

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of DOROTHY M. PENDER and U.S. POSTAL SERVICE,  
POST OFFICE, Bronx, NY

*Docket No. 99-710; Submitted on the Record;  
Issued January 10, 2001*

---

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a back injury on June 19, 1995 in the performance of duty.

On August 4, 1995 appellant, then a 55-year-old mail processor, filed a claim for compensation alleging that she hurt her back lifting heavy mail trays between May and June 19, 1995. By decision dated October 26, 1995, the Office of Workers' Compensation Programs denied her claim. By letter dated January 11, 1996, appellant requested reconsideration and submitted additional evidence. By decisions dated February 22, 1996 and April 20 and August 10, 1998, the Office denied modification of its October 26, 1995 decision.

The Board finds that this case is not in posture for decision because the medical evidence establishes a *prima facie* claim.

In a form report dated June 20, 1995, Dr. Frank J. Maselli, a Board-certified family practitioner, diagnosed low back pain syndrome, repeated appellant's belief that she sustained the injury at work and recommended light duty.

In a report dated July 26, 1995, Dr. Richard J. Radna, a neurosurgeon, related appellant's statement that she had injured her back at work due to lifting in June 1995 and had progressive lumbosacral pain with radiation down the right lower extremity. He provided findings on examination, opined that appellant was totally disabled and recommended surgery.

In a report dated February 6, 1996, Dr. Carl Franzetti, a family practitioner, related that appellant had been a patient for the past six years and that her job consisted of bending, lifting 40-pound bags and working on her feet throughout her shift. He noted that appellant had a history of back pain in 1991 and 1994. Dr. Franzetti stated that in June 1995 she complained of lumbosacral pain radiating to her right leg.

In a report dated February 5, 1997, Dr. Radna indicated that appellant had undergone surgery 17 months previously but continued to have back and leg pain. He stated:

“Physical examination gives expected postop[erative] mechanical signs in the lumbar region, in [appellant] who remains neurologically well.

“Impression is that of a causally-related lumbosacral, musculoskeletal and radicular pain syndrome. [Appellant’s] lumbosacral derangement has etiology both in the incident of work-related lifting of June 19, 1995, as well as years of occupational stress to the [lumbosacral] spine. The level of causally-related disability is total. In light of the chronicity of the [appellant’s] syndromes, they have permanency. [She] is a candidate for microdiscectomy.”

In a report dated February 12, 1997, Dr. Franzetti stated:

“The normal progression of [appellant’s] preexisting [back] condition would not normally count for the extensive deterioration and trauma shown immediately after the incident of June 19, 1995. The record shows that [she] was able to tolerate the persisting condition with conservative management prior to the [work] incident.

“Heavy work served to aggravate the preexisting condition resulting in cumulative stress over time. In [appellant’s] case, it could not help but aggravate the preexisting condition and in all probability, accelerate its development.

“It is my opinion, therefore, that [appellant’s] disability on and after June 19, 1995 was causally related to her employment through aggravation of the existing condition. Such aggravation over time precipitated the cause of incident.”

Proceedings under the Federal Employees’ Compensation Act are not adversarial in nature nor is the Office a disinterested arbiter. While appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>1</sup>

The Board finds that the medical evidence of record is sufficient to require further development by the Office.<sup>2</sup> Although Drs. Franzetti and Radna provided insufficient medical rationale in support of their opinions, their reports constitute substantial uncontroverted evidence that appellant sustained a back condition in the course of her employment and are sufficient to require that the case be remanded for further development of the claim.<sup>3</sup>

---

<sup>1</sup> *Elaine K. Kreymborg*, 41 ECAB 256, 258-59 (1989).

<sup>2</sup> *See Cheryl A. Monnell*, 40 ECAB 545, 551-52 (1989).

<sup>3</sup> *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978). The Board further notes that in the present case, the record contains no medical opinion contrary to appellant’s claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case to an Office referral physician for a second opinion.

The decisions of the Office of Workers' Compensation Programs dated October 22 and April 20, 1998 are set aside and the case is remanded for further development consistent with this decision of the Board.

Dated, Washington, DC  
January 10, 2001

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member