U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

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In the Matter of TANIA KEKA and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Los Angeles, CA

*Docket No. 00-1447 Submitted on the Record;*
*Issued May 2, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty causally related to factors of her federal employment.

On December 10, 1998 appellant, then a 47-year-old flat sorter machine clerk, filed an occupational disease claim alleging that she sustained pain in her lower right side and down both legs due to factors of her federal employment. She stated that she became aware of her disease on April 27, 1999 and related the condition to factors of her federal employment on August 6, 1999 because she worked in the employing establishment for 13 years constantly lifting 20 to 40 pounds of mail and pushing hand trucks and all-purpose containers weighing up to 800 pounds. Appellant did not stop work.

In a statement received by the Office of Workers' Compensation Programs on October 19, 1999, appellant provided photographs and descriptions of her various duties within the employing establishment.

In an August 6, 1999 report, Dr. James M. Loddengaard, Board-certified in orthopedic surgery, indicated that appellant had a four-month history of numbness and tingling in her legs which began when she walked for any period of time and got steadily worse when she sat down, at which point it resolved in about five minutes allowing her to get up and walk again. He indicated that appellant experienced numbness and tingling in her posterior thighs; however, it did not go down past her knees. Dr. Loddengaard also stated that appellant described her pain as discomfort. He stated that appellant had pain on the right side, which radiated from the right groin area down to the anterior thigh to the knee and this occurred with prolonged walking or with prolonged driving. Dr. Loddengaard diagnosed significant stenosis at L2-3 and L3-4 with spinal claudication, symptoms getting worse. Additionally, he indicated that surgery was an option; however, appellant did have a normal neurological examination.

In a September 10, 1999 disability certificate, Dr. Loddengaard reported that appellant had low back pain two weeks ago while walking at work. He noted that appellant was seen on August 24, 1999 and just took it easy and was feeling better. Dr. Loddengaard also noted that appellant was "avoiding too much bending at work [the employing establishment] and had trouble getting a chair since Tuesday." He also indicated that appellant now had a dull pain which was bearable and that with increased walking, appellant had "electricity" in her legs.

In a September 24, 1999 report, Dr. Loddengaard noted that appellant was seen in his office on three occasions: August 6, 24 and September 10, 1999 for a diagnosis of spinal stenosis at L2-3 and L3-4 with spinal claudication symptoms. He stated that, "while her stenosis is certainly not caused by her job, her symptoms are clearly aggravated by the increased walking and repetitive bending she does at work. This is typical for spinal stenosis."

In a letter dated November 26, 1999, the Office requested additional information from the employing establishment.

In a letter dated November 26, 1999, the Office requested that appellant submit additional information. The Office also requested medical documentation explaining how the reported work incident caused or aggravated the claimed injury. Appellant was allotted 30 days to submit the requested evidence.

In reports dated October 28 and December 1, 1999 and January 14, 2000, Dr. Loddengaard indicated that appellant was under orthopedic care for a lumbar dysfunction with bilateral radiculopathy. He indicated that appellant was able to continue working, but with restrictions of no prolonged sitting, standing or walking, and no lifting more than five pounds and no bending. Dr. Loddengaard also prescribed a chair with back support.

In a December 15, 1999 report, Dr. Loddengaard noted that, prior to January 1999, appellant worked as a clerk, generally doing intermittent lifting. In January 1999, appellant was required, for half of her shift per day, to do repetitive lifting of dozens of boxes, weighing 20 to 50 pounds, filled with magazines. Dr. Loddengaard indicated that appellant began experiencing pain in her low back in April 1999, associated with this repetitive bending and lifting. He stated that appellant indicated that after her back began hurting, she was moved to a different job late in April 1999. Dr. Loddengaard diagnosed spinal stenosis at L2-3 and L3-4, with spinal claudication symptoms and noted that the onset of symptoms were "based on repetitive bending and lifting at work."

In a decision dated February 1, 2000, the Office denied appellant's claim for compensation as she did not establish the fact of injury.

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

An employee who claims benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of her claim.[2] The claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.[3] However, it is well established that proceedings under the Act are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[4]

In this case, Dr. Loddengaard specifically stated that he had seen appellant on three occasions for a diagnosis of spinal stenosis at L2-3 and L3-4 with spinal claudication symptoms. He indicated that "while her stenosis is certainly not caused by her job, her symptoms are clearly aggravated by the increased walking and repetitive bending she does at work. This is typical for spinal stenosis." Additionally, in his December 15, 1999 report, Dr. Loddengaard explained the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. He noted appellant's history of injury and tied the commencement of pain to appellant's new position, which she started in January 1999. Dr. Loddengaar outlined the specific details of appellant's new job and concluded that appellant's spinal stenosis at L2-3, and claudication symptoms were "based on repetitive bending and lifting at work."

Although none of these reports contained sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that her stenosis at L2-3 and L3-4 with spinal claudication symptoms was causally related to her federal employment, they raised an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.[5]

On remand, the Office should refer appellant, together with a statement of accepted facts and the medical evidence of record to an appropriate Board-certified specialist or specialists for an examination, diagnosis and a rationalized opinion on whether appellant's diagnosed conditions were aggravated by her employment. After such development as is necessary, the Office should issue a *de novo* decision.

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[1] 5 U.S C. §§ 8101-8193.

[2] *Ruthie B. Evans,* 41 ECAB 416, 423-24 (1990); *Donald R. Vanlehn,* 40 ECAB 1237, 1238 (1989).

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

[4] *Dorothy L. Sidwell,* 36 ECAB 699 (1985); *William J. Cantrell,* 34 ECAB 1233 (1983).

[5] *See Robert A. Redmond,* 40 ECAB 796, 801 (1989); *see also Horace Langhorne,* 29 ECAB 820 (1978).

The decision of the Office of Workers' Compensation Programs dated February 1, 2000 is set aside and the case remanded to the Office for further proceedings consistent with this decision.

Dated, Washington, DC
May 2, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member