

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA A. ZEIGLER and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Brooklyn, NY

*Docket No. 02-1292; Submitted on the Record;
Issued October 24, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that she sustained a recurrence of total disability beginning February 11, 1999, due to her April 18, 1998 employment injury.

On April 24, 1998 appellant, then a 34-year-old mailhandler, filed a claim for a traumatic injury to her low back sustained on April 18, 1998 when she lifted a sack of mail and heard a click in her low back. Appellant stopped work on April 21, 1998 and received continuation of pay from that date until June 4, 1998.

On May 5, 1998 appellant underwent a magnetic resonance imaging (MRI) scan, which showed a "large posterolateral herniated disc on the left at L5-S1 with disc fragment herniating down" and a "mild diffuse posterior bulging disc at L4-5."

By letter dated June 9, 1998, the Office of Workers' Compensation Programs advised that it had accepted that she sustained a lumbosacral sprain on April 18, 1998. The Office began payment of compensation for temporary total disability on June 5, 1998. The Office later accepted that appellant also sustained a herniated disc at L5-S1 on April 18, 1998.

In a report dated October 9, 1998, appellant's attending physician, Dr. Paul M. Brisson, a Board-certified orthopedic surgeon, stated that appellant was much better and was "not presenting with the same sciatica," and that she was planning on returning to light duty with a lifting limitation of 10 pounds, working 6 hours a day.

On October 27, 1998 appellant accepted the employing establishment's October 23, 1998 offer of limited duty as a modified mailhandler, with duties of facing up letter size mail, traying mail on a meter belt, hand canceling letters or small parcels and patching letters and flats damaged in the mail. She was restricted from pulling or lifting over 10 pounds.

Pursuant to this offer, appellant returned to work on November 3, 1998 for six hours per day.

On February 9, 1999 appellant filed a claim for a recurrence of disability due to her April 18, 1998 employment injury. Appellant listed the date of the recurrence as February 9, 1999 and the date she stopped work as February 10, 1999. Appellant described the circumstances of the recurrence of disability:

“I have the pain that goes straight down my right leg (upper thigh). My lower back is very very painful. Lift and pulling myself up when I go to rise up I feel a click and pulling. Walking up more than five [to] eight steps causes pain from back to leg.”

In a report dated February 11, 1999, Dr. Steven J. Ravich, a Board-certified orthopedic surgeon, stated:

“The above patient is being seen for a follow-up orthopedic examination for complaints of sciatica and a known herniated disc. The patient complains of more intense pain in the central portion of her back. She has some radiation down the right leg. The patient, otherwise, has no interval changes since her last examination. She has had to stop working because of severe back pain.”

In response to a March 9, 1999, request from the Office for more information on her claim for a recurrence of disability, appellant stated that in a March 19, 1999 letter, that she had been having pain in her back before February 9, 1999, but at the end of appellant workday on February 9, 1999 her low back pain was extreme. Appellant stated that, after she returned to work on November 3, 1998 she did well until late December 1998, that the pain in her back began slowly aggravating her, that it would be painful sometimes when she would get up or sit down, that every time she picked up trays from tops of postal containers she would get a sharp pain in the middle of her back and on her right side, that by the beginning of February 1999, it became painful for her to get up and down and to stand or walk straight and that the week before she stopped work the pain went into her right leg.

By decision dated May 24, 1999, the Office found that appellant failed to establish that her recurrence of disability beginning February 10, 1999, was causally related to appellant's April 18, 1998 employment injury, on the basis that the medical evidence did not establish a worsening of her employment-related condition.

By decision dated June 17, 1999, the Office found that the position of modified mailhandler represented appellant's wage-earning capacity effective November 3, 1998. The Office continued to pay compensation for two hours per day.

By letter dated January 31, 2000, appellant requested reconsideration of the denial of her claim for a recurrence of disability. Appellant stated that her limited-duty position required her to collect mail to hand stamp, that trays that were filled with mail were heavy and that she began to have sharp shooting pain in her middle and lower back with spasms, which progressed and extended down her right leg. Appellant stated, “I can't say that I felt great pain in my back all at once, or that I fell down and I felt pain or any one specific thing caused my reoccurrence. But I can and will tell you that my reoccurrence came on gradually and very very painfully.” Appellant submitted additional medical evidence.

By decision dated April 21, 2000, the Office found that the evidence did not support a recurrence of total disability causally related to appellant's April 18, 1998 employment injury.

By letter dated August 10, 2000, appellant requested reconsideration and contended that the limited-duty assignment she accepted had changed when her supervisor told her she had to make pickups of the handstamp and faceup mail and that her back troubles began after this change. Appellant stated that on the night of February 9, 1999, she got a sharp pain in her back when she reached up to take a tray of mail off a postal container and that she had excruciating pain the remainder of that night and the next day.

