

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARISMA L. GUYTON and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 03-923; Submitted on the Record;
Issued June 18, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met her burden in establishing that she sustained a recurrence of disability on or after June 24, 2002 causally related to her May 14, 2002 employment injury.

On May 21, 2002 appellant, then a 30-year-old city carrier, filed a traumatic injury claim alleging that on May 14, 2002 she strained a nerve in her right groin and leg while moving tubs of mail at work. The Office of Workers' Compensation Programs accepted the claim for right inguinal strain and partial tear of the right quadriceps. Appellant was prescribed restrictions of limited walking on or about May 18, 2002.

The record reflects that appellant was off work from March 25 through May 6, 2002, for a nonindustrial abdominal surgery and released to regular duty on May 7, 2002 by Dr. Abdulghany Tabbara, her gynecologist.

On November 13, 2002 appellant filed a notice of recurrence of disability asserting that beginning June 24, 2002 she experienced ongoing right groin pain while performing light duty and became disabled from work beginning September 17, 2002 causally related to the original injury.¹ On the reverse side of the claim form, Maria Whetted, appellant's supervisor, stated that appellant had been off work from March 25 through May 6, 2002, for the above-noted abdominal surgery and that, although appellant was released to regular duty, she was given light duty with no walking by the employing establishment and specifically advised not to lift any tubs. Ms. Whetted indicated that since the original work injury, appellant had not returned to regular duty. She noted that prior to the claimed recurrence of disability on September 17, 2002 her duties consisted only of handling bundles of mail in trays.

¹ On November 15, 2002 appellant filed a Form CA-7 claim for compensation from September 17 through November 30, 2002, which she related to the accepted injury.

The Office received an undated attending physician's report from Dr. Vikram Gandhi, a Board-certified orthopedic surgeon, who noted that appellant was first seen on September 27, 2002 after her May 14, 2002 work injury when she injured her right groin. He noted that diagnostic testing revealed nerve impingement and L5-S1 radiculopathy, for which he recommended physical therapy. Dr. Gandhi stated that appellant was totally disabled from "March 25, 2002 through present" and that her period of partial disability ran from "October 4 through 25 2002." The Office further received disability slips, which indicated that she was incapacitated for periods between June and December 2002.

In a letter dated December 19, 2002, the Office advised appellant that the medical evidence of record established that she was currently being treated for the condition of L5-S1 radiculopathy, which was not accepted by the Office as related to the May 14, 2002 work injury. The Office indicated, therefore, that additional evidence was needed in order to establish that the claimed recurrence of disability was related to the original work injury.

The Office received a report from Dr. Gandhi dated January 30, 2003 on February 5, 2003. The physician stated:

"[Appellant] was seen by me on September 27, 2002. Apparently, she had been sent back to work and then on May 18, 2002 when she was at work she was supposed to remain on light[-]duty work and she was pushing heavy things. Because they were heavy she was pushing with the leg. When she was doing this, she started having pain in the right groin area. She felt these pains the next day and they had persisted."

* * *

"My impression was that she had a strain of her right thigh as well as a strain of the cervical and lumbar spine area. She was allowed to return to light[-]duty work. An EMG[electromyogram]/NCV[nerve conduction velocity] study examination was requested on her visit of October 4, 2002. When she came to see me in two weeks time initially she could not continue with physical therapy. Her back movements were causing this pain along the right thigh. EMG/NCV had shown findings consistent with L5-S1 radiculopathy."

* * *

"I believe that the right groin strain was related to the injury that she sustained along with the partial quadriceps tear that she had at the time. The cervical and lumbar spine injury also occurred, but likely were precipitated and that there may have been underlying problems there. Further, testing will clarify the situation better."

By decision dated February 7, 2003, the Office denied the recurrence of disability claim on or after June 24, 2002 on the grounds that the evidence was insufficient to establish that the recurrence resulted from the original injury of May 14, 2002.

The Board finds that appellant has not established that she sustained a recurrence of disability on or after June 24, 2002 causally related to her May 14, 2002 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, the employee can establish a claimed recurrence of total disability only through submitting sufficient evidence showing a change in the accepted condition or in the light-duty job requirements such that he or she can no longer perform the light-duty job.² If the claim for recurrence of disability is based on a worsening of the accepted condition, the claimant must submit rationalized medical evidence substantiating this deterioration and explaining how and why the condition continues to be related to the accepted injuries or other factors of federal employment.³

In this case, the Office accepted that appellant sustained a right inguinal strain and partial tear of the right quadriceps while moving tubs of mail on May 14, 2002. At the time of the work injury, appellant was already performing light duty, which consisted of handling bundles of mail in trays with no lifting and walking as a result of a March 25, 2002 nonindustrial surgery. Appellant asserted that she sustained a recurrence of disability beginning June 24, 2002, which caused permanent disability beginning September 17, 2002 due to the ongoing pain associated with the original injury.

The Board finds that appellant did not submit sufficient factual evidence regarding any changes in her light-duty job occurring on and after June 24, 2002, the day appellant asserted that her recurrence began and September 17, 2002, the date that she stopped work. Appellant has not substantiated that she was required to work outside of any medical restrictions in the light-duty work provided by the employing establishment.

Further, appellant has not submitted sufficient medical evidence to establish that her condition on and after the date of recurrence was related to the accepted right inguinal strain and right quadriceps tear. The January 30, 2003 report of Dr. Gandhi, an attending Board-certified orthopedic surgeon, which discussed the findings from a September 27, 2002 examination, noted that appellant had pain in the right thigh, leg and stiffness in the back associated with the original injury. He diagnosed lumbar radiculopathy in the report, which he indicated led to appellant's disability at that time. As the Office correctly pointed out, this medical evidence, which is contemporaneous with the date appellant claimed disability due to the recurrence involved a separate condition of L5-S1 radiculopathy, which had not been accepted by the Office as work related. Further, the report does not contain rationalized medical evidence establishing that appellant's claimed recurrence of disability is causally related to the accepted employment injury.⁴ The disability slips submitted with the claimed recurrence of disability do not address causal relationship.

² *Terry R. Hedman*, 38 ECAB 222 (1986).

³ *Carl C. Graci*, 50 ECAB 557 (1999).

⁴ The record also contains an undated report, in which Dr. Gandhi suggested that appellant had total disability starting October 25, 2002 due to an employment-related radiculopathy. The report contains the same deficiencies as the January 30, 2003 report.

As appellant submitted insufficient evidence substantiating either a change in the nature and extent of her light-duty position on and after June 24, 2002, or an objective worsening of the accepted condition on and after that date, she has not met her burden of proof in establishing the claimed recurrence of disability commencing on that date.⁵

The decision of the Office of Workers' Compensation Programs dated February 7, 2003 is hereby affirmed.

Dated, Washington, DC
June 18, 2003

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ Appellant did submit additional documentation following the February 7, 2003 decision, however, the Board's jurisdiction is limited to evidence that was before the Office at the time of its decision. 20 C.F.R. § 501.2(c).