

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GLORIA TUCKER and U.S. POSTAL SERVICE,  
POST OFFICE, New York, NY

*Docket No. 02-1792; Submitted on the Record;  
Issued December 11, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant sustained a recurrence of disability on or after April 4, 2001 causally related to an accepted right knee contusion and a low back sprain that occurred on December 7, 2000.

On January 16, 2001 appellant, then a 40-year-old carrier, alleged that on December 7, 2000, she tripped and fell while on duty, injuring her right knee and upper and lower back.

On January 27, 2001 the Office of Workers' Compensation Programs accepted appellant's December 7, 2000 injuries for a right knee contusion and back sprain.<sup>1</sup>

On March 13, 2001 appellant accepted a limited-duty job offer which restricted her lifting, pulling and pushing over 10 pounds, restricted her standing and walking to no more than one hour a day and no over-the-shoulder reaching. Her specific duties included stamping letters to be returned and writing up certified and express mail requirements.

On April 6, 2001 appellant filed a claim for a recurrence of disability alleging continuing pain in back, neck, shoulders and right arm. She alleged her recurrence occurred on April 3, 2001 and she stopped work on April 4, 2001.

In a report dated April 3, 2001 and received by the Office on May 2, 2001, Dr. Alapatt Thomas, appellant's treating physician and an internist, noted that appellant was unable to return to work until April 17, 2001 based on her cervical radiculopathy, ulnar neuropathy and a lumbosacral sprain and strain.

On May 24, 2001 the Office advised appellant what kind of evidence she needed to submit to establish her claim.

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<sup>1</sup> The Office later noted that appellant's accepted injuries were for thoracic and lumbar sprains.

By decision dated July 11, 2001, the Office denied appellant's claim for a recurrence of disability.

In an undated report received by the Office on July 27, 2001, Dr. Nazar H. Haidri, Board-certified in psychiatry and neurology, stated that he had examined appellant on June 4, 2001 and noted that appellant had chronic cervical, dorsal and lumbar sprain, symptoms consistent with right cervical radiculopathy and a right knee injury. He noted that appellant returned to work on March 13, 2001 "but had to stop after two weeks because of increased pain."

In a report dated September 6, 2001, Dr. Arthur J. Greene, Board-certified in radiology, stated that a cervical spine magnetic imaging resonance (MRI) scan taken that day revealed congenital stenosis of the C3-4, C4-5, C5-6 and C6-7 spinal canal, cord compression at the C3-4, C4-5 and C5-6 levels, C4-5 and C5-6 posteriorly herniated disc, loss of normal cervical lordotic curvature.

In a report dated January 19, 2002, Dr. Greene stated that a right knee MRI scan taken that day revealed high grade osteochondritis of the lateral femoral condyle, Grade III and IV patellofemoral chondromalacia, arthritic changes and knee joint effusion.

In a report dated November 9, 2001, Dr. Haidri stated that appellant's neck, mid and low back pain and radiating right arm pain as well as right knee pain were related to her December 7, 2000 work-related injury. He stated that her symptoms were aggravated when she returned to work on March 14, 2001 and that she "had to stop work two weeks later because of pain."

By letter dated March 6, 2002, appellant, through counsel, requested reconsideration.

On April 15, 2001 the Office referred the claim to Dr. Lester Lieberman, a second opinion physician and a Board-certified orthopedic surgeon, to determine what medical conditions afflicted appellant; whether they were caused or aggravated by her December 7, 2000 fall; whether appellant was disabled after April 4, 2001 and, if so, was the disability based on any condition caused or aggravated by her December 7, 2000 injury.

In a report dated April 26, 2002, Dr. Lieberman stated that he had reviewed the statement of accepted facts and diagnostic tests including MRI scans taken on January 19, 2002, September 6 and April 3, 2001. He noted that the findings were range of motion of the cervical spine of 35 degrees, extension 20 degrees, left and right bending 45 degrees, left and right rotation 60 degrees, measurements 3 inches above the mid-elbow was 12 inches and equal bilaterally, 2 inches below the elbow was 11 inches and equal bilaterally. Sensation and pulsation were intact, Dr. Lieberman noted a good grip, her right shoulder abduction was 120 degrees, left shoulder 130 degrees, flexion of the right and left to 120 degrees. He noted that internal and external rotation were intact and equal bilaterally. Range of motion of lower back findings were flexion 90 degrees, extension 30 degrees and left and right bending 45 degrees. Dr. Lieberman noted that appellant's cervical, thoracic and lumbar spines were mid-line, with no undue depression or elevation. He noted no spasm or tenderness. Measurements from the anterior, superior and iliac spine to the medial malleolus were 38 inches and equal bilaterally. Sensation and pulsation of the lower extremities were intact and equal bilaterally. Reflexes were 2 plus and equal bilaterally. Straight leg raising was positive bilaterally 10 degrees while lying

