

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CRYSTAL MUSTON and U.S. POSTAL SERVICE,
POST OFFICE, Carol Stream, IL

*Docket No. 00-2278; Submitted on the Record;
Issued September 14, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that she sustained a recurrence of disability effective March 30, 1998 that was causally related to her December 16, 1997 employment injury.

The Office of Workers' Compensation Programs accepted that on December 16, 1997 appellant, then a 33-year-old letter carrier, sustained a contusion of the left hemothorax in the course of her federal employment. Appellant did not stop work; however, she worked in a limited-duty position.¹

On March 28, 1999 appellant filed a notice of recurrence of disability alleging that on March 30, 1998 she had a recurrence of her December 16, 1997 employment injury. Appellant stated that she was able to perform her job fully with the exception of her one walking route. She noted that after about two hours, the pain became intense.

In a May 26, 1999 disability certificate, Dr. Patrick J. O'Donnell, a Board-certified family practitioner, advised that appellant was not to do consistent lifting or walking with her bag for 72 hours until appellant was evaluated by an orthopedist.

In a March 29, 1999 x-ray, Dr. Paul Goldberg, a Board-certified diagnostic radiologist, stated the chest film of the series showed no acute cardiopulmonary process compared to June 13, 1998.

¹ Appellant continued to perform her duties as a letter carrier with modifications that incorporated the limitations of her physician from December 17, 1997. The limited-duty position involved: one-hand work of both the right and left hands, seated work, no bending, twisting or turning, no reaching above the left shoulder, reaching above the right shoulder and restricted lifting of no more than 5 pounds. The restrictions of appellant's limited-duty position gradually increased to no lifting of more than 40 pounds, no pushing, twisting or pulling on February 19, 1998. Appellant continued to work noting her employer accommodated her restrictions.

In an April 6, 1999 mammogram, Dr. Michael W. Mitchell, a Board-certified diagnostic radiologist, diagnosed dense breasts with no evidence of malignancy.

In progress notes from March 11 to May 26, 1999, Dr. O'Donnell noted that appellant was seen for left breast pain in the outer quadrant and the injury was due to a fall in December of 1997. In the May 26, 1999 portion of the treatment notes, Stephanie Dressler, a physician assistant, noted that appellant fell onto a concrete step and placed restrictions on lifting and walking of no greater than 2 hours.

In a May 26, 1999 report, Dr. O'Donnell stated that appellant was seen on March 11, 1999 for pain on the left side of her chest, he noted appellant's history of injury as stemming from her December 1997 incident. Dr. O'Donnell indicated that the specific diagnosis remained uncertain and required further work up to clarify.

In a May 29, 1999 statement, appellant noted that she returned to delivering mail on November 10, 1998. She stated that she had 8 weeks of basic desk duties and progressed to delivering her route again with the exception of the walker. She noted that she had only done up to 2 hours and that her supervisor always accommodated her for walking. She indicated that her pain worsened. Appellant noted that, on August 26, 1998, she twisted her foot and chipped her ankle bone and was at home for nine weeks, during this time, there was no pain in her chest. She subsequently stated that, "I believe with no doubt in my mind that this is related to the injury I sustained on December 16, 1997. My breast has never stopped hurting me. The pain was not as severe as it is now."

In an August 6, 1999 decision, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that she sustained a recurrence of disability beginning on March 30, 1998 causally related to the December 16, 1997 employment injury.

Appellant subsequently submitted additional physical therapy notes, prescriptions and medical reports.

In a September 8, 1999 report, Dr. Mary T. Norek, Board-certified in physical medicine and rehabilitation, recommended a magnetic resonance imaging (MRI) scan of the left anterior chest wall region to rule out muscle tear, tendinitis, etc. Dr. Norek advised that if the MRI scan were negative, they were probably dealing with chronic recurrent muscle strain injury.

In November 11, 1999 progress notes, Dr. O'Donnell, noted that appellant was seen in follow up for increased breast pain due to a work-related injury in December 1997. He diagnosed chronic left anterior chest wall pain.

