

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KAY L. TOBEY and U.S. POSTAL SERVICE,  
POST OFFICE, Sandusky, OH

*Docket No. 01-1398; Submitted on the Record;  
Issued April 18, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,  
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof in establishing that her recurrence of disability beginning August 31, 2000 was causally related to her January 22, 1991 employment injury.

On January 22, 1991 appellant, then a 28-year-old letter carrier, was working in the back of her postal vehicle when the strut supporting the hatchback door broke, causing the hatchback door to fall and strike appellant in the head. Appellant complained of constant cervical pain after the employment injury. Appellant stopped working on February 5, 1991 and returned to light-duty work on February 19, 1991. In a July 12, 1991 report, Dr. R.G. Wilber noted that x-rays showed a decrease in height of the C3-4 disc with no motor deficit, no atrophy and an intact sensory examination. In an October 10, 1991 report, Dr. E.P. Martinez, a Board-certified radiologist, stated that a cervical magnetic resonance imaging (MRI) scan showed some loss of cervical lordosis which he indicated might be secondary to muscle spasms in the neck. He found no evidence of a herniated cervical disc, spinal canal stenosis or intraspinal lesion. The Office of Workers' Compensation Programs accepted appellant's claim for scalp contusion and temporary aggravation of intervertebral disc disease in the cervical spine.

On September 7, 2000 appellant filed a claim for recurrence of disability, effective August 31, 2000. Appellant indicated that the pain had never stopped since the employment injury. She stated that physicians had told her that the ligaments and tendons were torn in front and in back of the neck and that two discs were blown, one between the shoulder blades and one underneath the skull.

In a November 16, 2000 decision, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that appellant's recurrence of disability was causally related to the January 22, 1991 employment injury. In a November 30, 2000 letter, appellant requested reconsideration. In a February 1, 2001 merit decision, the Office denied appellant's request for modification.

The Board finds that appellant has not met her burden of proof in establishing that she had a recurrence of disability causally related to her January 22, 1991 employment injury.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which she seeks compensation was causally related to her employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.<sup>1</sup>

Appellant claimed that she had been informed that she had torn tendons and ligaments in her neck and “blown,” presumably herniated, cervical discs. In a December 28, 2000 report, Dr. Susan A. Gallagher, a Board-certified internist, stated that appellant continued to have cervical neck pain with headaches since her 1991 employment injury. Dr. Gallagher stated that appellant had “lived” with the pain over the years. She therefore concluded that appellant’s current symptoms were a result of the employment injury. In a September 11, 2000 note, Dr. Gallagher stated that appellant had a limited range of motion of the neck, numbness and weakness in the arms, and tenderness in the neck and between the scapula. Dr. Gallagher did not give a diagnosis of appellant’s condition other than mentioning cervical pain. She did not provide any findings on examination to substantiate her statement that appellant had weakness and numbness in the arms. In the most essential omission, Dr. Gallagher did not give a physiological explanation on how appellant’s January 22, 1991 employment injury would have caused her continued neck pain and disability nine years later, particularly as an MRI scan showed no herniated disc or spinal stenosis in the cervical spine. Dr. Gallagher’s report, therefore, has limited probative value as it does not have a diagnosis of appellant’s condition or any reasoned opinion relating appellant’s disability after August 31, 2000 to the employment injury. Appellant has not met her burden of proof in establishing that she had an employment-related recurrence of disability.

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<sup>1</sup> *Dominic M. DeScala*, 37 ECAB 369 (1986).

The decisions of the Office of Workers' Compensation Programs, dated February 1, 2001 and November 16, 2000 are hereby affirmed.

Dated, Washington, DC  
April 18, 2002

Michael J. Walsh  
Chairman

Alec J. Koromilas  
Member

Willie T.C. Thomas  
Alternate Member