

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PENNY E. CONNOR and U.S. POSTAL SERVICE,  
POST OFFICE, St. Louis, MO

*Docket No. 01-1329; Submitted on the Record;  
Issued August 8, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a recurrence of disability beginning September 7, 2000 due to her March 16, 1999 employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's reconsideration request without conducting a merit review.

On March 19, 1999 appellant, then a 41-year-old letter carrier filed a claim alleging that she sustained a neck and back injury when involved in an automobile accident on the way to work on March 16, 1999. The Office accepted that she sustained employment-related cervical radiculopathy and authorized an anterior cervical discectomy on August 23, 1999. Appellant stopped work on March 16, 1999 and returned to a limited-duty position on December 6, 1999 and resumed regular duty on March 6, 2000. On March 16, 2000 she again stopped work and returned to full-time limited duty on May 16, 2000 and worked intermittently until September 7, 2000.

Appellant submitted various medical records from Dr. Zaki Ibrahim, a Board-certified orthopedist, from March 22 to December 1999; a magnetic resonance imaging (MRI) scan dated May 18, 1999; a computerized tomography myelogram dated June 29, 1999; and an operative note dated August 23, 1999. Dr. Ibrahim noted a history of appellant's injury indicating that she sustained a discoligamentous cervical injury while a passenger in an automobile. He noted that appellant did not respond to conservative treatment and he recommended an anterior cervical discectomy which was performed on August 23, 1999. Dr. Ibrahim indicated that appellant progressed well after the surgery and he approved her return to work limited duty with restrictions on December 1, 1999. The MRI scan revealed a small central disc protrusion at C4-5 without significant cord or nerve root impingement; and a small left-sided disc protrusion at C5-6 causing minimal impingement. The myelogram revealed a medium sized disc protrusion at C4-5 on the right; and a small disc protrusion at C5-6 on the left. The operative note dated August 23, 1999 indicated that appellant underwent an anterior cervical discectomy and fusion with right iliac crest bone graft and anterior cervical plating and diagnosed appellant with a herniated disc at C5-6.

Thereafter, appellant was offered two positions with the employing establishment on November 19 and December 7, 1999. She accepted the offer of December 7, 1999 and began working limited duty at that time.

On March 14, 2000 appellant filed a CA-2a form, notice of recurrence of disability. She indicated a recurrence on March 14, 2000, noting that her route was changed requiring her to deliver more mail, which placed a strain on her arm. The Office accepted appellant's recurrence and paid appropriate compensation. She stopped work on March 16, 2000.

The employing establishment offered appellant a position starting May 15, 2000 with a restriction on lifting and carrying of no greater than 10 pounds with the left arm. She accepted this position and began working on May 16, 2000.

Thereafter, appellant submitted a functional capacity evaluation (FCE) dated May 22, 2000, several reports from Dr. Ibrahim dated May 27 to July 18, 2000; and work restrictions from Dr. Ibrahim dated July 18, 2000. The FCE dated May 22, 2000 noted that appellant was able to function in the medium demand level and indicated that appellant would be able to work in a position with restrictions on occasional lifting of 30 pounds; frequently lifting of 15 pounds; and constantly lifting of 6 pounds. Dr. Ibrahim's report dated May 27, 2000, noted appellant's complaints of headaches and throat pain. He noted upon examination that appellant exhibited a full range of motion of her neck and 5/5 motor strength of the upper extremity. Dr. Ibrahim diagnosed appellant with no acute injury to the cervical spine. His June 14, 2000 report indicated that he was in agreement with the FCE and believed appellant could return to work with restrictions on occasionally lifting of 30 pounds; frequently lifting of 15 pounds and constantly lifting of 6 pounds. Dr. Ibrahim released appellant from his care at this time. His July 18, 2000 work restrictions referred to the FCE and noted a lifting restriction of 10 pounds.

In a letter dated September 20, 2000, the Office indicated that appellant stopped work on September 7, 2000 and inquired as to whether she had sustained a recurrence of her employment-related injury. The Office advised appellant that she must submit additional medical evidence to support a claim for recurrence and advised appellant of the type of evidence required.

Appellant submitted a report from Dr. Ibrahim dated August 3, 2000 and a letter from Dr. T.Z. Chen, a Board-certified anesthesiologist, dated September 7, 2000. The report from Dr. Ibrahim dated August 3, 2000 noted appellant's continued complaints of pain in her left shoulder and arm. He diagnosed appellant with persistent pain despite a solid C5-6 fusion. Dr. Ibrahim further indicated that he found this interesting because appellant had complete resolution of symptoms before going back to work after which she complained of recurrent pain in her left shoulder and arm. He noted that there was no further need for surgery and indicated that appellant could continue with her present occupation. The treatment note from Dr. Chen indicated a history of appellant's injury in March 1999 and her subsequent surgery. He noted that appellant sustained a reinjury at work on March 14, 2000. Dr. Chen noted an essentially normal physical examination and diagnosed appellant with cervical radiculopathy. He recommended cervical epidural nerve blocks.

On November 14, 2000 the employing establishment offered appellant a limited-duty job in compliance with her treating physicians recommended restrictions. She declined the job offer noting that the job did not provide all the limitations and restrictions as set-forth by Dr. Ibrahim.

