

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

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**PHYLLIS JOHNSON-JARVIS, Appellant**

**and**

**U.S. POSTAL SERVICE, CHICAGO CENTRAL  
CARRIER ANNEX, Chicago, IL, Employer**

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**Docket No. 04-1839  
Issued: January 27, 2005**

*Appearances:*  
*Phyllis Johnson-Jarvis, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On July 15, 2004 appellant filed a timely appeal from the merit decision of the Office of Workers' Compensation Programs dated June 28 2004, denying her claim for wage-loss compensation for the periods March 1 through 4, July 6 through 22 and December 9 through 31, 1999. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this decision.

**ISSUE**

The issue is whether appellant has established that she is entitled to wage-loss compensation for total disability during the periods March 1 through 4, July 6 through 22 and December 9 through 31, 1999, due to a November 19, 1997 employment injury.

## **FACTUAL HISTORY**

On November 24, 1997 appellant, then a 37-year-old distribution clerk, filed a traumatic injury claim alleging that on November 19, 1997 she sustained a lumbar sprain and a contusion on the right side of her body when her foot became caught in a rug causing her to fall.<sup>1</sup>

Appellant was treated that day at the Northwestern Emergency Department and x-rays were obtained. She was discharged with the diagnosis of lumbar strain. Appellant was followed by Dr. Rudyard U. Smith, a Board-certified internist, who reiterated the diagnosis of lumbosacral sprain and referred her to physical therapy. By letter dated January 12, 1998, the Office accepted appellant's claim for a lumbar sprain.

On March 25, 1999 appellant filed a claim for continuing compensation on account of disability (Form CA-8) for the period March 1 through 4, 1999. She submitted a March 1, 1999 attending physician's supplemental report from Dr. Smith who indicated that she sustained a lumbar sprain due to the accepted employment injury with an affirmative mark.

By letter dated April 19, 1999, the Office advised appellant that the evidence submitted indicated that she may have sustained a recurrence of disability. The Office advised that her claim could not be processed until a formal decision was made regarding her recurrence claim. The Office informed appellant about the type of factual and medical evidence she needed to submit to establish a recurrence claim.

On August 11, 1999 appellant filed CA-8 forms requesting compensation for April 21, 1999 and the period July 6 through 22, 1999. She submitted Dr. Smith's July 21, 1999 attending physician's supplemental report reiterating that she sustained a lumbar sprain. Utilizing checkmarks, Dr. Smith indicated both "yes" and "no" to the question whether appellant's condition was caused by the November 19, 1997 employment injury.

By letter dated October 8, 1999, the Office advised appellant to submit additional factual and medical evidence to substantiate her claim of disability from July 6 to 22, 1999.

The Office received Dr. Smith's undated medical certificate, which indicated that appellant was examined on October 11, 1999 for back pain and was disabled from work from October 6 through 11, 1999 and that she could return to work with restrictions from October 12 through December 12, 1999. The Office also received appellant's October 18, 1999 acceptance of the employing establishment's limited-duty work offer, which became effective October 12, 1999.

The employing establishment submitted appellant's requests for leave, an April 21, 1999 electromyogram (EMG) report from Dr. Young C. Jough, a Board-certified physiatrist, noting normal nerve conduction velocity (NCV) studies and muscle test results and no electromyographical evidence of radiculopathy or neuropathy. The employing establishment

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<sup>1</sup> Appellant stopped work on the date of injury and to full-duty work on February 2, 1998 and two days later she was placed on limited duty. She sustained a recurrence of disability from April 6 to 22 and June 8 to July 7, 1998, which was accepted by the Office. Thereafter, appellant returned to limited-duty work intermittently.

also submitted an undated narrative report from Dr. Smith providing a history of appellant's November 19, 1997 employment injury and medical treatment.<sup>2</sup> He diagnosed a lumbosacral sprain and noted that the injury caused a low back sprain and a bruised muscle. An August 19, 1998 magnetic resonance imaging (MRI) scan showed a bulging disc pressing against the nerve which caused internal derangement of the low back muscles. He stated that chronic symptoms were possible and that appellant was totally disabled from July 6 through 22, 1999.

