

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CORLISIA L. SIMS and U.S. POSTAL SERVICE,  
POST OFFICE, Atlanta, GA

*Docket No. 00-2169; Submitted on the Record;  
Issued January 24, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant established that she sustained a recurrence of disability, commencing May 27, 1999, of the March 18, 1993 employment injury.

This case is on appeal to the Board for the third time.<sup>1</sup> In the first appeal, the Board found that appellant was totally disabled beginning August 27, 1992, due to a February 12, 1992 employment injury. In the second appeal, the Board affirmed the Office of Workers' Compensation Programs' December 20, 1996 decision adjusting appellant's compensation to reflect her wage-earning capacity in the position of a social worker. In a decision dated August 24, 1999, the Board denied appellant's request for reconsideration of the December 23, 1998 decision.

On June 25, 1999 appellant sought compensation for total disability commencing May 27, 1999. Appellant submitted evidence to support her claim. In a report dated May 27, 1999, a referral physician, Dr. Patrick Griffith, a Board-certified psychiatrist and neurologist, considered appellant's history of injury, performed a physical examination and reviewed a magnetic resonance imaging (MRI) scan of the cervical spine and nerve conduction studies. He diagnosed chronic post-traumatic cervical spine and opined that appellant had a three percent permanent disability due to chronic pain. Dr. Griffith recommended a psychological evaluation, suggested job retraining and treatment by a chronic pain clinic. In a work capacity evaluation dated July 13, 1999, he stated that appellant could work four hours a day with limited lifting, reaching and repetitive motion.

Appellant submitted the MRI results dated May 14, 1999 stating that she had no evidence of disc herniation but had slight reversal of the lordosis. She also submitted an electromyogram (EMG) dated May 25, 1999 which was "essentially normal." The EMG report stated that the

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<sup>1</sup> Docket No. 94-565 (issued August 3, 1995). *Corlisia L. Sims*, 50 ECAB 200 (1998). The facts and history surrounding the prior appeals are set forth in the initial two decisions and are hereby incorporated by reference.

dorsal primary rami at C5-6 interface demonstrated some dorsal primary rami axonal loss with an occasional to rare finding, and on three separate occasions, positive waves were noted in the paracervical region of C5-6. The report advised clinical corroboration. The report also stated that there was no evidence of carpal tunnel syndrome, ulnar neuropathy, radial neuropathy, myopathy, brachial plexopathy or myopathic process. In a note dated May 25, 1999, Dr. Ernest L. Howard, a Board-certified physiatrist, stated that the EMG showed no electrophysiologic evidence of cervical radiculopathy but showed occasional denervation in C5-6 paracervicals which might suggest some chronic degenerative disc disease at that level. Appellant submitted some progress notes dated May 4 and 27, 1999.

By letters dated July 16 and 27, 1999, the Office informed appellant that additional evidence was necessary to establish her claim. Appellant submitted a claim for a recurrence of disability, Form CA-2a, dated August 12, 1999 in which she stated that the original injury was on March 18, 1993 and indicated that the recurrence was the “original injury.” Appellant stated that her last physical examination was on May 27, 1999. She stated that she had not returned to work since the March 18, 1993 employment injury. Appellant stated that she had “never healed” and “never” stopped hurting or having problems with her neck, shoulder and shoulder blades.

By decision dated September 1, 1999, the Office denied appellant’s claim, stating that the medical evidence appellant submitted was insufficient to demonstrate total disability due to the accepted conditions.

By letter dated September 20, 1999, appellant requested written review of the record. She resubmitted the results of the May 13, 1999 MRI scan and the May 25, 1999 EMG.

By decision dated February 29, 2000, the Office hearing representative affirmed the Office’s September 1, 1999 decision.

The Board finds that appellant did not establish that she sustained a recurrence of disability, commencing May 27, 1999, of the March 18, 1993 employment injury.

An individual who claims a recurrence of disability, due to an accepted employment-related injury, has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.<sup>2</sup> When an employee, who is disabled from the job she 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 show that she cannot perform such light duty.<sup>3</sup> As part of this burden, the employee must show a change in the nature and extent of the light-duty job requirements or a change in the nature and extent of the injury-related condition.<sup>4</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and

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<sup>2</sup> *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

<sup>3</sup> *George DePasquale*, 39 ECAB 295, 304 (1987); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>4</sup> *Id.*

accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury, and supports that conclusion with sound medical reasoning.<sup>5</sup> An award of compensation may not be made on the basis of surmise, conjecture, or speculation or an appellant's unsupported belief of causal relation.<sup>6</sup>

In this case, appellant claimed she "never" returned to work after her March 18, 1993 employment injury so no change in her job requirements could be shown. Appellant, however, did not show that she had a change in the nature and extent of the injury-related condition. The May 13, 1999 MRI results stated slight reversal of the lordosis and the May 25, 1999 EMG results were "essentially normal." The progress notes appellant submitted dated May 4 and May 25, 1999 document appellant's ongoing treatment. Appellant did not submit a rationalized medical opinion showing that the alleged recurrence of disability as of May 27, 1999 was work related. Dr. Griffith's May 27, 1999 report in which he diagnosed post-traumatic cervical spine and prescribed treatment provides no opinion on causation. Similarly, Dr. Griffith's July 13, 1999 work capacity evaluation in which he placed working restrictions on appellant does not address causation.

The Office's February 29, 2000 and September 1, 1999 decisions are hereby affirmed.

Dated, Washington, DC  
January 24, 2002

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>5</sup> See *Nicolea Bruso*, 33 ECAB 1138 (1982).

<sup>6</sup> See *William S. Wright*, 45 ECAB 498, 503 (1994).