

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of AUGUSTA ANN KIRK and U.S. POSTAL SERVICE,
KENWOOD POST OFFICE, Toledo, OH

Docket No. 99-2541; Submitted on the Record;
Issued January 2, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability causally related to her April 7, 1993 employment injury.

This is the second appeal to the Board in this case. By decision dated October 2, 1998, the Board adopted a decision dated October 1, 1996, in which an Office of Workers' Compensation Programs' hearing representative affirmed the Office's December 20, 1995 decision denying appellant's recurrence of disability claims.¹ The hearing representative's findings of fact and conclusions of law are incorporated by reference.

By letter dated May 14, 1999, appellant, through her attorney, requested reconsideration of the Board's October 2, 1998 decision. To support her request, appellant submitted a report dated August 26, 1996 in which Dr. Ted Barber, a neurologist, discussed his physical examination findings, and appellant's symptoms and treatment.

By merit decision dated July 15, 1999, the Office denied appellant's reconsideration request on the grounds that the evidence submitted in support of her request was insufficient to establish a recurrence of disability.

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability on June 3, 1993 or December 1, 1994 causally related to her April 7, 1993 employment injury.

When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a limited or light-duty position, or the medical evidence of record establishes that she can perform the duties of such a position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence a recurrence

¹ Docket No. 97-631.

of total disability and show that 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.² The claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.³

In this case, the record does not contain rationalized medical evidence establishing a change in the nature or extent of appellant's employment-related lumbosacral and right knee strains or a change in the nature or extent of her light-duty job requirements. In his report dated August 26, 1996, Dr. Barber stated that he first examined appellant in December 1994 and had seen her most recently in May 1996.⁴ He described his findings and treatment since that time and concluded:

“Given that [appellant] identified the injury as the precipitating event causing her back pain, I would relate the injury as the direct and proximal cause of her mechanical low back pain. I expect that she will continue to have pain in some measure for a long time to come, as she has not responded to any of the conservative measures for treatment of her low back pain including physical therapy, medication, and lumbar epidural steroid injections, nor to the use of a TENS Unit. Given that her pain has gone on for an extended period of time (greater than one year) without much relief with conservative measures, it is my opinion that there is a greater than 51 percent likelihood that she will continue to have back pain and that the back pain is permanent at this time.”

In this report, Dr. Barber essentially repeated his findings and conclusions that were previously considered by the Board in its October 2, 1998 decision. While the physician stated that, based on appellant's history, he would relate her back pain to her April 7, 1993 employment injury, he did not explain why appellant could not perform the duties of her light-duty job. Nor did he opine that appellant's back condition had deteriorated. While Dr. Barber concluded that appellant's back pain would in all likelihood persist, he did not state that such pain would prevent her from doing her light-duty job. The Board, therefore, finds this report insufficient to establish that appellant sustained a recurrence of disability causally related to her April 7, 1993 employment injury.

² *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

³ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁴ The Board notes that Dr. Barber previously submitted reports dated December 1, 1994 to January 18, 1996 which were considered by the Board in its October 2, 1998 decision.

The decision of the Office of Workers' Compensation Programs dated July 15, 1999 is affirmed.

Dated, Washington, DC
January 2, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member