and negative while sitting. Dr. Lieberman stated that appellant had osteoarthritis of the cervical spine and small disc herniations. Regarding the lumbar and thoracic spine, he noted that no problems were seen from the MRI scans that could be related to the accepted injury. Dr. Lieberman noted that appellant could work after April 21, 2001, with restrictions of lifting, pulling and pushing no more than 10 pounds, limited squatting for two hours, kneeling for one hour and climbing for two hours.

By decision dated June 4, 2002, the Office denied appellant's claim for a recurrence of disability. The Office noted that since appellant was working in a light-duty status at the time of her claim for recurrence of disability, she would have been eligible for compensation if Dr. Lieberman determined that she was disabled from her light-duty job. Since Dr. Lieberman did not disable appellant from her light-duty job, her claim for a recurrence of disability was denied.

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 she 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 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 requirements.<sup>2</sup>

In this case, the Office accepted that appellant sustained right knee contusion and back sprain as a result of a fall at work on December 7, 2000. She was placed on light duty after March 13, 2001, has not carried mail since that time and stopped work on April 3, 2001.

The Board finds that appellant did not submit sufficient medical evidence to support her disability from work beginning April 4, 2001 as a result of a recurrence of disability based on her December 7, 2000 work-related injuries. For example, Dr. Haidri noted, in a November 9, 2001 report, that appellant's neck and arm pain were causally related to her December 7, 2000 injury and that they were aggravated by her return to work. However, these conditions were not accepted by the Office. He also noted that appellant's back and knee injuries were reaggavated after she returned to work, but he failed to indicate whether the recurrence restricted her further from the light-duty position that she encumbered at the time of her claim for recurrence. Although Dr. Haidri noted appellant's account of her symptoms, he did not provide medical rationale explaining how or why the accepted December 7, 2000 back sprain or right knee contusion would cause appellant's total disability on April 4, 2001. The Board notes that Dr. Haidri stated that appellant had to leave her light-duty position after two weeks as a result of her increased pain, but he did not support this statement with a rationalized medical opinion based on appellant's work-related injuries and the recurrence of these conditions on or about April 4, 2001. In fact, Dr. Haidri did not indicate whether appellant was unable to perform her light-duty position after April 4, 2001. Dr. Haidri's report has little probative value and is insufficient to support appellant's burden of proof. Further, appellant has not substantiated that she was required to work outside of her medical restrictions against lifting, pulling and pushing

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

over 10 pounds or that she was required to stand or walk more than one hour a day or to engage in any over-the-shoulder reaching. As applied to this case, appellant must submit rationalized medical evidence demonstrating a worsening of the accepted right knee contusion or back sprain from April 4, 2001 or that her sedentary, limited duties had changed. However, her physician, Dr. Haidri, did not establish that appellant was unable to perform her light-duty position as a result of a recurrence of her accepted injuries.<sup>3</sup>

Moreover, Dr. Lieberman, a second opinion and a Board-certified orthopedic surgeon, provided a comprehensive review of appellant's records including a review of her MRI scan, provided range of motion findings for her cervical and lower back, finding that she had normal range of motion of both her cervical and lumbar spines, as well as her lower extremities.

As appellant submitted insufficient evidence substantiating either a change in the nature and extent of her light-duty position on or after April 4, 2001<sup>4</sup> or an objective worsening of the accepted conditions on and after that date, she has not met her burden of proof in establishing the claimed recurrence of disability commencing on that date.

The decisions of the Office of Workers' Compensation Programs dated June 4, 2002 and July 11, 2001 are affirmed.

Dated, Washington, DC  
December 11, 2002

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>3</sup> Appellant's treating physician, Dr. Thomas, noted in an April 3, 2001 report that appellant was unable to work from April 3 to April 17, 2001. However, he merely listed diagnoses and provided no rationalized medical opinion to support her disability.

<sup>4</sup> See *supra* note 2.