

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLORIA LITMAN-ODUM PASCALE and U.S. POSTAL SERVICE,
SOUTH FLORIDA PARCEL DISTRIBUTION CENTER, South Florida, FL

*Docket No. 02-747; Submitted on the Record;
Issued August 22, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that she sustained a recurrence of disability from June 18 to August 20, 2001 causally related to an accepted lumbar strain.

The Office of Workers' Compensation Programs accepted that on October 4, 1996, appellant, then a 43-year-old distribution clerk, sustained a lumbar strain when she lifted heavy flats of mail and twisted her back. The Office authorized epidural injections and a psychological evaluation.¹

Appellant had intermittent absences from work due to lumbar symptoms from late 1996 through 2001. Due to the accepted lumbar strain, appellant was assigned to light-duty work beginning in 1997, with a permanent assignment to modified machine distribution clerk on March 20, 1998. She received appropriate wage-loss compensation.

Appellant submitted periodic treatment reports from Dr. Michael Weiss, an attending osteopath and orthopedic surgeon, noting intermittent exacerbations of lumbar pain, requiring prescription medications, epidural injections and a TENS (transcutaneous electrical stimulation) unit.

In a January 13, 1998 report, Dr. Weiss noted that appellant experienced an “[a]cute exacerbation of chronic low back strain” after military reserve activities involving sleeping on a cot and riding in military vehicles.

In an October 31, 2000 report, Dr. Weiss opined that appellant had reached maximum medical improvement. He provided permanent restrictions against lifting more than 30 pounds, walking and sitting limited to 6 hours per day, standing to 2 hours per day, climbing, kneeling,

¹ There is no claim of record for an emotional condition.

twisting, pulling, pushing, bending and stooping for up to 4 hours per day. Dr. Weiss recommended that appellant work the day shift due to her medications.²

In a January 12, 2001 report, Dr. Weiss noted that appellant sustained “an acute exacerbation of her chronic low back condition” while riding in a truck during military reserve training.

In a February 15, 2001 report, Dr. Weiss noted palpable lumbar spasm with limited range of motion, and that perimenopausal symptoms aggravated appellant’s back pain over the last several months.

In a June 1, 2001 report, Dr. Weiss stated that appellant was unable to perform her military reserve duty requirements due to “ongoing severe low back pain,” and was on permanent “sedentary to light-duty status at work.”

On August 17, 2001 appellant filed a claim for compensation (Form CA-7) alleging a recurrence of total disability from June 18 to August 20, 2001 due to lumbar pain and depression. She was on modified duty at the time of the alleged recurrence of disability. Appellant was off work from June 18 to August 20, 2001 “for lower back therapy and treatment for pain.” She submitted medical evidence in support of her claim.

In an August 25, 2001 form report, Dr. Weiss diagnosed a bulging intervertebral disc, with a date of injury noted as October 4, 1996. He checked a box “yes” indicating his support for causal relationship, noting that appellant “needed time to rest and relax/warm bath, no work.” Dr. Weiss indicated that appellant was totally disabled for work from June 18 to August 18, 2001, noting examinations on June 1, July 27 and August 14, 2001. He noted that appellant “should have the ability to change positions as needed.”

In an August 2001 report, Dr. Ronald Goldin, an attending psychiatrist, diagnosed depression, with an onset of symptoms on April 21, 2001 and first treatment on July 2, 2001. Dr. Goldin opined that appellant was partially disabled due to depression from May 25 to June 7, 2001 and totally disabled from June 18 to August 20, 2001. He attributed appellant’s depression to unspecified “personal and work” factors.

By decision dated September 18, 2001, the Office denied appellant’ claim for recurrence of disability on the grounds that causal relationship was not established. The Office noted that the August 25, 2001 report was dated after the claimed period of disability and did not provide “medical rationale explaining why a [prior] period was used.” The Office also found that Dr. Weiss attributed the period of disability to an L4-5 disc bulge, which had not been accepted as occupationally related.

