

**United States Department of Labor
Employees' Compensation Appeals Board**

SHEILA L. MINGO, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Atlanta, GA, Employer**

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**Docket No. 03-1384
Issued: July 20, 2004**

Appearances:
Sheila L. Mingo, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On April 28, 2003 appellant filed a timely appeal of a merit decision of the Office of Workers' Compensation Programs dated May 15, 2002 denying her recurrence of disability claim and an Office hearing representative's decision dated April 8, 2003 which affirmed the denial.¹ Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ The Board notes that the case record also contains documentation regarding a separate bilateral foot claim (Claim No. 060738730) with a date of injury of October 22, 1999. This case is not before the Board on appeal.

² The Board notes that appellant did not initially submit the requisite AB-1 form to process her appeal request nor did she advise the Board of the decision date from which she was appealing. By letter dated May 20, 2003, appellant was allowed reasonable opportunity in which to submit additional information to the Board for processing her appeal request. On July 9, 2003 the Board issued its order dismissing the appeal on the basis that appellant submitted the requested AB-1 form but did not advise the Board of the date of the decision appealed. On July 23, 2003 appellant filed a petition for reconsideration requesting that her appeal not be dismissed. Since appellant requested that her appeal not be dismissed prior to the July 23, 2003 order becoming final, it was determined that the most recent decision date in appellant's case was April 8, 2003 and the Board vacated its order and proceeded to adjudicate.

ISSUE

The issue is whether appellant has established that she sustained a recurrence of disability on and after June 27, 2001 causally related to her August 1, 1998 employment injury.

FACTUAL HISTORY

On August 5, 1998 appellant, a 41-year-old business mail entry unit technician filed a traumatic injury claim alleging that on August 1, 1998 she lifted a heavy basket of mail and injured her back. The Office accepted the claim for lumbar strain. Appellant did not stop work.

On September 5, 2001 appellant filed a recurrence of disability claim alleging that she still experienced severe low back pain causally related to the accepted lumbar strain of August 1, 1998 which required medical treatment through March 2001. Appellant noted June 27, 2001 as the date of the recurrence. She did not stop work.

In support of the recurrence claim, appellant submitted progress reports from Dr. Richard Tyler, a Board-certified orthopedic surgeon, dated October 19, 1998 through March 21, 2001 and treatment notes from a physical therapist dated from April 2 through 16, 2002 which noted, tenderness in the back. An October 29, 1998 report revealed that x-rays had been taken of the lumbar spine which demonstrated no fracture or dislocation or other evidence of injury. The early progress reports indicated that appellant was an obese woman with “a major problem with her weight” who suffered continuing pain in her back following the accepted August 1, 1998 employment injury for which she had received physical therapy. In the March 21, 2001 report, appellant reportedly advised that she had been “doing better” but had slight pain in her lower back.

On January 25, 2002 the Office advised appellant that the evidence of record was insufficient to establish that her recurrence was related to the original work injury. The Office requested additional information including medical records from her attending physician evidencing treatment of her back condition beginning March 21, 2001 onward.

By decision dated May 15, 2002, the Office denied appellant’s recurrence of disability claim on the grounds that the evidence submitted was insufficient to establish that it was causally related to the August 1, 1998 injury. The Office noted that the last treatment notes submitted from her attending physician were dated March 21, 2001 and that no further medical documentation was submitted prior to April 2, 2002. The Office found that appellant failed to provide a detailed medical report from her treating physician demonstrating a causal relationship between the recurrence and the accepted injury.

Appellant requested an oral hearing. The oral hearing was held February 6, 2003. At the hearing appellant testified that her recurrence of disability claim was for the payment of continuing medical expenses. She testified that during the time of her recurrence on June 27, 2001 she was performing duties in a new position, a distribution window clerk, lifting mail trays onto racks at work and she experienced severe low back pain. Appellant testified that she had not received treatment for her back pain since March 2001. She did not see Dr. Tyler at the onset of her pain in June 2001 because he related to her that he hated workers’ compensation

claims. Appellant testified that he had not seen her since March 21, 2001. Appellant testified that she just dealt with the pain and took medication.

The Office received additional progress notes dated September 12 to February 11, 2003 which document appellant's examination and treatment for bilateral foot and ankle pain.

By decision dated April 8, 2003, an Office hearing representative affirmed the May 15, 2002 decision finding that appellant submitted insufficient medical evidence to establish that her low back pain on or after June 27, 2001 was causally related to the August 1, 1998 lumbar strain.

LEGAL PRECEDENT

A person who claims a recurrence due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the condition for which she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish 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 the employment injury and supports that conclusion with sound medical reasoning.³

On August 1, 1998 appellant sustained an injury, accepted for a lumbar strain. She did not stop work.

ANALYSIS

On September 5, 2001 appellant claimed a recurrence of severe low back pain beginning June 27, 2001. The medical evidence submitted from Dr. Taylor dated 1998 to March 2001 does not pertain to the time period claimed and does not offer an opinion regarding causal relationship of the treatment to the accepted injury.⁴ Appellant submitted subsequent medical notes for the period September 12, 2002 through February 11, 2003 for unrelated bilateral foot and ankle pain. This evidence is not relevant to the issue before the Board.

The Board finds that the medical reports and treatment notes of record are insufficient to establish appellant's burden because they failed to address whether appellant's current back condition which reportedly began June 27, 2001 was caused by the accepted August 1, 1998 employment injury.

Appellant has failed to submit rationalized medical evidence establishing that she sustained a back condition for which she received treatment causally related to the August 1,

³ *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

⁴ The physical therapist notes of record pertain to a separate claim for which physical therapy was authorized. Further, appellant is unable to satisfy her burden of proof on causation through the submission of physical therapy notes. A physical therapist is not a physician for the purposes of the Federal Employees' Compensation Act, therefore the physical therapy notes do not constitute medical evidence. See *Jennifer L. Sharp*, 48 ECAB 209 (1996).

1998 employment injury beginning June 27, 2001, the Board finds that she has failed to satisfy her burden of proof in this case.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a recurrence effective June 27, 2001 causally related to her August 1, 1998 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 8, 2003 and May 15, 2002 are affirmed.

Issued: July 20, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member