

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARLEIGH M. LEAKE and U.S. POSTAL SERVICE,
POST OFFICE, Shreveport, LA

*Docket No. 02-488; Submitted on the Record;
Issued July 9, 2002*

DECISION and ORDER

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

The issue is whether appellant sustained a recurrence of disability causally related to her April 16, 1996 accepted lumbar strain.

On April 16, 1996 appellant, then a 35-year-old postal inspector, slipped while participating in a fire drill on the firing range. She filed a notice of traumatic injury and claim for compensation (Form CA-1), that was accepted on September 6, 1996 for a lumbar strain. At the time the claim was accepted it was noted that appellant had a history of nonwork-related back injury, dislocation at S-1 and fibromyalgia.

Appellant stopped work due to her accepted condition from July 22, 1996 through August 18, 1997 when she returned to restricted duty as an operations support technician. Results from a December 11, 1996 functional capacity evaluation showed appellant could lift 20 pounds on a frequent basis (3 to 6 hours a day) and 10 pounds on constant basis (6 to 8 hours a day). The job restrictions in her July 3, 1997 job offer included sitting for 30 minutes at a time 8 hours a day, walking up to 45 continuous minutes, lifting no more than 20 pounds and limited kneeling, standing, bending, twisting and reaching.

In an October 20, 1997 decision, the Office of Workers' Compensation Programs found appellant's light-duty job represented her wage-earning capacity

In March 1998, appellant began having stomach problems related to her pain medication. She missed work intermittently due to pain and muscle spasms until July 7, 1998 when she was admitted to an emergency room for chronic back pain. She received a shot of Demerol and was released. Appellant did not return to work and filed a notice of recurrence of total disability (CA-2a).

In support of her recurrence of disability claim appellant submitted a personal statement giving her recent medical history and two medical reports from Dr. Max Stell, a Board-certified family practitioner. In his June 5, 1998 report, he wrote that appellant has had severe back pain

for several days and discussed the various medications he was trying. In his July 24, 1998 report, Dr. Stell reported that appellant had several severe flair ups of her severe back pain ... and that he recommended that she not drive to and from Shreveport (50 miles each way). He stated that if she could not work at home then she will have to cease working at all.

In an October 29, 1998 decision, the Office denied appellant's recurrence of disability claim finding that the medical evidence did not sufficiently establish that her condition worsened so, that she could not perform her limited-job duties.

In a November 5, 1998 letter, appellant requested a written review of the record by the Branch of Hearings and Review.

In a February 19, 1999 letter, the employing establishment wrote that it could not accommodate appellant's request to work at home and noted that she has been a very cooperative and effective worker in her restricted-duty position.

In a November 8, 1998 report, Dr. Stell wrote:

"[Appellant] continues to have tenderness, pain and loss of motion on a daily basis with some acute flair ups. She is unable to drive to and from Shreveport without having extreme pain. [Appellant] is also unable to take most pain medications secondary to side effects. She is unable to sit or stay in one position for a prolonged period of time and has had several prolonged absences from work. MRI [magnetic resonance imaging], CT [computerized tomography scan] and x-rays [are] normal. It is my opinion that [appellant] suffers from chronic musculoligamentous back pain and she will probably never completely recover."

In an April 9, 1999 decision, the hearing representative affirmed the Office's October 29, 1998 denial of recurrence of disability finding the medical evidence did not establish that appellant could not perform her restricted job duties.

In a March 17, 2000 letter, appellant requested reconsideration. In support of her request, she included a personal letter that compared her performance in the December functional capacity evaluation with a June 30, 1999 lifting capacity/comprehensive test administered by the Minden Physical Therapy Department for Dr. Still. In the lifting capacity report, appellant was capable of lifting 15 pounds on an occasional basis (compared to 20 pounds in the December 11, 1996 functional capacity evaluation) on a frequent basis she could lift 8 pounds (20 pounds in the functional capacity evaluation) and 3 pounds on a continual basis (10 pounds in the functional capacity evaluation).

She also submitted an August 26, 1999 report from Dr. Still, who wrote:

"[Appellant] has been under my care since 1997, at which time she suffered a back injury diagnosed as musculo-ligamentous strain of the lumbar spine.... [R]ecently she had a complete examination in regards to the functional capacity by the Physical Therapy Department at Minden and she was determined to have severe back dysfunction compared to the general population. [Appellant] lacked strength in all planes of rotation, moved at very slow speeds. She complained and

appeared to be in pain during the examination. [Appellant] was found to be capable of performing light work.

“There have been several times over the last two to three years when [appellant] has attempted to return to work. Each time she had a flare up of her back pain, [i]t worsened either by prolonged sitting, physical activity or by driving approximately 70 miles a day, which exacerbated her pain significantly....

“She has had x-rays ... that demonstrate normal bony structure as certainly would be expected in musculo-ligamentous strain and chronic back pain.

