

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAMELA J. HEINTZELMAN and U.S. POSTAL SERVICE,
POST OFFICE, St. Peters, MO

*Docket No. 99-1190; Submitted on the Record;
Issued February 12, 2001*

DECISION and ORDER

Before BRADLEY T. KNOTT, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability on July 22, 1996 that was causally related to her employment injury of November 16, 1992.

On November 16, 1992 appellant, then a 37-year-old city letter carrier, injured her back when she slid a tray of mail across the floor of her postal vehicle and felt a sharp pain in her back. She stopped work that day. The Office of Workers' Compensation Programs accepted her claim for herniated nucleus pulposus at the L3-4 level and approved surgery. Appellant received compensation benefits and progressed to full-time regular duties by April 4, 1994.

In 1995 the employing establishment changed its method of mail delivery from the one-bundle method to the two-bundle method. Appellant attempted to deliver mail with the new method but developed increased back and leg symptoms.

On July 27, 1995 Dr. Ronald L. Fischer, appellant's Board-certified physiatrist, reported that appellant's low back and leg pain had increased, which she felt was due to increased twisting and bending from the new delivery technique. Dr. Fischer related his findings on examination and diagnosed the following: Chronic low back pain and left leg pain, status post L3-4 microdiscectomy; recent increase in back symptoms, "which appear related to increased bending and twisting after a job change." He recommended that appellant be allowed, if possible, to deliver mail by the old one-bundle system as she was apparently doing fairly well in her job until this change.

On July 9, 1996 the Office asked Dr. Fischer to review an enclosed description of the differences in the one- and two-bundle systems and to explain why appellant should be restricted to the one-bundle system.

On July 24, 1996 Dr. Fischer reported that he had reviewed the description provided. Based on appellant's description, he stated that the two-bundle system aggravated her low back condition. From her description, the two-bundle system involved increased torsion of the trunk

while sitting in her vehicle separating the mail. Under the prior one-bundle system appellant was able to separate her mail at the employing establishment by casing the mail, which required less twisting of the trunk. Appellant also did not require overtime to deliver the mail by the one-bundle system. Dr. Fischer restricted appellant to the one-bundle system.

On July 21, 1996 the employing establishment advised appellant that she would be required to deliver the mail using the two-bundle method.

On August 8, 1996 appellant filed a claim asserting that she sustained a recurrence of disability on July 22, 1996 that was related to her employment injury of November 16, 1992. Appellant attributed the recurrence to the change in the method of delivering mail. She asserted that the new two-bundle system required increased twisting of her back while in a sitting position. Appellant asserted that she also had to do more leaning over her trays of mail while in a twisting position.

On October 16, 1996 Dr. Fischer reported that when appellant attempted to deliver mail with the new two-bundle system she developed increased back and leg symptoms, which was an aggravation of her prior condition and not a new injury. He reported that the one-bundle system would be better for her back. Dr. Fischer noted that, because the employing establishment did not allow appellant to use the one-bundle system, she was working limited duty, sorting mail for four hours a day and then being sent home.

The Office referred appellant, together with the medical record, a detailed statement of accepted facts, photographs demonstrating the layout of trays in a postal vehicle and videotape of appellant's work duties,¹ to Dr. Donald M. McPhaul, a Board-certified physiatrist, for a second opinion.

In a report dated April 14, 1997, Dr. McPhaul related appellant's history, complaints and his findings on examination. He diagnosed herniated nucleus pulposus at L3-4 on the left side and status post lumbar microdiscectomy at L3-4 on the left. Dr. McPhaul concluded that appellant was physically capable of performing the city carrier position using the two-bundle method of delivering mail effective July 22, 1996. He based this conclusion on the mobility that he saw in his office and demonstrated on the two videotapes and the lack of objective evidence of neurologic deficits on physical examination. In the videotape he saw no evidence of the usual behaviors associated with acute or chronic pain. The key issue with appellant, he stated, was not whether she could physically perform the duties but that she experienced increased discomfort when she did perform the duties. Objective findings, however, were within normal limits and did not support her subjective complaints of pain. Dr. McPhaul restricted appellant to bending and twisting no more than 30 times an hour for 8 hours and to lifting no more than 40 pounds intermittently. He indicated that these restrictions were due to her employment injury.

In a decision dated June 16, 1997, the Office denied appellant's claim of recurrence.

¹ The record shows that the employing establishment submitted videotape of appellant working part-time limited duty. There is no indication that the Office obtained videotape of appellant performing her duties using the two-bundle method of delivery.

