

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LUCRETIA SMITH and U.S. POSTAL SERVICE
POST OFFICE, Bedford Park, IL

*Docket No. 01-254; Submitted on the Record;
Issued October 19, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a recurrence of disability on October 4, 1999 causally related to her October 5, 1998 employment injury.

On October 5, 1998 appellant, then a 26-year-old mail processor, sustained an injury to the top of her head when she was processing mail and was struck by an APC container.

The Office of Workers' Compensation Programs accepted appellant's claim for contusion to the head, postconcussion syndrome and tension headaches. Appellant was placed on the periodic rolls and received appropriate compensation. She returned to light duty on September 7, 1999.¹

In an October 21, 1999 report, Dr. Audrey Stillerman, Board-certified in family practice, stated that appellant was on medical leave as of October 4, 1999. She indicated that appellant had an exacerbation of her chronic neck and back pain secondary to a work-related injury. Dr. Stillerman advised that appellant was unable to work until further notice.

In a November 16, 1999 report, Dr. Michael J. Shaenboen, a Board-certified neurologist and a second opinion examiner, indicated that appellant had muscle contracture/tension headaches and a normal objective neurologic examination.

In a December 7, 1999 update to his November 16, 1999 report, Dr. Shaenboen diagnosed muscle/contraction tension headache, secondary to her head injury October 5, 1998, which was not resolved. He further opined that he had no neurologic reason for appellant not to work.

¹ Appellant filed a previous claim for recurrence on September 6, 1999 alleging that, on July 12, 1999, she had a flare up of her October 5, 1998 injury. The Office accepted this claim for recurrence for the period July 17 to September 6, 1999, when she was released to return again to light duty on September 7, 1999.

In a December 14, 1999 report, Dr. Stillerman indicated that appellant had a totally disabling chronic pain syndrome secondary to her original injury. She indicated that appellant was unable to complete her rehabilitative program and the repetitive nature of her duties affected her recovery. Dr. Stillerman indicated that she had made numerous recommendations regarding treatment, they were not addressed. She opined that appellant did not have a facial, neurologic or orthopedic program, she now had a chronic pain syndrome.

By letter dated January 28, 2000, the Office referred appellant, the case record and a statement of accepted facts to Dr. Paul Atkenson, a Board-certified orthopedic surgeon, for an independent medical examination to resolve the conflict between appellant's attending physician and the second opinion physician on the issue of whether appellant's injury was causally related to her federal employment. Appellant was also advised of the appointment to resolve the conflict on the same date.

In a February 21, 2000 disability certificate, Dr. Stillerman indicated that appellant was under her care for severe cervical myofascial pain syndrome and major depression. She indicated that appellant was "fully disabled from November 6, 1999 to February 23, 2000, she may return to work within restrictions on February 23, 2000."

In a March 2, 2000 disability certificate, Dr. Stillerman indicated that appellant was under her care for severe cervical myofascial pain syndrome and major depression. She indicated that appellant was "fully disabled from October 4, 1999 to March 5, 2000 and may return to work without restriction on March 6, 2000."

In an April 17, 2000 report, Dr. Stillerman indicated that appellant was under her care for severe cervical myofascial pain syndrome and depression resulting from a head injury on the job in October 1998. She stated that appellant suffered from daily headaches, neck, upper back and right arm pain and poor sleep, which was disabling to appellant. Dr. Stillerman stated that poor work conditions exacerbated appellant's symptoms. She recommended a daytime schedule in a quiet environment, along with participation in a pain program and therapy.

In an April 20, 2000 memorandum of telephone call, the Office was advised that the medical records were destroyed by Dr. Atkenson's office after appellant's appointment was cancelled.

In an April 22, 2000 memorandum of telephone call, the Office was advised that appellant returned to work on May 1, 2000 without restrictions.

In a May 4, 2000 memorandum of telephone call, appellant indicated that she did not need another impartial medical examiner as she was back to work.

On May 23, 2000 appellant filed a notice of recurrence alleging that on October 4, 1999 she had a recurrence of her October 5, 1998 injury. She asserted that she continued to have pain, dizzy spells, headaches, ringing in the right ear, right arm pain, as well as neck and back pain.

On June 29, 2000 the Office advised appellant of the type of medical evidence needed to establish her recurrence claim.

By decision dated August 24, 2000, the Office rejected appellant's recurrence of disability claim on the grounds that she failed to establish that her claimed recurrent condition worsened due to her October 5, 1998 employment injury.

The Board finds that this case is not in a posture for decision as a conflict in the medical evidence exists.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 to show that he or 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 record contains medical reports with conflicting opinions on the issue presented. Appellant's physician, Dr. Stillerman, supported a recurrence of total disability commencing October 4, 1999 such that she could not do light duty. On the other hand, the second opinion physician, Dr. Shaenboen, found that there was no neurologic reason why appellant could not work. Drs. Stillerman and Shaenboen have submitted rationalized reports based upon a complete background which the Board finds are in conflict on the issue of showing that appellant had a recurrence of total disability such that she could not perform such light duty.³ The Board finds that the case must be remanded to the Office for resolution of the conflict.⁴

To resolve this conflict, the Office should refer appellant, the case record and a statement of accepted facts to an appropriate Board-certified specialist for an impartial evaluation, diagnosis and rationalized medical opinion pursuant to 5 U.S.C. § 8123(a). After such further development as it deems necessary, the Office shall issue an appropriate decision.⁵

The decision of the Office of Workers' Compensation Programs dated August 24, 2000 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
October 19, 2001

² *Richard E. Konnen*, 47 ECAB 388 (1996); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

³ The record reflects that the Office found that a conflict existed and referred appellant to Dr. Atkinson, a Board-certified orthopedic surgeon. However, once appellant's original file was accidentally destroyed when she did not show for her appointment, the new independent medical examination was never rescheduled.

⁴ Section 8123(a) of the Federal Employees' Compensation Act provides: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

⁵ *Debra S. Jenkins*, 41 ECAB 616, 620 (1990).

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member