

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of REBECCA J. MULLANEY and U.S. POSTAL SERVICE,  
POST OFFICE, Lancaster, PA

*Docket No.03-1681; Submitted on the Record;  
Issued October 23, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant sustained a recurrence of disability as of December 1, 2002 causally related to her accepted lower back condition.

On June 30, 1998 appellant, a 38-year-old postmaster, filed a Form CA-2 claim for benefits based on an occupational condition, alleging that she sustained back and neck injuries causally related to her federal employment. Appellant noted that she had a prior back injury in August 1994.<sup>1</sup> The Office of Workers' Compensation Programs accepted her claim for lumbar disc displacement and aggravation of herniated lumbar disc.

Appellant filed a notice of recurrence of disability (Form CA-2a) commencing October 15, 1998. The Office accepted a recurrence of disability and appellant returned to a modified position in December 1998. By decision dated May 7, 1999, the Office terminated compensation benefits as of December 22, 1998; in a decision dated January 5, 2000, however, an Office hearing representative found that the Office had failed to meet its burden of proof to terminate compensation benefits.

On January 29, 2003 appellant filed a Form CA-2a claim for benefits. Appellant reported the date of recurrence as December 1, 2002; she indicated that she stopped working on January 9, 2003.

By letter dated February 26, 2003, the Office advised appellant that it required additional factual and medical evidence, including a medical report, to support her claim that her current condition/or disability as of December 1, 2002 was caused or aggravated by her accepted lower back condition.

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<sup>1</sup> There is no indication that appellant filed a claim for a traumatic injury in August 1994.

Dr. James P. Argires, a Board-certified neurosurgeon, submitted reports dated December 4 and 17, 2002 and January 9 and February 13, 2003. In his December 4, 2002 report, Dr. Argires noted chronic pain across the mid-lumbosacral area which occasionally radiated into her lower legs. He related that appellant was unable to stand or ambulate for any length of time without experiencing consequential back pain at a later time. Dr. Argires stated that, by the end of appellant's workday, she experienced considerable difficulty getting comfortable. In his subsequent reports, Dr. Argires stated findings on examination and continued to note appellant's complaints of lower back pain.

In order to determine whether appellant's claimed current condition was causally related to accepted lower back condition, the Office referred appellant to Dr. Perry A. Eagle, a Board-certified orthopedic surgeon.

In a report dated April 15, 2003, Dr. Eagle, after reviewing the statement of accepted facts and the medical history and stating findings on examination, stated that there was no evidence that the work-related condition of recurrent disc is active and causing objective findings. He advised that there was no evidence of herniated disc on the recent imaging studies, and that the findings of degenerative disease at L4-5 were the sequelae of the original disc injury. Dr. Eagle opined that the diagnosed condition was not medically connected to the work injury by direct cause, aggravation, precipitation or acceleration, and stated that there were no objective findings on examination or by imaging studies which would support a diagnosis of herniated disc.

Dr. Argires referred appellant to Dr. R. Scott Muraika, a Board-certified anesthesiologist, who submitted a report dated April 17, 2003. Dr. Muraika stated that appellant had been having pain since December 2002, and noted that she had previously underwent multiple lower spine surgeries. He related that appellant claimed to have reaggravated her bilateral hip and leg pain in December 2002 while she was lifting, and that she currently was complaining of "little back pain," with 75 percent of her pain stemming from her right lower extremity and 25 percent from her left lower extremity. Dr. Muraika advised that appellant underwent a magnetic resonance imaging (MRI) scan on December 9, 2002 which revealed surgery on the left at the L4-5 level without evidence of recurrent disc herniation. He stated that appellant had degenerative changes at L3-4 and L4-5 with no gross disc herniation or canal stenosis.

In a supplemental report dated April 29, 2003, Dr. Eagle reiterated that appellant's current claimed condition was not causally related to her accepted lower back condition. He noted that appellant underwent herniated disc surgery in 1994 and was asymptomatic for approximately four years, with no evidence of a recurrent herniated disc as indicated by a current MRI scan. Dr. Eagle concluded that there was no evidence that appellant's diagnosed condition of degenerative disc disease was due to direct cause, aggravation, precipitation or acceleration by the work-related incident.

By decision dated June 3, 2003, the Office denied appellant compensation for a recurrence of her accepted lower back condition. The Office found that appellant failed to submit medical evidence sufficient to establish that the claimed condition or disability as of December 1, 2002 was caused or aggravated by her federal employment.

The Board finds that appellant has not sustained a recurrence of disability as of December 1, 2002 causally related to her accepted lower back condition.

When an employee, who is disabled from the job held when 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.<sup>2</sup>

Appellant did not allege a change in the light-duty position. With respect to medical evidence, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates her disability for work as of December 1, 2002 to her accepted lower back condition. For this reason, she has not discharged her burden of proof to establish her claim that she sustained a recurrence of disability as a result of her accepted employment injury.

Dr. Algires stated in his December 4, 2002 report that appellant experienced chronic pain in the mid-lumbosacral area which occasionally radiated into her lower legs, and noted that extended periods of walking led to subsequent episodes of lower back pain. He noted appellant's continued complaints of back pain and stated findings on examination in the December 4, 2002 report as well as in subsequent reports. Dr. Muraika noted that appellant had been experiencing pain since December 2002 and related appellant's claim that she aggravated her bilateral hip and leg pain in December 2002 while she was lifting.<sup>3</sup> He further noted that she currently was complaining of "little back pain," with 75 percent of her pain stemming from her right lower extremity and 25 percent from her left lower extremity, and stated that a December 9, 2002 MRI scan noted degenerative changes at L3-4 and L4-5 with no gross disc herniation or canal stenosis and no evidence of recurrent disc herniation. These reports, however, do not constitute sufficient medical evidence demonstrating a causal connection between appellant's employment-related back condition and her alleged December 1, 2002 recurrence of disability. Causal relationship must be established by rationalized medical opinion evidence. The opinions of Drs. Algires and Muraika on causal relationship are of limited probative value in that they did not provide adequate medical rationale in support of their conclusions.<sup>4</sup> They did not provide a detailed history or explain the process through which her accepted back condition would have been competent to cause the claimed December 1, 2002 recurrence of disability. Moreover, their opinions are of limited probative value for the further reason that they are generalized in nature and equivocal in that they only noted summarily that appellant's current lower back complaints were causally related to her accepted lower back condition. Therefore, appellant failed to

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<sup>2</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>3</sup> If appellant is claiming a new employment incident caused an injury, a CA-2a is not the appropriate form to file. A recurrence of disability includes a work stoppage caused by a spontaneous material change in the employment-related condition without an intervening injury. If the disability results from new exposure to work factors, an appropriate new claim should be filed; *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (January 1995).

<sup>4</sup> *William C. Thomas*, 45 ECAB 591 (1994).

provide a rationalized, probative medical opinion indicating that on or after December 1, 2002 appellant had disability casually related to her accepted employment injury.

In addition, appellant was referred for a second opinion examination with Dr. Eagle, who opined that appellant's continuing symptoms were related to underlying degenerative disc disease. Dr. Eagle concluded that work activities did not accelerated the degenerative process and that appellant did not have a continuing employment-related condition.

As there is no medical evidence addressing and explaining why the claimed conditions and disability as of December 1, 2002 was caused or aggravated by her accepted lower back condition, appellant has not met her burden of proof in establishing that she sustained a recurrence of disability.

The June 3, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
October 23, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member