On December 14, 1999 appellant filed a claim for compensation (Form CA-7) for the period December 9 through 17, 1999. She submitted a November 30, 1999 report from Dr. Harvey L. Echols, a family practitioner, who noted that she sustained a back injury and he treated her beginning in April 1999. He opined that appellant had a lumbosacral disc bulge with impingement of the thecal sac at L5-S1 caused by repetitive bending and lifting excessive weight. Dr. Echols recommended that appellant stop work and allow her back to rest. He also recommended that she seek services from a neurosurgeon to surgically correct her lumbosacral disc bulge. He noted that appellant had unsuccessfully undergone extensive physical therapy. Dr. Echols concluded that appellant was totally disabled pending the outcome of a neurological referral. If a neurosurgeon determined that surgery was not appropriate, Dr. Echols recommended that she be found permanently and totally disabled. His treatment notes dated April 27 and October 19, 1999 relate to appellant's back pain and medical treatment.

Appellant also submitted an August 19, 1998 MRI scan report from Dr. Kenneth L. Pierce, a Board-certified radiologist, revealing a mild disc bulge at L5-S1 with mild mass effect upon the thecal sac.

In a January 3, 2000 letter, the Office advised appellant that her claim had been accepted for only a lumbosacral sprain and if her physician believed that she sustained additional conditions causally related to her November 19, 1997 employment injury, he must provide objective findings of causal relation.

On December 22, 1999 appellant filed a Form CA-7 for the period December 17 through 31, 1999. She submitted Dr. Echols' December 21, 1999 attending physician's statement in which he diagnosed a disc herniation and indicated that her condition was caused by the November 19, 1997 employment injury with an affirmative mark and that she was totally disabled.

By letters dated January 3 and 27, 2000, the Office informed appellant that Dr. Echols' November 30, 1999 report indicated a possible new claim as he diagnosed lumbosacral disc bulge with impingement of the thecal sac at L5-S1 due to factors of her employment. It recommended that she file an occupational disease claim and submit medical evidence to substantiate her claim that she was disabled from December 17 through 31, 1999.

The employing establishment submitted Dr. Echols' February 4, 2000 report reiterating his November 30, 1999 findings.

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<sup>2</sup> Although Dr. Smith described the November 19, 1997 employment injury, it appears that he inadvertently stated that the date of injury was November 25, 1997 rather than November 19, 1997.

By decision dated April 7, 2000, the Office denied appellant's claim for compensation for the period March 1 through 4, July 6 through 22 and December 9 through 31, 1999. The Office found that appellant failed to submit rationalized medical evidence to substantiate that she was totally disabled for work during the claimed periods due to the November 19, 1997 employment injury.

In an April 13, 2000 letter, appellant requested an oral hearing before an Office hearing representative.<sup>3</sup>

By decision dated December 14, 2000, an Office hearing representative affirmed the April 7, 2000 decision.

In a March 20, 2000 letter, appellant requested reconsideration and submitted a December 7, 2000 letter from Dr. Echols who noted his disagreement with the Office's denial of her claim. Dr. Echols stated that the accepted lumber strain was diagnosed without the benefit of an x-ray and that appellant's disc herniation of the lumbar spine was not a separate diagnosis but the progression of the diagnostic process and should be covered under workers' compensation. He provided an example of a preliminary diagnosis and a subsequent diagnosis based on further medical evaluation. Dr. Echols opined that appellant was permanently disabled due to her work injury. He noted that she had a life long disability as her disc herniation was centrally located in the front of the spine and was not amenable to surgery.

In a March 18, 2001 letter, Dr. Echols stated that appellant experienced back pain due to a 1984 work injury and that her physician at that time found that she was permanently disabled. Her pain caused her to miss work during the claimed periods. Regarding whether appellant was disabled from December 9, 2000 through the date of his letter, Dr. Echols opined that appellant's November 1997 employment injury aggravated exacerbated the 1984 employment injury. He stated that the November 1997 employment injury, diagnosed as a lumbar strain rather than a herniated disc, was the same injury for which he had been treating appellant for the past two years.

By decision dated April 27, 2001, the Office denied modification of the December 14, 2000 decision.

Appellant requested reconsideration in a May 7, 2001 letter and submitted a May 2, 2001 report from Dr. Echols who reiterated his March 18, 2001 findings.

