

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EILEEN M. WITHROW and U.S. POSTAL SERVICE,
POST OFFICE, Stow, OH

*Docket No. 02-77; Submitted on the Record;
Issued June 3, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on or about November 16, 1998 as a result of her July 3, 1997 employment injury.

In the prior appeal of this case,¹ the Board found that appellant failed to meet her burden of proof to establish that she sustained a recurrence of disability on or after November 16, 1997. The factual evidence failed to support any change in the nature and extent of her limited-duty job requirements. Appellant submitted medical reports from her attending physiatrist, Dr. James P. Klejka, who opined that appellant returned to limited duty with ongoing pain and suffered an exacerbation of her symptoms while working. The Board found that Dr. Klejka failed to provide the necessary medical rationale explaining how appellant's additional disc herniation at L3-4 resulted from her accepted employment injury. This medical rationale was essential, the Board held, because a magnetic resonance imaging report indicated that appellant's disc herniations were due to degenerative changes in her spine rather than to some traumatic occurrence.²

On June 27, 2001 appellant requested reconsideration. In support thereof, she submitted an April 23, 1999 report from Dr. Klejka, who reported that appellant was able to go back to work and did fairly well "until earlier this year in January when she began experiencing severely increased pain in her back due to exacerbation at work." He opined that appellant's disc herniation initially at L4-5 was a direct result of her work injury on July 3, 1997 and that her current disabling symptoms of excruciating pain and radiculopathy were an exacerbation of that injury due to her continued working.

¹ Docket No. 99-2041 (issued January 26, 2001).

² The Board also found that the Office of Workers' Compensation Programs properly reduced appellant's compensation benefits based on her capacity to earn wages in a part-time position. The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

Appellant submitted a May 15, 2000 medical report diagnosing degenerative disc disease of the lumbar spine. She also submitted various progress notes.

In a decision dated August 21, 2001, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. The Office noted that it had accepted appellant's claim for lumbar strain with disc herniation at L4-5. The Office also noted that appellant had worked with these conditions in a part-time restricted basis from March 1 through November 16, 1998. Appellant made no contention and presented no evidence that the nature of her duties had changed. Her contention was that her medical condition had worsened and caused a work stoppage. The Office found, however that Dr. Klejka's report was basically repetitious and offered no discussion of the duties that appellant performed from March 1 through November 16, 1998 or what had changed in the accepted conditions to prevent a continuation of those duties.

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability on or about November 16, 1998 as a result of her July 3, 1997 employment injury.

When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a limited-duty position, or the medical evidence of record establishes that she can perform the limited-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 limited-duty work. 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 limited-duty job requirements.³

In her June 27, 2001 request for reconsideration, appellant made no attempt to establish a change in the nature and extent of her limited-duty job requirements. Instead, she submitted an April 23, 1999 report from Dr. Klejka, her attending physiatrist. This report is repetitious and, like his earlier reports, lacks sufficient medical rationale. Dr. Klejka reported that appellant suffered an exacerbation of her accepted L4-5 disc herniation while working, but he documented no actual change in the nature and extent of this condition. Further, he made no distinction between the disc herniation at L4-5, which is accepted to be related to appellant's employment, and the additional disc herniation found at L3-4, which is not accepted. Dr. Klejka failed to discuss whether appellant's disability on or about November 16, 1998 was a result of the disc herniation at the L3-4 level or how this herniation was related to her employment. He also failed to discuss the role of appellant's lumbar degenerative disc disease.

Medical conclusions unsupported by rationale are of little probative value.⁴ Because the record fails to establish either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements, appellant has not met her burden of proof to establish that she sustained a recurrence of disability on or about November 16, 1998 as a result of her July 3, 1997 employment injury.

³ *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁴ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

The August 21, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
June 3, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member