

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRENDA L. FRAZIER and U.S. POSTAL SERVICE,
POST OFFICE, Charleston, SC

*Docket No. 00-660; Submitted on the Record;
Issued February 6, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant had any continuing disability on or after June 30, 1996 that was causally related to her May 6, 1996 employment-related injury.

On May 7, 1996 appellant, then a 33-year-old mail processor, filed a notice of traumatic injury and claim for compensation alleging that on May 6, 1996 she injured her left upper back in the performance of duty. The Office of Workers' Compensation Programs accepted the claim for a cervical and lumbar strain. Appellant was initially treated by Dr. Jeffrey W. Buncher, a Board-certified family practitioner.¹ Dr. Buncher prescribed a course of physical therapy and approved appellant for light duty with restrictions approximately one month later. Appellant received continuation of pay from May 7 through June 21, 1996. She returned to limited-duty work on June 21, 1996 and was subsequently terminated from her employment on June 30, 1996 when her term appointment expired.²

On June 9, 1997 appellant filed a Form CA-8 claim for continuing compensation beginning May 6, 1996.

In support of her claim, appellant submitted an April 30, 1997 report by Dr. Buncher, who noted physical findings and stated:

“[Appellant] has been under my care since May 13, 1996, from injuries she sustained in an accident on the above date. She has had extensive treatment for cervicothoracic and lumbosacral spine sprain/strain, as well as, myofascial pain

¹ The Office originally denied compensation on July 23, 1996. In a decision dated April 16, 1997, the Office vacated its prior decision and accepted the claim for a lumbar and cervical strain only. Although, Dr. Buncher indicated in a series of CA-17 duty status reports that appellant had upper thoracic spondylosis in addition to a muscle strain, those conditions were not accepted by the Office.

² The employing establishment contends that appellant's position was terminated due to a reduction in staff.

and dysfunction of the left trapezius, levator scapulae, left deltoid and rhomboid muscles. She has had extensive treatment consisting of pharmacologic therapy, physical therapeutics, myofascial release, trigger point injections and rehabilitative exercises. During this time frame, the patient's condition has improved; however, she continues with pain in the cervicothoracic spine, left trapezius muscle and left upper arm. On April 28, 1997 she reported continued pain in the cervical spine and trapezius muscles that is worsened when she drives her car."

Dr. Buncher diagnosed chronic neck pain and myofascial pain and dysfunction. He concluded that appellant was at maximum medical improvement and opined that she had a five percent total body impairment.

In a June 5, 1997 attending physician's report, Dr. Buncher diagnosed chronic cervical and thoracic strain/spasm with myofascial pain and dysfunction. He checked the box on the CA-20 form indicating that appellant's condition was due to the May 6, 1996 work injury. Dr. Buncher reported that appellant was totally disabled from May 6 to July 24, 1996 and partially disabled from July 24, 1996 to the present.

By letter dated June 17, 1997, the Office advised appellant of the nature of the medical evidence required to establish that she experienced a worsening of her employment-related medical condition such that she was disabled from work on or after June 30, 1996.

In a decision dated July 17, 1997, the Office denied compensation on the grounds that the medical evidence of record was insufficient to establish that appellant was disabled from work on or after June 30, 1996 as a result of her employment-related injury of May 6, 1996.

On July 23, 1997 appellant filed a request for reconsideration and submitted a May 1, 1997 report by Dr. Buncher that had not been previously considered by the Office.

In his May 1, 1997 report, Dr. Buncher described appellant's job duties on and before May 6, 1996 that led to her work injury. He noted that the repetitive nature of appellant's job, as well as involvement in moving heavy objects resulted in a cervicothoracic and lumbosacral spinal strain/sprain and myofascial pain, with dysfunction of the left trapezius, deltoid, levator scapulae and rhomboid muscles. Dr. Buncher did not discuss whether appellant was disabled from work on or after June 30, 1996.

In a September 24, 1997 decision, the Office denied modification of its prior decision following a merit review.

On October 20, 1997 appellant requested an oral hearing, but her hearing request was denied by the Office on February 9, 1998.

Appellant subsequently filed a second reconsideration request on May 19, 1998.³

In a decision dated July 27, 1998, the Office denied modification of the Office's July 17, 1997 decision following a merit review.

On April 7, 1999 appellant filed a third request for reconsideration.

In a decision dated August 9, 1999, the Office performed a merit review of the record but refused to modify its prior decision.⁴

The Board finds that appellant has failed to establish that she was disabled on or after June 30, 1996 as a result of her May 6, 1996 employment-related injury.⁵

An employee 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 he claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁶

When an employee who is disabled from the job 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 of proof to establish by the weight of the reliable and probative 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.⁷

In the instant case, the Office accepted that appellant sustained a cervical and lumbar strain on May 6, 1996 in the performance of duty. Appellant received appropriate compensation

³ Appellant submitted an April 20, 1998 report by Dr. Buncher, in which the physician stated that he had treated appellant for limited light duty effective June 25, 1996 in a sedentary position where appellant was only to be required to sit at a desk and answer the telephone. She also submitted a psychiatric report indicating that she was being treated for anxiety disorder and depression due to ongoing investigation of her workers' compensation claim.

⁴ The Office indicated that a merit review had been performed because appellant had not properly received a copy of her appeal rights in conjunction with the July 27, 1998 decision.

⁵ The Board's jurisdiction is limited to those Office decisions filed within one year of appellant's appeal on October 28, 1999. *See* 20 C.F.R. § 501.3(d)(2). The Board also notes that although appellant submitted additional evidence on appeal, the Board's jurisdiction is limited to a review of the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c).

⁶ *Dennis J Lasanen*, 43 ECAB 549 (1992); *Robert H. St. Onge*, 43 ECAB 1169 (1992). *See* 20 C.F.R. § 10.104 (1999).

⁷ *Doris J. Wright*, 49 ECAB 230 (1997); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

for wage loss until she returned to light duty on June 21, 1996. She was later terminated from her job on June 30, 1996 because her term appointment expired and her services were no longer required. Appellant alleges on appeal that she is entitled to compensation for wage loss after June 30, 1996 because she is disabled due to her May 6, 1996 work injury. The Board finds, however, that appellant has failed to submit any rationalized medical opinion evidence to show that she sustained a material worsening of her medical condition such that she would be precluded from performing her light-duty work assignment eight hours per day if that assignment were still available to her. None of the reports from Dr. Buncher stated that appellant was totally disabled from performing the requirements of her light-duty job on or after June 30, 1996 as a result of the May 6, 1996 work injury.⁸ Dr. Bunch does not even indicate that he was aware that appellant returned to work on June 21, 1996 or that she was terminated from her position for reasons unrelated to her work injury. Because there is no medical evidence of record to establish that appellant's medical condition changed after she returned to light-duty work effective June 21 1996, the Board concludes that appellant has failed to establish that she sustained a recurrence of disability. Thus, the Board finds that appellant is not entitled to compensation for wage loss on or after June 30, 1996 as a result of her May 6, 1996 employment injury.

The decision of the Office of Workers' Compensation Programs dated August 9, 1999 is hereby affirmed.

Dated, Washington, DC
February 6, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁸ Dr. Buncher check-marked an attending physician's CA-20 form to indicate that appellant was totally disabled from May 6 to July 24, 1996 and partially disabled on or after July 24, 1996 due to the work injury; however, that report is not sufficiently reasoned. The Board has held that merely checking a box on an Office form, by a physician, is insufficient to establish causal relationship. Furthermore, Dr. Buncher never adequately explained the role of appellant's diagnosed spondylosis in her alleged disability, which is particularly important since that condition was not accepted by the Office as work related.