

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY G. BORDONARO and U.S. POSTAL SERVICE,
POST OFFICE, Poughkeepsie, NY

*Docket No. 02-1824; Submitted on the Record;
Issued February 24, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established an employment-related disability after January 4, 1997.

The case was before the Board on a prior appeal. In a decision dated May 18, 2000, the Board affirmed the termination of compensation effective January 4, 1997.¹ The Board also found that there was an unresolved conflict in the medical evidence as to whether appellant had established any additional employment-related disability. It was noted that the physician selected to resolve the conflict, Dr. Edmund Stewart, a Board-certified orthopedic surgeon, had not provided a clear opinion on disability causally related to the continuing employment-related condition. The May 18, 2000 Board decision is incorporated herein by reference.

In a decision dated April 13, 2001, the Office of Workers' Compensation Programs denied compensation for wage loss as of January 4, 1997. By decision dated April 16, 2002, the Office denied modification.

The Board finds that the medical evidence is sufficient to deny compensation for wage loss as of January 27, 1998; the case must be remanded for further development with respect to January 4, 1997 to January 26, 1998.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³

¹ Docket No. 98-1500.

² 5 U.S.C. §§ 8101-8193.

³ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

In this case, the Office prepared a new statement of accepted facts and referred the case record to Dr. Stewart for a supplemental report. In a report dated November 7, 2000, Dr. Stewart stated that 50 percent of her cervical condition would be apportioned to the employment injury of December 27, 1989. Dr. Stewart did not address the relevant issue, in addition, the statement of accepted facts incorrectly reported that the postmaster position required lifting of up to 50 pounds. The Office then secured a job description of the postmaster position and submitted a new statement of accepted facts to Dr. Stewart.

In a report dated March 27, 2001, Dr. Stewart indicated that he had again reviewed the evidence of record. He noted that a treating physician had released appellant to full duty in January 1990, and that a June 1992 report had reported a full range of motion in the cervical spine. Dr. Stewart further stated:

“At the time of my physical examination on January 27, 1998, it was my feeling that the claimant would be capable of working in a light[-]duty, sedentary occupation befitting her age category.

“This remains my opinion and it is further my opinion that, following my examination at the time of January 27, 1998, [appellant] would be capable of carrying out her postmaster/manager duties as described...”

The Board finds that Dr. Stewart provides a reasoned medical opinion with respect to disability for work as of January 27, 1998. Appellant asserts that Dr. Stewart did not have an adequate factual background; she notes that from September 1991 until her voluntary retirement in October 1992, she had been working in the position of “Executive on Special Assignment,” rather than her postmaster position. Although appellant contends that the position required physical activity in excess of the postmaster position, there is no probative evidence to support the contention. In an August 6, 2001 letter, the employing establishment stated that the position did not require more physical demands than a postmaster position. The employing establishment indicated that at the time there was no formal job description; the special assignment required coordinating and implementing environmental programs, and it was an executive position similar in physical demands to a postmaster position.

It is well established that when a case is referred to an impartial medical examiner for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁴ The Board finds that Dr. Stewart’s report is entitled to special weight and is sufficient to establish that appellant did not have an employment-related disability as of January 27, 1998.

The Board notes, however, that the Office has found that appellant was not entitled to compensation for wage loss as of January 4, 1997. It is clear from Dr. Stewart’s report that his opinion on disability was limited to the period commencing January 27, 1998, the date of the examination. Dr. Stewart does not address the issue of disability for work commencing January 4, 1997. The case will be remanded to the Office to secure a supplemental report that

⁴ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

resolves the issues with respect to disability from January 4, 1997 to January 26, 1998. After such further development as the Office deems necessary, it should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated April 16, 2002 is affirmed with respect to compensation for wage loss after January 27, 1998; it is set aside and remanded with respect to the period January 4, 1997 to January 26, 1998.

Dated, Washington, DC
February 24, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member