

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY P. RICHARDS and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, MO

*Docket No. 03-343; Submitted on the Record;
Issued April 10, 2003*

DECISION and ORDER

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

The issue is whether appellant sustained a recurrence of disability in September 2000 causally related to her November 19, 1993 employment injury.

On November 19, 1993 appellant, then a 39-year-old mail carrier, sustained a low back injury while lifting a tray of letters. The Office of Workers' Compensation Programs accepted her claim for lumbar strain. Appellant was discharged from treatment on February 8, 1995 with a diagnosis of lumbar sprain and a permanent lifting restriction of 25 pounds.¹ On March 28, 2001 she accepted a modified city letter carrier position but protested that the offer violated her permanent lifting restriction.²

On April 6, 2001 appellant filed a claim for recurrence of disability indicating that she went home in September 2000 as a result of her November 19, 1993 employment injury.³ In an attached statement, she explained that her modified position exceeded her doctor's restrictions, but she indicated no stoppage of work in this position. Appellant stated instead that she went home in September 2000 because she could hardly stand because of her back.

To support her claim, appellant submitted reports from her attending internist, Dr. Kurt A. Piening. On March 22, 2001 Dr. Piening alluded to previous back injuries and an extensive car accident. He stated that appellant suffered from, among other things, chronic and continuous back pain. After sorting mail during and after work, Dr. Piening stated that appellant had continuous shooting pains to her arms and fingers. He concluded that appellant was unable

¹ The record indicates that appellant also suffered a lumbar strain at work on September 21, 1991 as well as multiple injuries from a motor vehicle accident at work on January 31, 2000.

² The offered position required lifting no greater than 10 to 30 pounds continuous and required no driving.

³ Appellant noted that this was not a recurrence, it was a "continuation." She stated, however, that she went home "in Sept[ember]??? 2000" because the pain was too much. Appellant saw a doctor and was given two prescriptions."

to carry a mailbag for any length of time and for any distance whatsoever because of her previous medical problems: "Again, [appellant] is unable now and will never be able to carry a mailbag or have a walking route, nor will she be able to drive a mail truck because of her post-traumatic stress disorder now or in the future."

In an April 3, 2001 report, Dr. Piening reported that appellant's first injury was in approximately 1990 when she slipped on wet grass while carrying a heavy bag of mail. Appellant was diagnosed with lumbar strain and placed on a 30-pound weight limit. After this injury, Dr. Piening stated that she suffered from recurring back pain, especially with heavy lifting in spite of the 30-pound weight restriction. Appellant had another injury in November 1993. She was in the back of a postal truck squatting down to lift a tray of mail and her back went completely out. Appellant was diagnosed with overuse lumbar sprain with chronic radiculopathy and was given a permanent lifting restriction of 25 pounds. Since then she suffered chronic recurring back pain, especially with any type of lifting, even below the 25-pound weight restriction. Dr. Piening stated:

"According to her job description as a postal carrier, there is no way that she would be able to carry a walk-out route and carry mail door to door. She is completely unable to lift a mailbag anywhere near 25 pounds, especially for the time frame of five to six hours while she is out on a route. Because of this permanent lifting restriction of 25 pounds, there is no way she will ever be able to perform the duty on a walk-out route. She has been seen in our office numerous times for back pain, both lower and upper back pain, and also neck and shoulder pain related to her work. We have prescribed different anti-inflammatories and muscle relaxants on many occasions.

"She has also suffered from cervical radiculopathy with neck pain and pain radiating down her left arm and shoulder consistent with seventh cervical nerve root radiculopathy. This is no doubt directly related to her lifting and carrying heavy bundles of mail, but it now continually affects her usage of her hands and arms, and any type of lifting or repetitive movements can exacerbate her pain and numbness down her neck and arms."

