitted with her prior occupational disease claim and thus did not create a new claim. However, in a statement accompanying her April 15, 1997 claim, appellant cited the duties of her limited-duty employment and related that the “constant movement on the job” increased her pain. To the extent that appellant indicated that new employment factors contributed to her condition, this would constitute a claim for a new occupational injury.⁶ The Office should develop the record and issue an appropriate decision upon return of the case record.

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

² *Debra S. King*, 44 ECAB 203 (1992).

³ *Id.*

⁴ *See Charlene R. Herrera*, 44 ECAB 361 (1993).

⁵ *Lurecia M. Nielsen*, 42 ECAB 583 (1991).

⁶ In a report dated April 4, 1997, Dr. Stewart noted that objective tests revealed bilateral C7-8 radiculopathy and found that employment factors described by appellant, including “overhead and upper extremity activities” could have aggravated her condition.

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

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member