Appellant filed her appeal with the Board on October 9, 2001. Afterward, in a December 5, 2001 letter, she requested reconsideration of the September 18, 2001 decision by

² In a November 22, 2000 slip report, Dr. Sylvan Goldin, an attending osteopath, diagnosed a lumbar strain and diabetes. He released appellant to return to work on November 25, 2000 after an absence beginning October 15, 2000.

the Office. Appellant submitted new, additional medical and factual evidence to the Office pursuant to her request for reconsideration.³

By decision dated January 17, 2002, the Office denied modification of the September 18, 2001 decision on the grounds that the evidence submitted in support of the request was insufficient to warrant modification.

The Board finds that appellant has not established that she sustained a recurrence of disability from June 18 to August 20, 2001 causally related to an accepted October 4, 1996 lumbar strain.

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, the employee can establish a claimed recurrence of total disability only through submitting sufficient evidence showing a change in the accepted condition or in the light-duty job requirements such that he or she can no longer perform the light-duty job.⁴ If the claim for recurrence of disability is based on a worsening of the accepted condition, the claimant must submit rationalized medical evidence substantiating this deterioration and explaining how and why the condition continues to be related to the accepted injuries or other factors of federal employment.⁵

In this case, the Office accepted that appellant sustained a lumbar sprain on October 4, 1996 when she lifted heavy flats of mail and twisted her back. Following this injury, appellant was placed in a modified duty machine clerk position with prescribed work restrictions. She was still working the modified position at the time of the alleged recurrence of total disability on June 18, 2001.

Appellant has not asserted a change in the nature and extent of her light-duty job requirements. Instead, she alleges a change in her accepted lumbar condition, which totally disabled her for work from June 18 to August 20, 2001. The Board finds, however, that appellant submitted insufficient medical evidence to establish such a change.

In support of her claim for a recurrence of total disability, appellant submitted an August 25, 2001 report from Dr. Weiss, an attending osteopath and orthopedic surgeon, and an August 2001 report from Dr. Ronald Goldin, an attending psychiatrist.

In his report, Dr. Weiss diagnosed a bulging intervertebral disc at an unspecified level. Although Dr. Weiss provided a date of injury as October 4, 1996, he did not provide medical rationale explaining how or why the diagnosed herniated lumbar disc was related to the accepted October 4, 1996 lumbar strain. This is significant as Dr. Weiss had treated appellant since 1997, but did not diagnose a bulging intervertebral disc prior to August 17, 2001. Without such

³ Appellant also filed claims for wage-loss compensation for the periods October 6 to 19 and December 2 to 11, 2001. These claims are not before the Board on the present appeal.

⁴ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁵ *Carl C. Graci*, 50 ECAB 557 (1999).

rationale, Dr. Weiss' report is of little probative value in establishing causal relationship in this case.⁶

Regarding Dr. Goldin's report, the Office has not accepted depression or any other emotional condition as related to work factors. The Board notes that there is no claim of record for an emotional condition. Thus, Dr. Goldin's report is irrelevant to the issue of causal relationship in this case as it pertains to the accepted lumbar injury and claimed recurrence of disability.

As appellant submitted insufficient evidence substantiating a change in her light-duty position or an objective worsening of the accepted lumbar condition from June 18 to August 20, 2001, she has not met her burden of proof in establishing the claimed recurrence of disability.⁷

The Board and the Office may not simultaneously have jurisdiction over the same issue in the same case.⁸ As the Office issued its January 17, 2002 decision regarding causal relationship at a time that the Board also had jurisdiction over this issue, that decision is void and is hereby vacated.

The decision of the Office of Workers' Compensation Programs dated September 18, 2001 is hereby affirmed.⁹ The decision dated January 17, 2002 is hereby vacated.

Dated, Washington, DC
August 22, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁶ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

⁷ Regarding the second issue, the Board finds that the Office improperly issued a January 17, 2002 decision after appellant had filed her appeal with the Board.

⁸ *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

⁹ Following issuance of the September 18, 2001 decision, appellant submitted new, additional medical and factual evidence through March 2002. The Board may not consider this evidence for the first time on appeal as it was not before the Office as of September 18, 2001, the time it issued the final binding decision in the case. 20 C.F.R. § 501.2(c)