

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of YOLANDA MONTALVO and U.S. POSTAL SERVICE,  
POST OFFICE, Newburgh, NY

*Docket No. 02-1262; Submitted on the Record;  
Issued November 7, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,  
MICHAEL E. GROOM

The issue is whether appellant has established a recurrence of disability commencing October 24, 1999.

On November 21, 1997 appellant, then a 36-year-old clerk, filed a claim alleging that she injured her lower back on that date while pulling buckets. The Office of Workers' Compensation Programs accepted that she sustained a lumbosacral strain. Appellant remained off work and received compensation for temporary total disability. The Office developed the medical evidence and referred appellant to Dr. Gerald Freifeld, a Board-certified neurosurgeon selected as an impartial medical specialist. In a decision dated August 2, 1999, the Office terminated compensation for wage-loss and medical benefits effective July 30, 1999.<sup>1</sup>

Appellant returned to work on September 13, 1999. On November 1, 1999 she filed a notice of recurrence of disability (Form CA-2a) commencing October 24, 1999.

In a decision dated April 21, 2000, the Office denied the claim for a recurrence of disability. In a decision dated September 12, 2000, the Office again denied the claim for a recurrence of disability, finding that the medical evidence was insufficient to establish causal relationship between the disability, as of October 24, 1999, and the employment injury.<sup>2</sup> By decision dated February 8, 2002, the Office denied modification of its September 12, 2000 decision.<sup>3</sup>

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<sup>1</sup> Since this decision was issued more than one year before appellant filed her appeal on April 5, 2002, the Board lacks jurisdiction over the termination decision. 20 C.F.R. § 501.3(d)(2).

<sup>2</sup> The April 21, 2000 Office decision was vacated; the Office noted that, since compensation had been terminated, appellant's return to work in a limited-duty position was not due to an employment injury. The April 21, 2000 decision had considered appellant's work restrictions as if they were the result of the employment injury.

<sup>3</sup> The Office vacated a December 3, 2001 decision finding that appellant's request for reconsideration was untimely.

The Board finds that appellant did not meet her burden of proof to establish a recurrence of disability commencing October 24, 1999.

A person 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 she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish 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.<sup>4</sup>

In a report dated October 27, 1999, Dr. Paul Burns, an anesthesiologist, indicated that appellant was seen for lumbar epidural injections due to back pain. He diagnosed herniated nucleus pulposus with radiculopathy by history and stated that he strongly believed that appellant's condition was employment related. In a prescription note of the same date, he stated that appellant would be unable to work for three months. The probative value of this evidence, however, is diminished by the lack of a complete history and medical rationale. Dr. Burns reports that appellant had an injury on November 21, 1997 and complained of unchanged pain since that time. He does not discuss or describe the employment incident itself, nor does he demonstrate familiarity with appellant's medical or work history. Dr. Burns does not attempt to provide a reasoned medical opinion that clearly explains why he believed that the disability in October 1999 was causally related to the November 21, 1997 employment injury.

In a report dated December 28, 1999, Dr. Andrew Hirsch, an osteopath, stated that appellant had a "flare[-]up on [October 25, 1999] of low back pain while walking to her bathroom." He reported that appellant had a work injury in November 1997, but he did not provide any explanation regarding the flare-up of pain and its relationship to the employment injury.

In an undated report received by the Office on September 18, 2001, an associate of Dr. Burns, Dr. Dilip Subhedar, stated that he had reviewed appellant's chart and the date of injury noted in their records was November 21, 1997. Dr. Subhedar does not provide any further description of the employment incident. He notes that appellant was first seen on October 27, 1999 with radicular pain that "most likely" represented pain from her date of injury, but he does not provide any additional detail or explanation on causal relationship.

Appellant has also submitted reports from Dr. Marie Cantu, a chiropractor. Section 8101(2) of the Federal Employees' Compensation Act provides that the term "'physician' ... includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist."<sup>5</sup> In a July 5, 2000 report, Dr. Cantu diagnosed subluxations, without discussing x-rays or indicating that the diagnosis was based on review of x-rays. The Board finds that Dr. Cantu is not established as a physician under the Act and her reports are of no probative medical value.

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<sup>4</sup> *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

<sup>5</sup> 5 U.S.C. § 8101(2).

The Board finds that the medical evidence does not contain a reasoned medical opinion, based on a complete and accurate medical and factual background, that established a disabling condition as of October 24, 1999 that is causally related to the employment injury. In the absence of such evidence, the Board finds that appellant did not meet her burden of proof in this case.

The decision of the Office of Workers' Compensation Programs dated February 8, 2002 is affirmed.

Dated, Washington, DC  
November 7, 2002

Michael J. Walsh  
Chairman

Alec J. Koromilas  
Member

Michael E. Groom  
Alternate Member