

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOANN M. LODICO and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

*Docket No. 99-1891; Submitted on the Record;
Issued May 7, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a recurrence of disability on March 11, 1998, causally related to her June 1, 1990 employment injury.

On June 3, 1990 appellant, then a 43-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that, while moving tubs of mail she felt a pull in her back, across her shoulder and down her right side. Appellant stated that she thought the pain would subside, but the next day it returned, with a paralysis-like feeling and pain shooting up into her neck and down her right side into her hip. The Office of Workers' Compensation Programs accepted appellant's claim for right shoulder and cervical strain. Appellant stopped work on the date of the injury, and returned to light duty, four hours a day, on May 8, 1991. Appellant later began full-time work, but remained on light duty and continued to miss work for intermittent periods. Appellant had a prior employment injury on March 5, 1981, which was accepted by the Office for contusion of the left wrist and lower back, and was later accepted for left wrist subluxation and wrist surgery. The Office also later accepted that appellant developed employment-related bilateral leg cramps.

In a narrative report dated September 17, 1990, Dr. John D. Lupiano, appellant's primary treating Board-certified internist, stated that, on June 4, 1990, appellant had presented to him with an acute onset of neck pain and right-sided shoulder pain which developed after she moved several bins during the course of her job. He stated that the initial diagnosis was acute muscle spasm with possible nerve compression. On June 12, 1990 appellant returned to light duty, but upon reexamination on June 18, 1990, appellant complained that, after four days of light duty, her pain increased and she developed paresthesias and weakness of the right upper extremity. Magnetic resonance imaging (MRI) was performed on June 21, 1990, which revealed a right-sided posterolateral disc herniation at the C6-7 level with significant encroachment upon the right C7 neural foramen. Dr. Lupiano explained that the herniated cervical disc revealed by the MRI was precipitated by appellant having picked up tubs of mail.

In follow-up reports dated April 11, 1991 and March 5, 1994, Dr. Lupiano again stated that, after her original injury on June 2, 1990, which occurred while appellant was moving tubs of magazines at work, appellant showed some improvement and returned to light duty. When her symptoms recurred and worsened, she was seen by a neurologist and diagnosed with a C7 radiculopathy, as revealed by a June 21, 1990 MRI, causally related to her June 1990 employment injury.

On December 23, 1995 appellant began a permanent full-time restricted duty job as a modified letter carrier. In a decision dated February 23, 1996, the Office found that the position of modified letter carrier fairly and reasonably represented appellant's wage-earning capacity.

In a narrative report dated January 25, 1998, Dr. Lupiano reaffirmed that appellant has a chronic condition of C7 radiculopathy which requires ongoing monitoring and treatment. He stated that, during a period of excessive heat and humidity at work, appellant suffered an exacerbation of her condition, and added that prolonged standing and changes in temperature could continue to exacerbate her condition.

In a report dated March 31, 1998, Dr. Enrico Fazzini, a treating physician, stated that appellant was totally disabled due to her employment-related C7 radiculopathy.

In a report dated April 8, 1998, Dr. Lupiano stated that appellant had been suffering extreme anxiety due to work-related stress, and that, on February 28, 1998, he advised her to stay away from the job, but appellant informed him that she had an appointment with the medical unit and injury control office that week and wanted to keep the appointment. He noted that, on March 11, 1998, following her appointment with the medical unit,¹ she returned to work to submit the appropriate forms to her supervisor, which created additional stress and led to an aggravation of her cervical radiculopathy. Dr. Lupiano further noted that, in addition to the exacerbation of her cervical radiculopathy, appellant also demonstrated increased anxiety, confusion and inability to concentrate. Dr. Lupiano concluded that appellant was unable to work at the present time.

On April 9, 1998 appellant filed a claim for a recurrence of disability commencing March 11, 1998 causally related to her June 2, 1990 employment injury. Appellant indicated that at the time of her recurrence she was still performing modified duty under her 1995 job assignment.

By letter dated July 6, 1998, the Office advised appellant of the information required to support her recurrence of disability. In response, appellant submitted a July 30, 1998 report from Dr. Fazzini, who stated that appellant had suffered a work-related injury in June 1990, for which he had been treating her since June 21, 1990. He stated that electromyography and nerve conduction studies had revealed bilateral C6 radiculopathy and an MRI had revealed a C7 disc herniation. Dr. Fazzini stated that appellant's physical examination had been consistent with cervical radiculopathy and agitated depression. He further stated that appellant had been

¹ A medical report from Dr. Chow of the Injury Compensation Control Office listed the diagnoses of disc herniation and thrombosis of the legs, indicated by check mark that these conditions were employment related, and further indicated that appellant could return to her limited-duty position.

working at the employing establishment sorting letters, but he felt she could not perform this work any longer because it exacerbated her neck pain. He added that, on appellant's last visit on July 16, 1998, he was concerned that her condition had worsened and that she could no longer work at the employing establishment on either full or light duty. He explained that appellant's depression and anxiety had worsened and her left arm numbness and weakness as well as her neck pain had increased.

By decision dated March 1, 1999, the Office denied appellant's claim for a recurrence of disability. In the attached memorandum, the Office found that appellant had failed to submit any rationalized medical evidence, supported by objective findings and test results, establishing that she was disabled from performing her modified job duties due to her accepted employment-related conditions.

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

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence 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 While appellant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.³ In the instant case, while the record contains no medical reports indicating that appellant's March 11, 1998 recurrence of disability was due to the accepted employment-related conditions of right cervical strain, right shoulder strain, left wrist subluxation or bilateral leg cramps, the record contains numerous medical reports, causally relating appellant's recurrence of disability to an employment-related herniated cervical disc with associated radiculopathy. While the reports of Drs. Lupiano and Fazzini are not sufficiently rationalized to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that her March 11, 1998 recurrence of disability was due to her June 1990 employment injury, they constitute sufficient evidence in support of appellant's claim to require further development of the record by the Office.⁴ In addition, the Board notes that there is no medical evidence of record refuting a causal relationship between appellant's diagnosed herniated cervical disc with associated radiculopathy and her June 1990 employment injury. On remand, the Office should refer appellant, together with the case record and a statement of accepted facts, for examination by an appropriate medical specialist. After such further development as the Office deems necessary, it should issue a *de novo* decision.

² *Richard E. Konnen*, 47 ECAB 388 (1996).

³ *Dennis J. Lasanen*, 43 ECAB 549 (1992).

⁴ *See Horace Langhorne*, 29 ECAB 820 (1978).

The decision of the Office of Workers' Compensation Programs dated March 1, 1999 is hereby set aside and the case remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
May 7, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member