

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEAN A. GUERIN and U.S. POSTAL SERVICE,
POST OFFICE, Lehigh Valley, PA

*Docket No. 02-502; Submitted on the Record;
Issued July 12, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant established that she sustained a recurrence of disability causally related to her July 6, 1991 employment injury.

On July 17, 1991 appellant, then a 48-year-old letter carrier, filed a notice of occupational disease, alleging that she suffered from a back condition due to factors of her employment. The Office of Workers' Compensation Programs accepted the claim for a low back strain on July 6, 1991, aggravation of lumbar degenerative disc disease and aggravation of her cervical disc disease. Appellant began working limited duty with restrictions on July 8, 1991.

On January 10, 1994 appellant filed a claim for a recurrence of disability. She stopped working on December 22, 1993 and has not returned.

In a decision dated June 9, 1998, the Office denied appellant's claim for compensation based on a recurrence of disability, finding the evidence insufficient to establish any change in the nature or extent of appellant's permanent light-duty position or a change in her injury-related condition such that she was unable to continue in the light-duty position. Appellant remained entitled to medical benefits since she had residuals of the accepted work-related back conditions.

On March 15, 2000 the Board affirmed the Office's June 9, 1998 decision.¹ The Board's March 15, 2000 decision, which thoroughly outlines the medical evidence of record, is incorporated by reference herein. The Board found that the weight of the medical evidence resided with the Office referral physician, Dr. James J. Heintz, a Board-certified orthopedic surgeon, who opined that appellant was capable of performing the duties of her light-duty position.

¹ *Jean A. Guerin*, Docket No. 98-2069 (issued March 15, 2000).

Appellant filed a request for reconsideration with the Office. She submitted copies of physical therapy notes, the results of an electromyographic study and a magnetic resonance imaging (MRI) scan of both the cervical and lumbar spine dated October 4, 2000.

In conjunction with her reconsideration requested, she also submitted reports by Dr. Leroy J. Pelicci, a Board-certified pain management specialist and neurologist, dated June 26 and July 10, 2000. He discussed appellant's history of injury and noted physical findings. Dr. Pelicci opined that appellant continued to have active symptoms related to her disc herniations. In neither report did the physician address appellant's ability to perform her light-duty position.

In a decision dated May 14, 2001, the Office denied modification following a merit review.

Appellant filed additional evidence with a reconsideration request on July 31, 2001.

In a report dated August 21, 2001, Dr. Pelicci indicated that he began treating appellant in November 1991 and has watched her condition deteriorate over time as demonstrated by the most recent MRI findings of a bulging discs at C3-4 and L3-4 and disc herniations at C6-7 and L3-4. He stated:

"The constellation of pathology noted on the MRI scans in concert with my knowledge of [appellant's] overall medical complaints lead me to the conclusion that she is totally disabled as a result of the work-related injury. I do not see how she could function in any job on a consistent basis. Furthermore, disc protrusions and herniations of this nature in my experience are traumatic in nature and just do not develop spontaneously.

"I think that her activities in the past at work which included needing to maintain positions for prolonged periods of time even though it may have been in a sitting position actually caused further pressure on her vertebral column resulting in further protrusions and herniations in the areas which were initially injured in 1991. I believe that this, therefore, led to the reoccurrence in 1993."

The record contains copies of an electromyographic study dated June 26, 2000 and a series of treatment notes by Dr. Pelicci indicating that appellant complained of radiculopathy in the cervical and lumbar spine. Another copy of the MRI of the cervical spine dated October 4, 2000 was provided by appellant on reconsideration.

In a decision dated October 26, 2001, the Office denied modification of its prior decision.

The Board finds that appellant has failed to establish that she sustained a recurrence of disability causally related to her July 6, 1991 employment injury.

As used in the Federal Employees' Compensation Act,² the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.³ 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.⁴ 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 supports that conclusion with sound medical reasoning.⁵ An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on appellant's unsupported belief of causal relationship.⁶

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 of establishing 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.⁷

In this case, appellant has submitted numerous treatment notes from Dr. Pelicci indicating that she is still suffering from cervical and lumbar pain. The MRI findings in 2001 show an increase in appellant's degenerative disc condition and further disc herniations. Although Dr. Pelicci attributes the disc herniations to appellant's work duties, he also stated that they were caused by a traumatic event and did not just develop over time. Dr. Pelicci's opinion does not address the causal relationship between appellant's claimed disability and her work-related back condition as caused by employment factors. If appellant's disc herniations are the result of a traumatic injury then the physician's opinion would not corroborate appellant's contention that she sustained a recurrence of disability due to her work injury. Because Dr. Pelicci's opinion is not sufficiently reasoned on the nature of appellant's diagnosed condition, her degree of disability and its relation to her work injury, the Board concludes that appellant has failed to carry her burden of proof in establishing a recurrence of disability. More importantly, there is no

² 5 U.S.C. §§ 8101-8193.

³ *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.57(17). Disability is not synonymous with physical impairment. An employee who has a physical impairment, even a severe one, but who has the capacity to earn the wages he was receiving at the time of the injury, has no disability as that term is used in the Act and is not entitled to disability compensation; see *Gary L. Loser*, 38 ECAB 673 (1987); *Cf.* 5 U.S.C. § 8107 (entitlement to schedule compensation for loss or permanent impairment of specified members of the body).

⁴ *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

⁵ *Jose Hernandez*, 47 ECAB 288 (1996).

⁶ *Ausberto Guzman*, 25 ECAB 362 (1974).

⁷ *Mary A. Howard*, 45 ECAB 646 (1994).

medical evidence of record to establish that appellant was unable to work light duty when she quit working in 1993. The evidence submitted on reconsideration is insufficient to overcome the reasoned opinion of Dr. Heintz as discussed in the Board's prior decision.

The decision of the Office of Workers' Compensation Programs dated October 26, 2001 is hereby affirmed.

Dated, Washington, DC
July 12, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member