Dr. Piening described appellant's January 31, 2000 motor vehicle accident. He noted that she suffered from post-traumatic stress disorder regarding driving as a result. Dr. Piening reported:

"Because of her post-traumatic stress disorder, she is at this point unable to take a driving route in a mail truck. This post-traumatic stress disorder is a permanent condition, so she will never be able to have a driving route in the future.

"At this point, [appellant] suffers from recurring pain in her neck, upper and lower back, knees and hands, and this pain is exacerbated by any lifting, standing for a prolonged period of time, any repetitive movements and carrying heavy objects, especially over 25 pounds, for any period of time. We will continue to treat [appellant] with anti-inflammatory medicine, muscle relaxants, heat and occasional physical therapy if deemed necessary, but any type of walking mail

route will exacerbate her back problems, and she will continue to have severe pain and disability unless this situation is remedied....”

On May 29, 2001 Dr. Piening explained that appellant was incapable of performing the duties of a modified letter carrier. After relating appellant’s complaints and symptoms and his findings on examination, Dr. Piening diagnosed chronic myofascial pain syndrome, neck strain and headaches secondary to a motor vehicle accident, hand swelling, pain and paresthesias possibly secondary to cubital tunnel syndrome or previous accident, and L2-3 disc bulging causing a right radiculopathy.

In a decision dated October 15, 2001, the Office denied appellant’s claim on the grounds that there was no specific, well-rationalized medical evidence supporting a recurrence of the 1993 lumbar strain. The Office noted that appellant was released from care for this condition on February 8, 1995 and Dr. Piening’s recent reports did not sufficiently demonstrate a recurrence of disability. The Office advised appellant as follows: “If you feel that your ongoing duties have caused an aggravation to your underlying back condition you may wish to file claim Form CA-2 claim for occupational disease. If you feel that your January 31, 2000 motor vehicle accident has aggravated your underlying back condition you should submit evidence from your treating physician that you suffer from a back injury consequential to the accident. Such evidence should be submitted under claim number 11-0177773.”

Appellant requested an oral hearing before an Office hearing representative. She testified and submitted additional evidence, including an April 4, 2002 report from Dr. Piening, who stated that appellant’s condition was not improved and that she was still unable to carry a mailbag due to the pain from previous back injuries and was still unable to drive a mail truck due to post-traumatic stress disorder directly related to a motor vehicle accident while on the job.

In a decision dated September 12, 2002, the Office hearing representative affirmed the denial of appellant’s claim of recurrence. She found that there was no rationalized medical evidence to support appellant’s contention that her condition on and after April 6, 2001 was causally related to the November 19, 1993 employment injury.

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability around September 2000 causally related to her November 19, 1993 employment injury.

A “recurrence of disability” is defined as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁴

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires 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

⁴ 20 C.F.R. § 10.5(x) (1999).

causally related to the employment injury and who supports that conclusion with sound medical reasoning.⁵

To support her claim, appellant submitted several narrative reports from her attending internist, Dr. Piening, who, however, did not acknowledge a stoppage of work around September 2000, as appellant claimed. Further, he did not attribute any work stoppage to a spontaneous worsening of appellant's November 19, 1993 lumbar strain, a condition for which she was discharged from treatment on February 8, 1995. Instead, Dr. Piening reported that appellant's condition was exacerbated by any lifting, standing for a prolonged period of time, any repetitive movements, and carrying heavy objects, especially over 25 pounds, for any period of time. He argued that she was incapable of performing the duties of her modified letter carrier position. These arguments tend to support a worsening of appellant's condition due to new exposure and do not support a spontaneous change in her 1993 lumbar strain. The Office has correctly advised appellant what claim forms she may file, under file number 11-0177773, if she feels that her ongoing duties have caused an aggravation of her underlying back condition or if she feels that she suffered a consequential back injury as a result of her January 31, 2000 motor vehicle accident. But as the medical opinion evidence currently of record fails to establish that appellant's November 19, 1993 employment injury caused a spontaneous recurrence of disability around September 2000, the Board will affirm the denial of her recurrence claim.

The September 12, 2002 and October 15, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
April 10, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).