

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA SEIDEN and U.S. POSTAL SERVICE,
POST OFFICE, Royal Oak, MI

*Docket No. 99-524; Submitted on the Record;
Issued January 11, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has met her burden of proof in establishing that she sustained a back condition causally related to either her occupational duties or her accepted employment injuries.

The Board has duly reviewed the record and finds that appellant has not met her burden of proof to establish that she sustained a back condition due to her employment.

Appellant, a clerk, filed a claim on May 16, 1984 alleging that on May 14, 1984 she developed low back pain in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for acute low back strain.

Appellant filed a notice of recurrence of disability on September 9, 1988 and a second claim for traumatic injury on August 31, 1989. The Office accepted this claim for lumbar strain and appellant returned to limited duty on September 18, 1989. On January 12, 1991 appellant stated that she sustained recurrences of disability on March 21, September 5, September 7, September 13 through September 23, 1990 and November 14 through November 19, 1990 and filed the appropriate notices. She filed a claim for occupational disease on April 11, 1992 alleging that on March 23, 1992 she developed degenerative arthritis due to recurrent back injuries. On June 10, 1992 appellant informed the Office that the April 11, 1992 claim should be developed as recurrence of disability.

By decision dated April 15, 1996, the Office denied her claim finding that she had no residuals of her accepted employment injuries.¹ Appellant requested an oral hearing on April 21, 1996. By decision dated March 26, 1997 and finalized on March 27, 1997, the hearing representative found the case not in posture for decision because of an unresolved conflict in the medical opinion evidence. He remanded the case for the Office to determine whether appellant

¹ Appellant filed another notice of recurrence of disability on April 6, 1996.

had a current low back condition causally related to either her 1984 or 1989 employment injuries or to her occupational duties since 1989; and whether appellant experienced the recurrences of disability on the dates in question. By decision dated November 18, 1997, the Office denied appellant's claim, finding that the reports of the impartial medical examiner were entitled to the weight of the medical evidence.

In this case, appellant's attending physicians, Dr. Lawrence T. Kurz, a Board-certified orthopedic surgeon, and Dr. Robert A. Carter, a Board-certified family practitioner, completed reports opining that appellant had a current employment-related low back condition and had experienced recurrences of disability not accepted by the Office. The Office referred appellant to Dr. Michael Krieg, a Board-certified orthopedic surgeon. He diagnosed degenerative disc disease at L4 and stated that this condition was not caused or aggravated by the workplace. Dr. Krieg stated that appellant could return to full duty with no restrictions.

Section 8123(a) of the Federal Employees' Compensation Act,² provides: "If there is 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." The hearing representative properly found a conflict between Drs. Carter and Kurz and the Office referral physician, Dr. Krieg, and remanded the case for the Office to refer appellant for an impartial medical examination.

On remand the Office referred appellant, a statement of accepted facts and a list of specific questions, to Dr. Joseph Salama, a Board-certified orthopedic surgeon. In his initial report dated May 19, 1997, Dr. Salama reviewed the medical history and performed a physical examination. He diagnosed degenerative arthritis most significant at the L4-5 interspace. Dr. Salama stated: "As far as a causal relationship is concerned, it would appear these changes are longstanding and not specifically related to a specific incident of injury or trauma, although it is feasible that certain heavy activities could exacerbate symptomatology associated with her underlying condition."

The Office requested a supplemental report on June 3, 1997 and asked that Dr. Salama address the exacerbation or aggravation of appellant's underlying condition by work duties and whether such exacerbation, if it occurred, was permanent or temporary. The Office also asked whether appellant's work restrictions were prophylactic and whether her alleged recurrences of disability were causally related to her accepted condition.

Dr. Salama responded on June 13, 1997 and stated that heavy activities could exacerbate the symptomatology associated with appellant's underlying degenerative condition, "although to what extent the multiple injuries she allegedly sustained through the years played in the development is difficult to determine." He added: "[I]t is my opinion that her degenerative condition would have occurred regardless of her activities and that it is not specifically occupationally related."

² 5 U.S.C. §§ 8101-8193, 8123(a).

The Office again requested a supplemental report from Dr. Salama on October 20, 1997 inquiring when the effects of the employment-related injury ceased. On October 21, 1997 he stated that appellant had no residual orthopedic pathology that he would relate to any specific incident of injury or trauma. Dr. Salama concluded: "As I did not see [appellant] at the time of her previous injuries, I am unable to comment on her condition at that time and at what point any soft tissue myofascial complaints may have resolved."

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such a specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.³

In this case, Dr. Salama provided a detailed history of appellant's work duties, the recurrences of disability due to her back condition and the physical requirements of her limited-duty positions. He stated that her degenerative arthritis "certainly could predispose" her to recurrent back pain when she did heavy lifting with bending and twisting, which she did in her initial job. However, appellant's limited-duty activities since the 1989 injury were specified as sedentary with lifting of no more than 20 pounds and intermittent sitting, standing, walking, bending, stooping and twisting. He then opined that appellant's degenerative changes were not related to specific work injuries, recommended that she continue in her present limited-duty job and added that there was no need for further formal medical intervention.

Dr. Salama found that appellant's degenerative arthritis was not related to her accepted employment injury of acute low back strain or to her limited-duty work requirements and would have occurred regardless of her activities. He concluded that appellant had no residual orthopedic pathology related to any specific incident of injury or trauma. Inasmuch as Dr. Salama's report is well rationalized, it is deserving of special weight. Therefore, appellant has not met her burden of proof in establishing that she has an ongoing employment-related back condition.

³ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

The November 18, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 11, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member