

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VICKIE BROWN and U.S. POSTAL SERVICE,  
POST OFFICE, Troy, MI

*Docket No. 01-725; Submitted on the Record;  
Issued April 4, 2002*

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DECISION and ORDER

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

The issue is whether appellant sustained a recurrence of disability on or after July 21, 1997 causally related to her accepted August 1, 1994 employment injury.

This is the second time this case has been before the Board on appeal. On the previous appeal, the Board, in a May 2, 2000 decision, affirmed the Office of Workers' Compensation Programs' decision that appellant had failed to establish that she sustained a recurrence of disability on or after July 21, 1997 causally related to her accepted August 1, 1994 employment injury. The Board found that the weight of the medical opinion evidence rested with the May 22, 1997 report of Dr. Michael Kreig, a Board-certified orthopedic surgeon, who was selected to resolve a conflict in the medical opinion evidence between Dr. Richard W. Easton, a Board-certified orthopedic surgeon and appellant's treating physician, and Dr. Emmanuel N. Obianwu, a Board-certified orthopedic surgeon and referral physician. The Board also found that the reports of Dr. Craig D. Pepler, an osteopath, were not sufficiently rationalized to establish that appellant sustained a recurrence of disability due to her August 1, 1994 employment injury. The facts of the case are set forth in that decision.<sup>1</sup>

In an October 13, 2000 letter, appellant requested that the Office reconsider the Board's decision. By decision dated October 20, 2000, the Office denied modification after a merit review.

The Board has reviewed the case record and finds that the case is not in posture for decision.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a full-time light-duty position or the medical evidence of record establishes that she can perform the full-time light-duty position, to be entitled to

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<sup>1</sup> Docket No. 98-563 (issued May 2, 2000).

further compensation the employee has the burden to establish by the weight of the substantial, reliable and probative evidence that she cannot continue to perform such light-duty full-time work. 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.<sup>2</sup>

In this case, appellant has not shown a change in the nature and extent of her limited-duty requirements. Following the August 1, 1994 employment injury, appellant returned to limited-duty work at the employing establishment on July 17, 1997. The record does not establish, nor does appellant allege, that the claimed recurrence of total disability was caused by a change in the nature or extent of the limited-duty job requirements.

Regarding a change in the nature and extent of her employment-related injury, appellant submitted Dr. Pepler's October 5, 2000 report. After noting a history of appellant's accepted employment injury and subsequent surgery, Dr. Pepler stated:

"The pathophysiology of low back pain injuries is complex and generally occurs over a time continuum. That is underlying degenerative changes of the spinal elements may be slowly developing but are compensated for by the normal homeostatic mechanisms of the human body. An injury occurs when a net force (which may be small) exceeds the human body's capacity to compensate. Factors which play a role in reducing the amount of force required to produce injury include, degenerative changes which occur over time, surgery which is an attempt to correct alterations which have occurred and are causing pain and deconditioning of the spinal musculature and indeed the whole body.

"In addition to the injury itself, deconditioning can accelerate in the face of a new injury. A feedback process may result that leads to increased pain from the injury with increased debilitation, which in turn leads to increased pain from the injury with increased debilitation, which in turn leads to more pain and debilitation. This process has been termed the structural degenerative cascade of spinal pain. Deconditioning plays a central role in the development of this cascade.

"The deconditioning syndrome is initially produced by the immobilization and inactivity associated with an injury, supplemented by disruption of spinal soft tissues, scarring resulting from degenerative change, surgical approaches or repetitive micro trauma. As pain perception is enhanced, learned protective mechanisms lead to a vicious cycle of inactivity and disuse. As physical capacity decreases, the likelihood of fresh sprains/strains to unprotected joints, muscles, ligaments and discs increases.

"Drs. Arthur White and Jerome Schofferman describe the structural degenerative cascade of spinal pain. A subcategory of the degenerative cascade is the deconditioning spiral. Many patients with pain become progressively less active. Their musculature becomes weaker through disuse and they become progressively less fit aerobically. The deconditioning may be exacerbated by a clinician who

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<sup>2</sup> See *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

prescribes bed rest. As the patient becomes weaker it becomes more painful to do even ordinary activities and the patient does even less. The amount of disability becomes greater than expected based on the structural pathology. Eventually this severe deconditioning becomes a major obstacle to rehabilitation and recovery.

“This is the condition that [appellant] was in when she attempted to return to work on July 17, 1997. She had already had two injuries to her low back on August 1, 1994 and on August 7, 1995 which led her to have surgery to repair a damaged motion segment at L4-5. The surgery resulted in further disruption to her spinal musculature resulting in even greater weakness making her susceptible to further injury. As stated previously, in this physical state even trivial forces result in further injury to the muscles and spine.”

Dr. Pepler concluded:

“It is my medical opinion that due to these circumstances, [appellant] was in such poor physical condition that she was totally disabled. This disability would remain in effect until she completed an intensive spinal and general aerobic conditioning program of six to eight weeks in duration. Even then she would only have been capable of severely restricted work. [Appellant] should not have returned to work July 17, 1997, because she did attempt the return to restricted work she experienced a recurrence of her back injury on July 21, 1997.”

The Board finds that Dr. Pepler’s report is sufficiently well rationalized to create a new conflict in the medical opinion evidence with Dr. Kreig as to whether appellant sustained a recurrence of disability on or after July 21, 1997 causally related to her August 1, 1994 employment injury.

As there remains an unresolved conflict in the medical evidence, and both the independent medical examiner and appellant’s treating physician have issued well-rationalized opinions concerning whether appellant sustained a recurrence of disability on or after July 21, 1997 causally related to her August 1, 1994 employment injury, the Board finds that this case should be referred to a new impartial medical examiner to resolve the conflict between Drs. Kreig and Pepler.

The decision of the Office of Workers' Compensation Programs dated October 20, 2000 is hereby set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, DC  
April 4, 2002

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member