On October 28, 1997 Dr. Fischer restricted appellant to lifting and carrying up to 20 pounds 2 to 3 times an hour for 4 hours a day; bending and twisting 10 to 20 times an hour for 6 hours a day; climbing up and down steps (no ladders) once an hour for 4 hours a day; squatting and kneeling 1 to 2 times an hour for 4 hours a day; and walking or standing up to 4 hours a day. He advised that appellant could work eight hours a day with these limitations, which were all secondary to her L3-4 herniated nucleus pulposus and subsequent microdiscectomy.

On March 16, 1998 Dr. Fischer related appellant's history and reported: "I do not claim to know the intricacies of the one- and two-bundle systems. I asked [appellant] to provide a written description of the two systems. Her description of the two systems is included with this letter." Based on this description, Dr. Fischer reported that it appeared that the two-bundle system required increased bending and twisting compared to the one-bundle system. The one-bundle system allowed her to case the majority of her mail at the employing establishment, which allowed her to turn her entire body instead of twisting her torso. In the two-bundle system she did most of the casing in her vehicle, which could be achieved only with twisting of the torso. Also, with the two-bundle system there may be more lifting and rearranging of trays in the vehicle.

Thus, Dr. Fischer reported, the two-bundle system required increased rotation of the torso and increased bending and lifting compared to the one-bundle system. This increased torso twisting, bending and lifting aggravated appellant's chronic L3-4 radiculopathy and resulted in increased left leg pain and low back pain. He explained that these activities resulted in increased stretch on the nerve roots causing increased compression by scar tissue or residual disc material. Because appellant was doing well with the one-bundle system and developed her increased pain after the two-bundle system was adopted by the employing establishment, Dr. Fischer concluded that the change in work activities caused her increased back and leg symptoms. He further reported that appellant should not be working as a mail carrier using the two-bundle system.

In a decision dated April 9, 1998, an Office hearing representative found Dr. Fischer's opinion of little or no probative value because it was based on an incomplete or inaccurate factual background. Dr. Fischer based his opinion on appellant's description of the manner in which she performed her duties under the two-bundle system for delivery. The employing establishment advised that "the proper procedure that should be followed" under the two-bundle system required turning the torso to a lesser degree and less frequently than appellant had described. The hearing representative compared appellant's description with that provided by the employing establishment and found that appellant was either performing her duties incorrectly or that she was embellishing the nature of her duties.

In a decision dated November 18, 1998, the Office reviewed the merits of appellant's claim and denied modification of its prior decision.

The Board finds that this case is not in posture for decision. There is a conflict in medical opinion requiring referral to a referee medical specialist pursuant to 5 U.S.C. § 8123(a).

Section 8123(a) of the Federal Employees' Compensation Act provides in part: "If there is [a] disagreement between the physician making the examination for the United States and the

physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”²

The Office’s second opinion physician, Dr. McPhaul, and appellant’s physician, Dr. Fischer, disagree on whether the two-bundle method of delivering mail aggravated appellant’s injury-related condition and whether she was, therefore, medically disabled for work in July 1996 when the two-bundle method was mandated. Both physicians have given reasoned medical opinions that carry probative weight.

Although the employing establishment disagrees with the number of degrees that appellant claims she turned her torso with the two-bundle method, there appears to be no dispute that this method required her to case mail from a seated position in her postal vehicle while the one-bundle method allowed a freer movement of her whole body. Dr. Fischer based his opinion on this basic distinction, not on the number of degrees of twisting and on the observation that there may be more lifting and rearranging of trays in the vehicle under the two-bundle system.

The Office did not provide Dr. Fischer with a detailed statement of accepted facts, but the Board has reviewed the factual evidence in this case and finds that he based his opinion on an accurate history. He also provided sufficient medical reasoning to support that the conclusion he drew was rational, sound and logical.

To resolve the conflict in opinion between Dr. McPhaul and Dr. Fischer, the Office shall refer appellant, together with the medical record and a statement of accepted facts, to an appropriate referee medical specialist for a well-reasoned opinion on whether appellant sustained a recurrence of disability on July 22, 1996 that was causally related to her employment injury of November 16, 1992. After such further development of the evidence as may be necessary, the Office shall issue an appropriate final decision on appellant’s claim of recurrence.

² 5 U.S.C. § 8123(a).

The November 18, 1998 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this opinion.

Dated, Washington, DC
February 12, 2001

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member