

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARISA A. LeGRAND and U.S. POSTAL SERVICE,  
POST OFFICE, Washington, DC

*Docket No. 02-1827; Submitted on the Record;  
Issued March 13, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that she sustained a recurrence of disability.

The Office of Workers' Compensation Programs accepted that on January 1, 1990 appellant, then a 25-year-old postal distribution clerk, sustained an injury to her back and right shoulder when she was pulling and lifting trays weighing approximately 25 pounds each. The Office accepted appellant's claim for low back strain and right shoulder strain due to the work activities on January 1, 1990. Appellant received continuation of pay for the appropriate period and returned to light-duty work with restrictions.<sup>1</sup>

Appellant continued to submit medical reports pertaining to treatment of and for her back until July 17, 1998. She then sought medical treatment on January 11, 1999 for her low back condition and a right knee condition and again on December 12, 2000 where she was rendered totally disabled due to lumbar disc syndrome and right knee sprain.

In the December 12, 2000 report, Dr. Rida N. Azer, a Board-certified orthopedic surgeon and appellant's treating physician, advised that she had reviewed appellant's medical records. She opined that, as a result of appellant's injury of January 1, 1990, appellant injured the lumbar disc in her lumbar spine and sustained a lumbar disc syndrome and has sciatica and radiculopathy. She advised that the examination showed traumatic arthritic changes. It was noted that appellant had been treated by nonsurgical measures, including epidural blocks, physical therapy, muscle relaxants and medications. Dr. Azer recommended that appellant needed further investigation, including a magnetic resonance imaging (MRI) scan of the lumbar spine region and also of the right knee, an electromyogram (EMG) and nerve conduction studies of the lower limbs for the purpose of compression neuropathy and radiculopathy. She opined

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<sup>1</sup> The Office accepted that appellant's work duties of August 17, 1991 resulted in tenosynovitis right hand. Appellant was disabled from September 6, 1991 and returned to limited duty on November 13, 1991.

that appellant's condition, including the lumbar disc syndrome and traumatic arthritis of the right knee, were caused by her work injury of January 1, 1990. She stated that appellant's condition has been progressing and her symptoms have increased considerably in the last several weeks. In a Form CA-17 of December 12, 2000, Dr. Azer opined that appellant was totally disabled due to her work injury of January 1, 1990, by placing a check mark in the appropriate box.

In a March 28, 2001 report, Dr. Azer advised that appellant's condition had not reached maximum medical improvement, she needed further investigations in terms of MRI scan, EMG and nerve conduction studies of the lumbar spine and was to remain off work until the investigations were performed.

On April 18, 2001 appellant filed a Form CA-7 requesting continuation of pay for the period December 6, 2000 through March 15, 2001.

In a letter dated April 25, 2001, the Office advised appellant of the additional factual and medical information needed to establish her claim.

In a report of June 11, 2001, Dr. Azer reported that appellant was reinjured on May 6, 1999 when she was struck by another power equipment machine at work. She noted that appellant still had not had her MRI scan.

In a letter dated November 28, 2001, the Office again advised appellant of the information needed to establish her claim.

In a December 28, 2001 decision, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that she sustained a recurrence of disability on or about December 6, 2000 causally related to the January 1, 1990 accepted employment injury.

The Board finds that appellant has not established that she sustained a recurrence of disability due to her January 1, 1990 employment injury.

An individual 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 compensation is claimed is causally related to the accepted injury.<sup>2</sup> This burden includes the necessity of 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 causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>3</sup> An award of compensation may not be made on the basis of surmise, conjecture, or speculation or on an appellant's unsupported belief of causal relation.<sup>4</sup>

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<sup>2</sup> *Lourdes Davila*, 45 ECAB 139 (1993); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

<sup>3</sup> *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

<sup>4</sup> *Ausberto Guzman*, 25 ECAB 362 (1974).

