

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MONA L. CARVER and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Cleveland, OH

*Docket No. 01-655; Submitted on the Record;
Issued November 5, 2001*

DECISION and ORDER

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

The issues are: (1) whether appellant sustained a recurrence of disability on May 19, 2000, causally related to her May 11, 1993 employment injury; and (2) whether appellant's claim for lost wages due to medical treatment on October 25, 2000 was causally related to her accepted employment injury.

On May 11, 1993 appellant, then a 58-year-old mailhandler, injured her back while in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for bilateral lumbar radiculopathy. Additionally, the Office accepted that appellant sustained a recurrence of disability on September 22, 1994. Appellant returned to work in a limited-duty capacity. Her treating physician subsequently imposed permanent physical restrictions, which the employing establishment accommodated.

On August 1, 2000 appellant filed a notice of recurrence of disability alleging that she sustained a recurrence of disability on May 19, 2000 causally related to her May 11, 1993 employment injury.¹ Appellant returned to work on June 7, 2000. By decision dated August 29, 2000, the Office denied appellant's claim.

On October 25, 2000 appellant underwent an epidural steroid nerve block. She subsequently filed a claim for wage-loss compensation for that day.

The Office informed appellant on November 6, 2000 that it had not received a request from her physician for the October 25, 2000 procedure and, therefore, could not approve the procedure or compensation for lost wages. The Office asked appellant to submit a medical opinion from her physician regarding her current condition.

¹ Appellant filed a claim for wage-loss compensation, on May 19, 2000 for disability from May 19 to June 5, 2000. By letter dated July 27, 2000, the Office advised appellant that the evidence submitted indicated the possibility of a recurrence of disability and informed her of the proper claim form.

By decision dated December 13, 2000, the Office denied appellant's claim for compensation for lost wages on October 25, 2000.

The Board finds that appellant failed to establish that her claimed recurrence of disability on May 19, 2000 was causally related to her May 11, 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 light-duty position, or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden of establishing 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 employment-related condition or a change in the nature and extent of the light-duty job requirements.²

Appellant did not allege a change in the nature and extent of the light-duty position she held at the time of her claimed recurrence of disability on May 19, 2000. The Board finds that the record does not establish a change in the nature and extent of the requirements of appellant's light-duty position.

Appellant also failed to establish a change in the nature and extent of her accepted bilateral lumbar radiculopathy. The record indicates that appellant has preexisting degenerative disc disease. The Office authorized a February 21, 2000 magnetic resonance imaging (MRI) scan that revealed osteophyte formation at T12-L1, disc degeneration and bulging at L1-L2, mild broad-based disc bulging at L4-L5 with bilateral facet hypertrophy, and bilateral facet hypertrophy at L5-S1 with central osteophyte formation and narrowing of the thecal sac. These conditions have not been accepted as resulting from appellant's May 11, 1993 employment injury.

Where appellant claims that a condition not accepted or approved by the Office was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.³

Appellant's treating physician, Dr. Norton A. Winer, a Board-certified neurologist, reviewed the February 21, 2000 MRI scan and in a report dated March 3, 2000, diagnosed degenerative disc disease and lumbar radiculopathy, attributable to appellant's employment activity. Dr. Winer also provided a May 19, 2000 status report indicating that appellant was unable to work from May 19 to June 5, 2000. However, he did not provide no diagnosis and failed to indicate the reason for appellant's inability to work at that time. In a second status report dated June 6, 2000, Dr. Winer stated that appellant could return to work on June 5, 2000 and noted lumbar radiculopathy, central disc osteophyte, chronic back pain and lumbosacral degenerative joint disease. He did not, however, offer an opinion on the cause of appellant's condition.

² *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

³ *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

Dr. Winer's March 3, 2000 report does not address the period of disability in question and, therefore, is insufficient to establish that appellant sustained a recurrence of disability on May 19, 2000. Furthermore, while Dr. Winer noted that the diagnosed conditions of degenerative disc disease and lumbar radiculopathy were attributable to appellant's employment activity, he did not provide any rationale for his conclusion. He merely checked the "yes" box in response to a question the form.⁴ The Board has consistently held that such an opinion is of little probative value and is, therefore, insufficient to establish causal relationship.⁵ Dr. Winer's May 19 and June 6, 2000 status reports are similarly insufficient to establish that appellant's claimed recurrence of disability is causally related to her accepted employment injury of May 11, 1993.

Because appellant failed to establish a causal relationship between her claimed recurrence of disability on May 19, 2000 and her accepted employment injury of May 11, 1993, the Office properly denied appellant's claim for recurrence of disability.

The Board also finds that the Office properly denied appellant's claim for wage-loss compensation for October 25, 2000.

While the record indicates that appellant underwent an epidural steroid nerve block on October 25, 2000, there is no evidence relating the need for this procedure to appellant's accepted employment injury. The September 12, 2000 report from Dr. Winer failed to address the issue of causal relationship. Dr. Winer noted, among other things, that appellant was scheduled for physical therapy because of continuing symptomatology and that she had been referred for a surgical consult in March 2000. But the report made no mention of the possible need for an epidural steroid nerve block. Because the record is devoid of any evidence demonstrating that the treatment appellant received on October 25, 2000 was related to her accepted employment injury, the Office properly denied appellant's claim for wage-loss compensation.

⁴ Question number 8 on Form CA-20 inquires as follows: "Do you believe the condition found was caused or aggravated by an employment activity?"

⁵ *E.g., Lee R. Haywood*, 48 ECAB 145, 147 (1996).

The decisions of the Office of Workers' Compensation Programs dated December 13 and August 29, 2000 are hereby affirmed.⁶

Dated, Washington, DC
November 5, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

⁶ The Board's review is limited to the evidence of record that was before the Office at the time of its final decision dated May 17, 2000. 20 C.F.R. § 501.2(c).