“She was [un]able to perform her duties because of pain and at this time ... she ... exhausted all therapeutic measures.... I do not expect that she will ever be able to return to work.”

In a June 14, 2000 merit review, the Office affirmed the earlier denials of recurrence of disability finding the medical evidence insufficient. The results of the 1999 lifting test were “questionable, given the fact that objective findings have remained unchanged since 1996 and that there are no objective medical findings that support a change in the nature and extent of her injury-related condition; only subjective complaints of an increase in lumbar pain.”

In a March 20, 2001 letter, appellant requested reconsideration. In support of her request, she submitted new medical reports. In a report August 28, 2000, Dr. John G. Underwood, an internist, wrote that appellant does have significant pain due to her back problems. “She injured her back in 1997.... Appellant tried to go back to work about a year later but found that just sitting caused excruciating pain in her lower back.... If she sits for any time she has severe muscle spasms. It has not improved in the past four years and I expect that she will continue to have significant problems, which will keep her from any type of employment at the present time. Dr. Underwood estimated appellant could occasional lift five pounds and frequently lift less than three pounds. She could stand and/or walk less than two hours a day and sit for less than two hours a day with findings of fibromylagia and low back pain to support these restrictions.

In a January 24, 2001 report, Dr. Clinton McAlister, an orthopedic surgeon wrote that “appellant is still having persistent pain.... I have seen [her] for [two and a half] years and feel her condition is chronic. I feel [appellant] is permanently disabled and will not be able to work.”

Dr. Stell wrote in a May 15, 2001 report, that appellant’s objective findings on examination continue to be loss of motion, multiple tender points in the back. Her situation is complicated by fibromylagia. The effects of appellant’s work-related injury have not changed much over a period of time. Her activities are severely limited, mostly to being house bound and doing only minimal walking. There is essentially no chance of her returning to her work.

Appellant also submitted documentation that she had been approved for social security disability.

In an October 9, 2001 decision, the Office denied modification of its previous decisions finding that appellant provided “no reasoned medical opinion” explaining why she was totally disabled.

The Board finds this case should be remanded to the Office for further medical development.

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. 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 job requirements.¹

Appellant has submitted evidence that her medical condition worsened subsequent to returning to work in her restricted job. In the December 11, 1996 functional capacity evaluation, it was found that appellant could lift 20 pounds on a frequent basis (3 to 6 hours a day) and 10 pounds on constant basis (6 to 8 hours a day). In the 1999 lifting capacity report, that was reviewed by Dr. Still in his August 26, 1999 report, appellant was capable of lifting only 15 pounds on an occasional basis, on a frequent basis she could lift 8 pounds and only 3 pounds on a continual basis. The August 28, 2000 report by Dr. Underwood found that she could occasionally lift five pounds and frequently lift less than three pounds.

Additionally, it is not clear that appellant's restricted job met her new medical restrictions after the 1999 lifting capacity test and Dr. Underwood's test in 2000. The 1996 test was used to set the job restrictions in the employing establishment's July 3, 1997 job offer. The job offer included limits for sitting for 30 minutes at a time 8 hours a day, walking up to 45 continuous minutes, lifting no more than 20 pounds and limited kneeling, standing, bending, twisting and reaching. In Dr. Underwood's August 28, 2000 report he set, sitting, walking and standing limits at less than two hours a day, total.

Appellant's treating physician, Dr. Still, also submitted several reports indicating that subsequent to when appellant began experiencing side effects to her pain medications in 1998 that she could no longer make the 70 mile round trip drive from her home in Minden to her job site in Shreveport. In his July 24, 1998 report, he indicated that if appellant could not work at home then she would have to cease working at all. Since that restriction was not part of her original medical restrictions, this restriction would constitute a change in her medical condition.

However, 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.² This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and

¹ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

² *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

supports that conclusion with sound medical rationale.³ Where no such rationale is present, medical evidence is of diminished probative value.⁴

Finally, the Board notes that while none of the reports of appellant's attending physicians are completely rationalized, they are consistent in indicating that after returning to work she was totally disabled due, at least in part to her accepted employment-related injury on April 16, 1996. These statements are not contradicted by any substantial medical or factual evidence of record. Therefore, while the reports are not sufficient to meet appellant's burden of proof to establish her claim, they raised an uncontested inference between appellant's claimed total disability and the employment incident on April 16, 1996 and are sufficient to require the Office to further develop the medical evidence and the case record.⁵

Accordingly, the case will be remanded to the Office for further evidentiary development regarding the issue of whether appellant sustained a recurrence of total disability related to her employment-related injury on April 16, 1996. The Office should prepare a statement of accepted facts and obtain a medical opinion as to whether appellant sustained a recurrence of disability and if so, when such disability commenced. After such development of the case record as the Office deems necessary an appropriate decision shall be issued.

The October 9, 2001 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further development.

Dated, Washington, DC

July 9, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

³ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁴ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁵ See *Robert A. Redmond*, 40 ECAB 796, 801 (1989).