In March 26, 1998 treatment notes, a physician whose signature was illegible² indicated appellant was reexamined for her left shoulder and chest wall contusion. He stated appellant could return to regular work as of Monday, March 30, 1998. In subsequent treatment notes dated May 14, 1998, the physician noted that appellant returned with what appeared to be a

² It appears the physician used his initials and signed off with initials. The Office indicated this was appellant's treating physician.

recurrence of an injury on her left pectoralis muscle that occurred, according to appellant, about two weeks prior when she was trying to lift a heavy object from the side. The physician diagnosed this as a mild reinjury of her old accident. In subsequent notes, he noted that appellant had discomfort at the level of the anterior aspect of this joint and diagnosed chronic left shoulder tendinitis.

In a December 18, 1999 statement, appellant indicated that her claim was accepted for a contusion of the left chest wall and that she was on limited duty since the incident. Although her physician released her in March 1998, she still had similar pain in June of 1998 and was waiting for an MRI scan. Appellant indicated the pain was in the left upper body. Appellant also indicated that she did have a chipped anklebone in 1998, however, she indicated that she did not hit her upper body nor did it aggravate her symptoms. She also stated that she was led to believe that she was waiting acceptance of her MRI scan. Appellant stated that her employer accommodated her as they knew of her pain.

In an August 2, 1999 report, Dr. Norek stated that appellant came in with complaints of left chest wall pain. She noted the symptoms were present since December 16, 1997, when appellant tripped on a crack in the pavement and fell forward, hitting her left breast on a concrete step. Dr. Norek indicated that appellant was off work for a few months and she returned to work, noting an aggravation of symptoms again. She indicated appellant's pain was aggravated with the constant use of her left arm or weight on the left arm after two hours. She stated that appellant appeared to have myofascial pain of the left pectoralis muscle.

In a December 7, 1999 report and disability certificate, Dr. Norek noted appellant's history of injury and treatment. She diagnosed persistent left chest wall pain, status post contusion injury in December 1997. Dr. Norek stated that it was her medical opinion that the source of the ongoing pain is in the pectoralis muscle. The repetitive nature of her job appears to be causing recurrent aggravation of the left pectoralis injury. She advised restrictions that indicated appellant was to avoid repetitive use of the upper extremity as well as avoiding holding or carrying mail in her left arm for more than 10 seconds consecutively. No limitations were placed on the right upper extremity. Dr. Norek noted appellant could lift 70 pounds on an occasional basis and was capable of carrying a mailbag on her right shoulder for up to one and a half hours in an eight-hour work day. She also stated appellant should be allowed two consecutive days off work per week in order to rest the symptomatic area. Dr. Norek advised that appellant was capable of driving but could not sort mail with her left arm.

In a letter received by the Office on January 18, 2000, appellant requested reconsideration.

By merit decision dated April 14, 2000, the Office denied modification of the August 26, 1999 decision.

The Board finds that appellant has not established that she sustained a recurrence of disability effective March 30, 1998 that was causally related to her December 16, 1997 employment injury.

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.³

Appellant has not provided medical reports sufficient to establish that there has been a change in the nature and extent of her condition such that she can no longer perform her light-duty job or which establish that there has been a change in the nature and extent of her light-duty job requirements such that she can no longer perform her position. On May 11, 1999 the Office advised appellant of the type of medical and factual evidence needed to establish her claim for a recurrence of disability, however, appellant has not submitted such evidence.

Appellant sustained injury on December 16, 1997 when she fell while in the performance of duty, striking the area of her left breast. Following her injury, she was placed on limited duty and her job accommodated her physical limitations. Appellant indicated that her pain had not changed since the date of the injury. Appellant has not alleged that there was a change in the nature of her light-duty requirements such that she was unable to perform her position. Rather, she has alleged a recurrence of disability commencing March 30, 1998.

