

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NELVA J. RUCKMAN-BILE and U.S. POSTAL SERVICE,
POST OFFICE, Wadsworth, OH

*Docket No. 99-2076; Submitted on the Record;
Issued January 17, 2001*

DECISION and ORDER

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

The issue is whether appellant has any residuals due to her September 11, 1990 employment injury that would entitle her to compensation or medical benefits.

The case has been on appeal previously.¹ Appellant, then a 49-year-old rural letter carrier, injured her back on September 11, 1990, while delivering mail. Her claim was accepted for subluxation of the spine at the L4 level and a lumbar strain. In a May 12, 1992 report, Dr. Joseph B. Paley, a Board-certified orthopedic surgeon, stated that appellant had sustained a lumbosacral strain in 1990 from which she had recovered. The Office of Workers' Compensation Programs subsequently found that appellant had no residuals of her September 11, 1990 employment injury.

The Board found that the reports of Dr. Karen L. Lehman, a chiropractor, and Dr. John A. McCulloch, a Board-certified orthopedic surgeon, required further development of the case record. The Board remanded the case so that the Office could obtain a rationalized medical opinion from Dr. McCulloch on whether appellant's diagnosed conditions were causally related to factors of her employment injury and whether appellant had any residuals due to her accepted employment injury.

On remand, the Office requested a further opinion from Dr. McCulloch but received no response. The Office subsequently referred appellant, together with a statement of accepted facts and the case record, to Dr. Charles J. Paquelet, a Board-certified orthopedic surgeon.²

In a July 30, 1998 report, Dr. Paquelet noted that an October 30, 1990 computerized tomography (CT) scan showed a central disc bulge at L4-5 and unilateral spondylolysis at L5.

¹ Docket No. 96-1698 (issued June 4, 1998).

² In its July 9, 1998 letter to Dr. Paquelet, the Office stated erroneously that a conflict in medical opinion had arisen.

He reviewed Dr. McCulloch's March 2, 1994 report indicating that appellant "likely" had a herniated disc at the L4-5 level in 1990 with degenerative disc disease at L4-5 and L5-S1, annular bulging L4-5, and spondylolysis at L5 on the left.

Dr. Paquelet stated that appellant's degenerative disc disease and mechanical instability of the spine due to unilateral spondylolysis were not related to the September 11, 1990 employment injury. The annular bulging seen on the CT scan may or may not have been an abnormal finding but there "certainly was no evidence of degenerative disc disease at that time on any level."

Dr. Paquelet added that appellant's complaints of pain were at best suggestive and not typical of lumbar radiculopathy that would infer mechanical low back pain "most likely" due to spondylolysis. He concluded that appellant sustained a lumbosacral sprain in 1990 that had long since resolved and that her ongoing treatment with Dr. Lehman was for the unrelated conditions of degenerative disc disease and spondylosis. Based on appellant's medical history and physical examination, as well as the reports of Drs. Lehman and McCulloch, Dr. Paquelet stated that appellant had no residuals from the employment injury. He added that appellant was medically capable of performing her duties as a rural letter carrier but could not do so due to her nonwork-related spinal disorder.

In a September 23, 1998 decision, the Office terminated her medical benefits on the grounds that the evidence established that she no longer had any residuals from her September 11, 1990 employment injury.

Appellant requested a hearing, which was held on February 22, 1999. Appellant testified that she had returned to work at a sedentary job but had taken retirement after her claim was denied because she was unable to return to work as a carrier. The record indicates that appellant returned to work in the private sector.

She submitted a February 19, 1999 report from Dr. Lehman who stated that Dr. Paquelet's report was based on an incomplete history and was inaccurate in several respects. Dr. Lehman noted that he commented that appellant had not worn her transcutaneous electrical nerve stimulation (TENS) unit whereas appellant reported that he had asked her to take her TENS unit off. Dr. Paquelet stated that appellant could squat and duck waddle. Dr. Lehman related that appellant indicated she had told Dr. Paquelet that she could not perform these movements. She commented that, although Dr. Paquelet stated that appellant had a bulging disc but not degenerative disc disease, a bulging disc would lead to degenerative changes. Dr. Lehman stated that appellant had not reached her preinjury level.

In an April 30, 1999 decision, the Office hearing representative found that the weight of the medical evidence rested with the report of Dr. Paquelet who concluded that appellant was no longer experiencing disabling residuals from the September 11, 1990 employment injury.

The Board finds that appellant has no residuals due to her September 11, 1990 employment injury.

The Office accepted appellant's claim for subluxation of L4 and a lumbosacral strain. The Office met its burden of proof to terminate medical benefits based on the report of

Dr. Paquelet, the referral orthopedic specialist. Appellant also claimed conditions of a herniated disc with degenerative disc disease based on the report of Dr. McCulloch.

The Office referred appellant to Dr. Paquelet because Dr. McCulloch did not respond to the Office's request for an additional medical report. Dr. Paquelet concluded that appellant had sustained a lumbosacral sprain due to the employment injury which had resolved. He noted that appellant had a bulging disc at L4-5 and spondylolysis at L5 and concluded, based on the October 30, 1990 CT scan, that these conditions were unrelated to the employment injury. He stated that appellant's pain was not typical of lumbar radiculopathy but was most likely related to her spondylosis. He found that appellant's employment-related condition had resolved and indicated that appellant's continuing problems were due to her spondylosis. Dr. Paquelet's report was well rationalized, presenting cogent reasons for his conclusion that appellant no longer had any residuals of her employment injury. Appellant did not present any well-rationalized report that established that her degenerative disc disease or spondylosis conditions are related to her employment injury. She did not meet her burden of proof.

The decisions of the Office of Workers' Compensation Programs, dated April 30, 1999 and September 23, 1998, are hereby affirmed.

Dated, Washington, DC
January 10, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member