

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CYNTHIA RICHMOND and U.S. POSTAL SERVICE,
POST OFFICE, Quincy, IL

*Docket No. 00-2152; Submitted on the Record;
Issued September 14, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant's back condition and related disability beginning January 31, 1995 were causally related to the accepted employment injury.

On February 8, 1993 appellant, then a 45-year-old clerk filed a traumatic injury claim alleging that she injured her left knee, right foot and back on February 5, 1993 when she tripped while walking to a letter sorting machine. The Office of Workers' Compensation Programs accepted the claim for lumbar strain and herniated disc L5-S1. Appellant had intermittent periods of disability from June 3 through October 28, 1993 and returned to limited duty on September 20, 1993, with a lifting restriction of 25 pounds.

On June 23, 1995 appellant filed a notice of recurrence of disability alleging that her back condition and related disability beginning January 31, 1995 were due to the February 5, 1993 employment injury.

By decision dated January 12, 1996, the Office denied appellant's claim for recurrence on the grounds that the evidence failed to establish that the claimed recurrence was causally related to the accepted injury of February 5, 1993.

On February 9, 1996 appellant requested an oral hearing. On February 19, 1997 an Office hearing representative found that appellant failed to establish a causal relationship between her orthopedic condition and the February 5, 1993 injury or other employment factors.

On May 2, 1997 appellant requested reconsideration. By decision dated August 1, 1997, the Office denied modification of the prior decision. Appellant again requested reconsideration on February 6, 1998 and the Office denied modification of the August 1, 1997 decision in a merit decision dated May 18, 1998.

On May 5, 1999 appellant requested reconsideration a third time. In a merit decision dated July 14, 1999, the Office again denied modification of the prior decision. The Office

found that, although the evidence supported a herniated disc diagnosis, the record did not contain a physician's rationalized opinion, which explained the lack of objective clinical or diagnostic findings during the two-years following the February 5, 1993 injury date.

The Board finds that appellant has failed to establish that her back condition and related disability beginning January 31, 1995 were causally related to the original work injury.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a limited or light-duty position or the medical evidence of record establishes that she can perform duties of such a 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.¹

In this case, appellant has not shown a change in the nature and extent of her modified-duty job requirements, nor has she submitted sufficient medical evidence to show a change in the nature and extent of her injury-related condition. The record indicates that, prior to her return to work following the injury, appellant underwent a magnetic resonance imaging (MRI) scan on March 12, 1993, which revealed degenerative disc disease and a minimal protrusion of disc material centrally at the lumbosacral level.

In a report dated September 1, 1993, Dr. Heffner indicated that appellant was released for part-time limited duty as early as June 1993. He reported that, after appellant began work in the limited-duty position for a couple of weeks, she should be able to return to full-time work with no restrictions. Appellant was also examined by Dr. Arun Lakhapal, a Board-certified neurologist, who reported no evidence of focal neural compromise to suggest myelopathy or lumbosacral radiculopathy.

A subsequent MRI of the lumbar spine performed on January 14, 1994 showed no significant change. A myelogram and postmyelogram computerized tomography scan in March 1994 showed no evidence of disc herniation or nerve root compression. An electromyography on March 21, 1994 revealed no evidence of neuropathy or lumbosacral radiculopathy.

On April 18, 1994 appellant was referred to Dr. David Kennedy, a Board-certified neurosurgeon who, after conducting a physical examination and reviewing previous diagnostic tests, found that appellant had a clinically insignificant bulge at L5-S1 and that a prior myelogram was entirely normal. He concluded that appellant had persistent lumbar strain, but found no evidence of neuropathy or lumbosacral radiculopathy.

In a January 30, 1995 report, Dr. Heffner indicated that appellant had undergone a repeat MRI on January 23, 1995, which had not revealed any significant changes from previous scans and no specific nerve compression. Dr. Heffner recommended that appellant cut back her hours to assist in tolerating her situation but no specific treatment was necessary.

¹ *Glenn Robertson*, 48 ECAB 344, 352 (1997); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

In a report dated November 22, 1995, Dr. Heffner noted that appellant's symptoms had changed to involve the other leg and that, based on her symptoms, she should be evaluated by a neurologist. Dr. Heffner indicated that appellant could work with current restrictions. In a December 27, 1995 report, Dr. Heffner stated that appellant had a repeat MRI of the lumbar spine which was without change from previous studies. He indicated that the scan showed a central disc protrusion at the L5-S1 level without compression of the thecal sac or nerve roots and that the nerve conduction study was unremarkable.

In an MRI report dated July 10, 1998, Dr. Randal Trecha, a Board-certified orthopedic surgeon reviewed the findings of serial MRIs on January 23, 1995 and in December 1995. He stated: "Outside studies of January and especially December 1995 show focal right central, paracentral disc herniation at [L]5-[S]1 with mass effect on the descending right nerve root. Between the two studies, approximately 12 months, there are some progressive interval changes. Diffuse disc degeneration at other levels, but no other focal levels of herniated disc or focal disc."

In support of her May 5, 1999 request for reconsideration, appellant argued that Dr. Trecha's report confirmed a herniated disc at L5-S1 with progressive interval changes from January 23 to December 1995. Appellant asserted that this evidence supports that her herniated disc resulted from the work injury and necessitated surgery.

The Board finds that appellant has failed to meet her burden of proof in establishing that the claimed recurrence of January 31, 1995 is causally related to the original employment injury. Dr. Trecha's July 10, 1998 report supports a herniated disc diagnosis as of 1995 but does not provide an opinion on causal relationship. There was no objective evidence of disability or a change in appellant's condition. All previous medical reports submitted on the claim indicated that appellant's complaints of back pain were subjective and all diagnostic tests performed since March 1993 did not support a herniation diagnosis but degenerative changes unrelated to her employment. Appellant has failed to submit the necessary medical evidence bridging the return to work and explaining why and how appellant's February 5, 1993 employment injury or limited-duty work beginning in September 1993 caused the diagnosed herniation and the resulting periods of total disability. Without this medical evidence, appellant has not established her claim for recurrence of disability.

The July 14, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 14, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member