In this case, the Office accepted that appellant sustained a lumbar strain and left shoulder strain in the performance of her employment duties on January 1, 1990. Appellant requested continuation of pay commencing December 6, 2000. The Office requested that appellant provide medical evidence that would establish a causal relationship between her current conditions and her present disability.

In support of her claim for recurrence, appellant provided a January 11, 1999 report from Dr. Azer, appellant's treating orthopedic physician, which advised that appellant still had pain in the lumbar spine region, was tender between L4 and S1 with some pain and muscle spasm on movements. A right knee condition was also noted. In her December 12, 2000 report, Dr. Azer opined that, as a result of appellant's injury of January 1, 1990, appellant injured the lumbar disc in her lumbar spine and sustained a lumbar disc syndrome and had sciatica and radiculopathy. She advised that the examination showed traumatic arthritic changes. She opined that appellant's condition, including the lumbar disc syndrome and traumatic arthritis of the right knee were caused by her work injury of January 1, 1990. She stated that appellant's condition has been progressing and her symptoms have increased considerably in the last several weeks. In a Form CA-17 of December 12, 2000, Dr. Azer opined that appellant was totally disabled due to her work injury of January 1, 1990, by placing a check mark in the appropriate box. In her March 28, 2001 report, Dr. Azer advised that appellant's condition had not reached maximum medical improvement, she needed further investigations and was to remain off work until the investigations were performed. In a report of June 11, 2001, Dr. Azer reported that appellant was reinjured on May 6, 1999 when she was struck by another power equipment machine at work. She noted that appellant still had not had her MRI scan.

These reports are of limited probative value as they did not address how the accepted injury caused disability on or after December 6, 2000 and without any further explanation or rationale, they are insufficient to establish a causal relationship.<sup>5</sup> Dr. Azer's December 12, 2000 report, although advising that appellant had suffered a lumbar disc injury and sustained a lumbar disc syndrome and had sciatica and radiculopathy as a result of her work injury, failed to provide any medical rationale as to why appellant's symptoms had increased considerably over the last several weeks and what role the 1990 injury played in appellant's current increase in symptoms. Similarly, Dr. Azer's indication by checkmark that appellant's current conditions were caused or aggravated by her employment duties, without any further explanation, is insufficient to establish causal relation to the accepted injury of January 1, 1990.<sup>6</sup> Moreover, neither report provides any explanation as to how or why appellant's right knee condition is related to the events of January 1, 1990. This is necessary as the Office never accepted any condition pertaining to appellant's right knee. Further, explanation or rationale is also needed as Dr. Azer's report of June 11, 2001 mentions the possibility of another injury occurring on May 6, 1999. Accordingly, Dr. Azer's reports, without further explanation or rationale, are of limited probative value as Dr. Azer failed to offer a rationalized opinion to explain why appellant's current conditions pertaining to her back and right knee are the result of her employment activities

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<sup>5</sup> *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

<sup>6</sup> *Id.*

approximately 10 years earlier, especially in light of the fact the possibility of an intervening injury on May 6, 1999 might have occurred.

Appellant additionally submitted reports predating her claim for recurrence. While these reports provide bridging evidence of medical conditions after her January 1, 1990 employment injury, they are insufficient to establish appellant's claim for disability on or after December 6, 2000 as they cannot describe her condition after that date and relate it to her employment injury.

Accordingly, the Board finds that appellant has not met her burden of proof in this case as she has not submitted a reasoned medical opinion explaining how she sustained a recurrence of disability beginning December 6, 2000, caused or aggravated by the January 1, 1990 employment injury.

The December 28, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.<sup>7</sup>

Dated, Washington, DC  
March 13, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> The Board notes that subsequent to the Office's December 28, 2001 decision, appellant wrote a letter dated January 15, 2002, addressed to "The Director or The Appeal Board" and submitted additional evidence. Appellant additionally referenced an Office decision dated July 3, 2002, on her AB-1 form. However, there is no evidence that the Office rendered a decision on the new evidence. The Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a).