Appellant submitted additional medical evidence, including a report of an MRI scan done on March 30, 2000. In a report dated May 11, 2000, Dr. Ali Araghi, an osteopath specializing in spine surgery, stated: "While patient was pulling down trays on February 10, 2000 at work she stated the trays were over 10 [pounds]. [S]he suddenly felt a sharp pain on her right side and back at which time she was referred to me from Dr. Ravich. At that time and from the present injury I felt [appellant] should not have returned to work and I still feel she should not return to work."

By decision dated November 9, 2000, the Office found that the report from Dr. Araghi, contained no medical rationale and failed to establish that appellant's back condition worsened to the extent that she could no longer perform her limited-duty position.

On November 24, 2000 the employing establishment terminated appellant's employment.

On October 8, 2001 appellant requested reconsideration. She submitted additional medical evidence. In a report dated January 17, 2001, Dr. Frank S. Folk, a Board-certified surgeon, stated that appellant's symptoms and diagnosed condition were "directly related to the accident and, has continued to cause exacerbation." In a report dated June 13, 2001, Dr. Jason S. Lipetz, a Board-certified physiatrist specializing in pain management, diagnosed possible mechanical lower lumbar discomfort of discogenic origin and right lower extremity complaints of an unclear nature. Dr. Lipetz also stated that he was "unable to identify a spinal stressor which might explain her [complaints]." In a report dated January 9, 2001, Dr. Araghi stated that appellant told him "that her second accident where she was pulling trays with mail in them, she injured her back worse and it lasted longer and it has been a bigger problem than her first injury." Dr. Araghi stated that appellant was able to perform light-duty work.

In a report dated May 13, 1999, Dr. Michael Brooks, an orthopedic surgeon performing a fitness-for-duty examination for the employing establishment, stated that some findings on physical examination substantiated her complaints but that there were a number of contradictory findings, the main one being: "The MRI [scan] report indicates a fairly large herniated disc with left sided herniation and left nerve root involvement; the claimant never had any left sided complaints; she had complaints of right sided thigh pain. The thigh pain, by the way, does not correspond with the significant L5-S1 disc herniation noted in the MRI [scan] report (it does not correspond whether the report was left sided or right-sided herniation)."

By decision dated January 19, 2002, the Office found that the medical evidence did not "provide a complete and accurate history of the claimed condition nor did it explain how the

condition found on examination was caused or aggravated by your work activities on February 10, 1999 when you alleged a recurrence of disability.”

The Board finds that appellant has not established that she sustained a recurrence of total disability beginning February 11, 1999, due to her April 18, 1998 employment injury.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 to show that he or 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 not shown a change in the nature and extent of her injury-related condition on or about the time of her claimed recurrence of total disability on February 10, 1999. In a report dated February 2, 1999, Dr. Ravich stated that appellant still persisted with back pain and that she was advised to continue working 6 hours a day with lifting limited to 10 pounds. In his next report, which was dated February 11, 1999, Dr. Ravich stated that appellant complained “of more intense pain in the central portion of her back” and of “some radiation down the right leg.” Dr. Ravich, however, noted that there were no other changes since her last examination.

Dr. Ravich’s February 11, 1999 report found that there was no change in appellant’s condition on examination, but that she complained of more intense back pain and pain radiating down her right leg. The reports from Drs. Brooks and Lipetz cast serious doubt that appellant’s right leg pain was related to the herniated disc she sustained on April 18, 1998. Dr. Folk stated that appellant’s symptoms were directly related to the accident. However, he provided no medical rationale to support his stated conclusion. As such, his report is of diminished probative weight. Beginning November 3, 1998, appellant was able to work for three months with the herniated disc in her lumbar spine. Without an explanation of how the nature and extent of appellant’s employment-related condition changed on February 10, 1999 so that she could no longer perform her limited-duty assignment, appellant has not met her burden of proof to establish a recurrence of disability.

The reports from Dr. Araghi, lend some support to a recurrence of disability on February 10, 1999. He, however, based his conclusions on appellant’s statements that she sustained a more serious injury and felt sharp pain in her right side and back when she lifted a tray weighing more than 10 pounds on February 9, 1999. This history is not corroborated by the evidence in the record. In a January 30, 2000, request for reconsideration appellant indicated that there was no specific incident that resulted in her recurrence of disability. She did not cite a specific incident on February 9, 1999 on her claim for a recurrence of disability or in her March 19, 1999, statement further describing her recurrence, nor did she report such an incident to Dr. Ravich on February 11, 1999.

¹ *Terry R. Hedman*, 38 ECAB 222 (1986).

Appellant has not shown that the nature and extent of the requirements of her limited-duty assignment changed so that she was no longer able to perform this assignment. Appellant alleged that the trays of mail she lifted were heavy, but has submitted no evidence that they weighed over 10 pounds. In any event, appellant did not stop work because of any change in her work assignment, but rather because she felt her pain was too great to continue working. Her claim for a recurrence thus must be supported by medical evidence showing a change in the nature and extent of her injury-related condition. For the reasons stated above, appellant has not met her burden of proof.

The January 19, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 24, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member