

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JO H. TURNER and U.S. POSTAL SERVICE,
POST OFFICE, Jackson, MI

*Docket No. 02-2362; Submitted on the Record;
Issued March 13, 2003*

DECISION and ORDER

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

The issue is whether appellant has established that she sustained a recurrence of disability beginning January 16, 2002 due to her January 16, 2001 employment injury.

On May 28, 2001 appellant, then a 47-year-old letter carrier, filed an occupational disease claim alleging that on January 4, 2001 she first realized that bone spurs on her left cervical spine were caused or aggravated by factors of her federal employment. She stopped work on April 27, 2001.

By letter dated June 18, 2001, the Office of Workers' Compensation Programs accepted appellant's claim for aggravation of left cervical radiculopathy.

Appellant returned to limited-duty work on September 11, 2001 for four hours per day. Effective December 12, 2001 appellant increased her work hours to five hours per day.

In a February 4, 2002 letter, the Office advised Dr. Ray H. King, a Board-certified family practitioner and appellant's treating physician, to submit an updated medical report regarding the status of appellant's employment-related injury.

On February 1, 2002 appellant filed a claim alleging that she sustained a recurrence of disability on January 4, 2002. She stated that she was sitting in a chair when she felt pins and needles running down the left side of her buttock and toes. Appellant further stated that this feeling has never left and sometimes she is unable to walk on her left foot. She stopped work on January 16, 2002. Appellant's claim was accompanied by an undated report from Dr. John Wald, a neurologist, indicating a diagnosis of left arm and left leg numbness, tingling and depression.

Appellant submitted a September 5, 2001 report of Dr. Richard Enter, a psychologist, revealing that she was seen for a general psychological evaluation at the pain management center. Dr. Enter noted appellant's complaints of pain in her left neck, shoulder and arm, and a

history of appellant's family background. On psychological examination, he stated that appellant was in a defensive posture making a naïve and unsophisticated attempt to look good by claiming high moral values and freedom from common human frailty. Dr. Enter further stated that appellant was reticent to admit anything unusual or compromising about herself and that test results clearly pointed towards a person with likely somatization disorder. He explained that patients such as appellant present with excessive physical symptoms and great concern about bodily health, misidentify physiologic concomitants of emotion as physical disorder and pursue medical explanation and mask underlying depression and distress with physical complaints. Dr. Enter noted a possibility that appellant had some underlying anger issues that were not likely recognized by her. He also noted that appellant may experience more anxiety and discomfort than the usual person with this type of configuration. Dr. Enter concluded by noting appellant's medical treatment.

Appellant also submitted Dr. King's January 22, 2002 disability certificate providing a diagnosis of paresthesia of the left leg and that she was disabled from January 16 through 19, 2002. Dr. King's January 23, 25, 28 and 30, 2002 disability certificates indicated that appellant was disabled on several days during the period January 23 through 31, 2002. In his January 30, 2002 disability certificate, Dr. King noted that he was uncertain as to when appellant could return to work.

In response to its February 4, 2002 letter, the Office received Dr. King's February 15, 2002 letter indicating that appellant was being evaluated for left cervical radiculopathy and at the beginning of the year she developed paresthesia in her left leg. Dr. King noted that appellant was referred to Dr. Wald regarding her cervical radiculopathy. He further noted normal electromyogram findings and minimal degenerative changes at L4-S1 and diffuse small anterior spurs on x-ray examination of appellant's spine. Dr. King opined at that time appellant was not capable of returning to her prior position as a letter carrier in a full and unrestricted capacity. He stated that appellant must continue her current work restrictions limiting her to five hours of work per day and no delivery of the mail. Dr. King further stated that he was uncertain as to when appellant could increase her work hours.

By letter dated February 26, 2002, the Office advised appellant of the type of factual and medical evidence needed to establish her recurrence claim. In response, appellant submitted a January 22, 2002 x-ray report from Dr. S.T. Reddy, a Board-certified radiologist, indicating minimal degenerative changes at L4 through S1, facet joints with minimal levoscoliosis and diffuse small anterior spurs.

By decision dated April 2, 2002, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability beginning January 16, 2002 due to her accepted January 16, 2001 employment injury.¹

The Board finds that appellant has failed to establish that she sustained a recurrence of disability beginning January 16, 2002 due to her January 16, 2001 employment injury.

When an employee who is disabled from the job she held is injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light-duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.²

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her recurrence of disability and her January 16, 2001 employment injury.³ 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.⁴

In this case, appellant has not shown a change in the nature and extent of her injury-related condition or of the light-duty requirements. The record shows that, following the January 16, 2001 employment-related aggravation of left cervical radiculopathy, appellant returned to work in a limited-duty capacity on September 11, 2001 with certain physical restrictions. The record does not establish, nor does appellant allege, that the claimed recurrence of total disability was caused by a change in the nature or extent of her limited-duty job requirements. Further, appellant has not submitted sufficient medical evidence establishing that the accepted condition has materially changed or worsened since her return to work on September 11, 2001.

The only medical evidence of record that addressed appellant's current disability were disability certificates dated January 22, 23, 25, 28 and 30, 2002 and a February 4, 2002 letter of Dr. King, a Board-certified family practitioner and appellant's treating physician. His

¹ Subsequent to the Office's April 2, 2002 decision, it received additional factual and medical evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision. See *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501.2(c). The Board notes that, based on receipt of additional medical evidence, the Office issued a notice of proposed termination to appellant on November 14, 2002. The record does not contain a decision regarding this proposed action.

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

³ *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139, 142 (1993); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

⁴ *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

January 22, 2002 disability certificate providing a diagnosis of paresthesia of the left leg, as well as, appellant's disability from January 16 through 19, 2002 failed to discuss whether or how the diagnosed condition was caused by appellant's January 16, 2001 employment-related injury.⁵ His January 23, 25, 28 and 30, 2002 disability certificates failed to indicate a diagnosis and to discuss whether or how the diagnosed condition was caused by appellant's accepted employment-related injury.⁶

Dr. King's February 4, 2002 letter revealed that appellant had minimal degenerative changes at L4-S1 and diffuse small anterior spurs on objective examination. He opined that appellant was unable to return to her position as a letter carrier in a full and unrestricted capacity. Dr. King, however, failed to provide any medical rationale explaining how or why appellant's disability for work was caused by her employment injury.

The Board finds that appellant failed to submit rationalized evidence supporting a causal relationship between her accepted employment injury and a recurrence of disability beginning January 16, 2002. Thus, she has failed to meet her burden of proof.

The April 2, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 13, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

⁶ *Id.*