In a decision dated November 15, 2000, the Office denied appellant's claim for recurrence of disability on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or about September 7, 2000 which was causally related to the accepted employment injury sustained March 16, 1999.

Subsequent to the November 15, 2000 decision, appellant submitted an MRI scan dated October 30, 2000; a report from Dr. Chen dated November 3, 2000; several reports from Dr. Ibrahim dated November 9, 2000 to March 2, 2001; and a narrative statement.

On June 8 and March 13, 2001 appellant requested reconsideration of the Office decision dated November 15, 2000 and submitted additional medical evidence, a new Form WH380 and a medical excuse note from Dr. Ibrahim.

By decision dated March 26, 2001, the Office denied modification of its November 15, 2000 decision on the grounds that appellant did not submit any additional evidence or argument in support of her claim for total disability from limited-duty work.

By decision dated April 18, 2001, the Office denied modification of its prior decision on the grounds that there was no evidence to support total disability from limited-duty work.<sup>1</sup>

The Board finds that the evidence fails to establish that appellant sustained a recurrence of disability beginning on September 7, 2000 as a result of her March 16, 1999 employment injury.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 show that he 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 requirements.<sup>2</sup>

Appellant has not submitted sufficient evidence to support a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty

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<sup>1</sup> Appellant filed an appeal of this case to the Board on April 2, 2001. This decision, dated April 18, 2001, therefore is null and void as the Board and the Office may not simultaneously have jurisdiction over the same case. The Office may not issue a decision regarding the same issue on appeal before the Board; see *Arlonia B. Taylor*, 44 ECAB 591 (1993); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

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

requirements.<sup>3</sup> On September 20, 2000 the Office advised appellant of the type of evidence needed to establish her claim.

Appellant submitted several reports from Dr. Ibrahim dated May 27 to August 3, 2000; indicating that he was in agreement with the FCE and believed appellant could return to work with restrictions on occasionally lifting 30 pounds; frequently lifting 15 pounds and constantly lifting 6 pounds. He released appellant from his care at this time. Dr. Ibrahim's August 3, 2000 report diagnosed appellant with persistent pain despite a solid C5-6 fusion. He noted that there was no further need for surgery and indicated that appellant could continue with her present occupation. However, none of Dr. Ibrahim's reports, most contemporaneous with the recurrence of injury noted a specific date of a recurrence of disability nor did he note a particular change in the nature of appellant's physical condition, arising from the employment injury, which prevented appellant from performing his light-duty position. Rather, Dr. Ibrahim in his August 3, 2000 note, indicated that appellant's recurrent symptoms were "interesting because she had complete resolution of symptoms before going back to work after which she complained of recurrent pain in her left shoulder and arm." These notes do not support appellant's contention that she sustained a recurrence of disability on September 7, 2000, nor do they show a change in the nature and extent of the injury-related condition or a change in the nature or extent of the light-duty requirement.

Appellant also submitted a report from Dr. Chen dated September 7, 2000. He diagnosed appellant with cervical radiculopathy and recommended cervical epidural nerve blocks. Dr. Chen's report provided no specific opinion on causal relationship between conditions diagnosed and appellant's claimed recurrence of total disability. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.<sup>4</sup>

Appellant has not met her burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements which would prohibit her from performing the light-duty position she assumed after her returned to work.

The Board further finds that the case is not in posture for decision on whether the Office properly denied appellant's request for reconsideration.

On June 8 and March 13, 2001 appellant filed reconsideration requests of the Office decision dated November 15, 2000. By its March 26, 2001 decision, the Office denied appellant's claim for compensation on the grounds that she did not submit any additional evidence or argument in support of her claim for total disability from limited-duty work.

The Board has duly considered the matter and notes that in the case of *William A. Couch*,<sup>5</sup> the Board held that when adjudicating a claim, the Office is obligated to consider all

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<sup>3</sup> Appellant testified at the October 26, 1999 hearing that he had not experienced a change in the nature and extent of his limited duties.

<sup>4</sup> See *Theron J. Barham*, 34 ECAB 1070 (1983).

<sup>5</sup> 41 ECAB 548 (1990).

evidence properly submitted by a claimant and received by the Office before the final decision is issued. In the present case, the Office received various responsive medical information from appellant following the Office's November 15, 2000 merit decision and prior to its March 26, 2001 decision. By decision dated March 26, 2001, the Office denied modification of its November 15, 2000 decision denying appellant's claim for recurrence of disability on the grounds that appellant did not submit any additional evidence or argument in support of her claim for total disability from limited-duty work.

It appears the Office in its March 26, 2001 reconsideration decision, did not review the additional factual and medical evidence properly submitted by appellant and received by the Office following the Office's November 15, 2000 decision.<sup>6</sup> For this reason, the case will be remanded to the Office to enable it to properly consider all the evidence submitted prior to the issuance of its March 26, 2001 decision. Following such further development as the Office deems necessary, it shall issue an appropriate decision on the merits.

The decision of the Office of Workers' Compensation Programs dated March 30, 2001 is set aside and remanded for further proceedings consistent with this opinion and the Office decision of November 15, 2000 is hereby affirmed.

Dated, Washington, DC  
August 8, 2002

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>6</sup> See *Linda Johnson*, 45 ECAB 439, 440 (1994).