

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUNG S. SIM and U.S. POSTAL SERVICE,
POST OFFICE, Seattle, WA

*Docket No. 00-1400; Submitted on the Record;
Issued May 10, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established a recurrence of disability causally related to her employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

The case has been before the Board on prior appeals. In a decision dated June 30, 1992, the Board affirmed a decision of the Office that residuals of the October 15, 1986 injury had ceased by December 5, 1986.¹ In a decision dated August 4, 1995, the Board affirmed a January 3, 1994 decision that appellant's request for reconsideration was untimely and failed to show clear evidence of error.² The history of the case is contained in the Board's prior decisions and is incorporated herein by reference.

On January 8, 1998 appellant filed a notice of recurrence of disability. In a decision dated July 20, 1998, the Office denied the claim. By decision dated March 31, 1999, an Office hearing representative affirmed the prior decision. In a decision dated December 9, 1999, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review.

The Board finds that the case is not in posture for decision.

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related condition, which continued after termination of compensation benefits.³ The Board also notes that a person who claims a recurrence of disability

¹ Docket No. 92-4.

² Docket No. 94-442.

³ *Talmadge Miller*, 47 ECAB 673, 679 (1996); see also *George Servetas*, 43 ECAB 424 (1992).

due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury.⁴

In response to a December 29, 1997 request from the Office for a medical report on whether appellant had residuals of a work-related injury, the attending physician, Dr. Gregory Vaughan, a family practitioner, submitted a January 15, 1998 report providing a history and results on examination. Dr. Vaughan diagnosed chronic right-sided low back pain due to chronic ligamentous strain across the upper sacral and iliac joint. He further stated:

“There is a clear correlation with the sudden onset of pain and the work activity of the original date of injury of October 15, 1986. It is a known consequence of injury that injured musculotendinous tissue, if not adequately stretched and retracted, may develop permanent shortening and/or atrophy leading to chronic persistent pain and dysfunction that may become very resistant to treatment and physical therapy at a later time.”

The Board finds that Dr. Vaughan provided a probative medical opinion in response to the questions posed by the Office.⁵ The July 20, 1998 Office decision purports to limit the probative value of the report because Dr. Vaughan stated: “may develop” and, therefore, was speculative.⁶ He does not, however, offer an equivocal opinion, Dr. Vaughan states his opinion and supports his opinion with a medical explanation. While not sufficiently detailed to meet appellant’s burden of proof, it is of sufficient probative value to require further development of the record.⁷ On remand, the Office should prepare a statement of accepted facts and secure medical evidence that is sufficient to resolve the issue of whether appellant had an employment-related condition or disability on or after December 5, 1986. After such further development as it deems necessary, it should issue an appropriate decision.

In view of the Board’s finding, it will not address the second issue.

⁴ *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

⁵ Dr. Vaughan reiterated his opinion in a May 27, 1999 report.

⁶ The hearing representative did not address the January 15, 1998 report.

⁷ See *Richard E. Konnen*, 47 ECAB 388 (1996).

The decisions of the Office of Workers' Compensation Programs dated December 9 and March 31, 1999 are set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
May 10, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member