In a March 11, 1999 progress note, Dr. O'Donnell indicated appellant was seen for left breast pain in the left quadrant due to a fall in December 1997. He did not provide an opinion address how appellant's condition on or after March 30, 1998 was related to the accepted injury or caused any period of disability after that date. In a May 26, 1999 disability certificate, Dr O'Donnell advised that appellant was not to do lifting or walking with her bag for 72 hours or until evaluated by an orthopedist. In his May 26, 1999 report, he stated the specific diagnosis remained uncertain and required further work up. The Board has held that an opinion which is speculative in nature has limited probative value in determining the issue of causal relationship.⁴ In November 11, 1999 progress notes, Dr. O'Donnell indicated that appellant was seen in follow up for increased breast pain due to her injury on December 16, 1997. However, Dr. O'Donnell did not specifically address the period of appellant's claimed recurrence of disability or provide explanation addressing how her physical findings related back to the accepted injury.

An April 6, 1999 mammogram indicated appellant had dense breasts with no evidence of malignancy and a March 29, 1999 x-ray showed that the chest film showed no acute pulmonary

³ *Richard E. Konnen*, 47 ECAB 388 (1996); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁴ *Arthur P. Vliet*, 31 ECAB 366 (1979).

distress compared to a June 13, 1998 x-ray. These reports merely noted appellant's physical findings and are, therefore, of limited probative value.⁵

Appellant provided physical therapy notes and physician's assistant notes, however, the Board finds that these are not probative medical reports as physical therapists and physician's assistants are not defined as physicians under the Federal Employees' Compensation Act.⁶

In March 26, 1998 treatment notes, a physician indicated that appellant was reexamined for her left shoulder and chest wall contusion, indicating appellant could return to regular work on Monday, March 30, 1998. This report contained no diagnosis and the physician concluded that appellant could return to her regular duties. This report does not support a recurrence of disability. In his subsequent report dated May 14, 1998, the physician indicated that appellant returned with what appeared to be a recurrence of an injury to her left pectoralis muscle that occurred when appellant was trying to lift a heavy object from the side. He diagnosed this as a mild reinjury of her old accident. This report is of diminished probative value as the physician related a history of a possible new injury from heavy lifting rather than addressing how appellant's condition was caused or contributed to by the accepted employment injury. Again, he did not indicate that appellant was unable to perform her duties.

In an August 2, 1999 report, Dr. Norek diagnosed myofascial pain of the left pectoralis muscle. She did not explain the nature of the relationship between the diagnosed condition and the December 16, 1997 employment injury. In a September 8, 1999 report, Dr. Norek recommended an MRI scan. She provided no further diagnosis or opinion regarding causal relationship. In a December 7, 1999 report, Dr. Norek indicated that appellant had persistent left chest wall pain, status post contusion injury in 1997. She opined that the repetitive nature of appellant's job appeared to cause an aggravation of the left pectoralis injury. Dr. Norek did not address appellant's December 16, 1997 employment injury or provide an explanation for relating appellant's condition on or after March 30, 1998 to the accepted injury. Rather, she too implicated a possible new injury due to repetitive actions at work. A recurrence of disability is defined as the inability to work caused by a spontaneous change in a medical condition which results from a previous injury or illness without an intervening injury or new exposure in the work environment that caused illness.⁷

⁵ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant; *see Charles E. Burke*, 47 ECAB 185 (1995).

⁶ Reports of physical therapists are not probative. *See Jennifer L. Sharp*, 48 ECAB 209 (1996); *Kathy Marshall (Dennis Marshall)*, 45 ECAB 827 (1994); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *see Robert J. Krstyen*, 44 ECAB 227 (1992); *John H. Smith*, 41 ECAB 444 (1990) (physician's assistant not a physician); *but see* FECA Procedure Manual, Chapter 3.0100.3(c)(cosigned evidence is probative).

⁷ *See* 20 C.F.R. § 10.5(x).

Appellant has not submitted sufficient medical evidence showing that she became disabled beginning March 30, 1998, due to her accepted employment injury. She has not met her burden of proof.⁸

The April 14, 2000 and August 6, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
September 14, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

⁸ Following the issuance of the Office's April 14, 2000 decision, appellant submitted additional evidence. However, the Board may not consider such evidence for the first time on appeal.