In a May 22, 2001 decision, the Office denied modification of the April 27, 2001 decision.

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<sup>3</sup> On March 24, 2000 appellant filed a claim alleging that she sustained a recurrence of disability on December 6, 1999. In an August 4, 2000 letter, the Office informed appellant that her claim would not be addressed because claims for compensation for the same period had already been denied. On November 2, 2000 appellant filed a claim for compensation (Form CA-7) for the period December 31, 1999 through November 2, 2000 and medical evidence in support of her claim. By decision dated November 16, 2000, the Office denied appellant's claim.

On July 2, 2001 appellant requested reconsideration and submitted a June 29, 2001 report from Dr. Echols describing the difference between a lumbosacral disc bulge and lumbosacral disc herniation and reiterating that she was permanently disabled due to her November 19, 1997 employment injury. She also submitted a duplicate copy of Dr. Echols' December 7, 2000 letter.

On September 28, 2001 the Office denied modification of the May 22, 2001 decision.

Appellant requested reconsideration by letter dated October 18, 2001. Her request was accompanied by an October 15, 2001 report from Dr. Echols who provided a history of appellant's 1984 and 1987 back injuries and medical treatment. He stated that appellant had a lumbosacral back strain which progressed to a lumbosacral disc bulge based on an MRI scan. Dr. Echols reiterated his opinion that appellant was permanently disabled due to her work-related injury.

By decision dated March 11, 2002, the Office denied modification of the September 28, 2001 decision.

Appellant requested reconsideration and submitted an April 2, 2002 report providing MRI scan findings related to appellant's lumbosacral spine from Dr. Reddy Illuri, a Board-certified internist. He listed focal central bulging disc at L5-S1 without mass impression on the thecal sac. The Office also received a March 26, 2002 report from Dr. James V. Schiappa, an orthopedic surgeon, who provided a history of the November 19, 1997 employment injury and his findings on physical examination. He stated that it was unknown as to the length of appellant's disability. An April 11, 2002 report provided Dr. Schiappa's findings on physical examination and a diagnosis of lumbar disc disorder. He stated that appellant was unable to work and that she was being discharged from his care and referred to a pain clinic. A May 4, 2002 report from Dr. Vipin K. Gupta, a Board-certified neurologist, included NCV/EMG studies of appellant's lower extremities and lumbosacral paraspinal muscles. He found evidence of active mild chronic bilateral radiculopathy greater on the right than on the left at L5-S1 and no evidence of neuropathy. In a May 6, 2002 report, Dr. Ranjit S. Wahi, an anesthesiologist, provided a history of appellant's November 19, 1997 employment injury and his findings on physical examination. He opined that her accepted lumbosacral sprain condition should also include lumbosacral disc bulge based on her symptoms which were consistent with her medical history. Physical examination revealed a bulging disc which likely started from appellant's June 1984 injury. He stated that gradually over a period time and working, appellant's disc began to bulge and deteriorate from the June 1984 injury until her November 19, 1997 employment injury, which exacerbated into her present condition. Dr. Wahi further stated that trauma, such as a fall or impact, caused the bulging disc. He stated that the bulging disc resulted from appellant's November 19, 1997 employment injury. Dr. Wahi noted that the causal relationship between appellant's accepted condition and the bulging disc was demonstrated by her symptoms throughout her medical history. He noted that appellant had been off from work since December 9, 1999 and that her diagnosis should be changed to reflect a lumbosacral disc bulge.

By decision dated November 12, 2002, the Office denied modification of the March 11, 2002 decision.

On December 12, 2002 appellant requested reconsideration. She submitted a December 2, 2002 report from Dr. Wahi who reviewed medical records from Drs. Smith and Echols. He reiterated that appellant's November 19, 1997 employment injury aggravated and exacerbated her preexisting condition due to an injury sustained in 1984, which produced a bulging disc. Dr. Wahi agreed that appellant was totally disabled during the periods March 1 through 4, July 6 through 22 and December 9 through 31, 1999, due to the November 1997 employment injury and reiterated that her accepted condition should include a lumbosacral disc bulge.

Dr. Wahi submitted forms indicating that appellant received physical therapy for her lower back from October 25, 2002 until February 7, 2003. He also submitted his treatment notes from December 8, 2002 through December 29, 2003.

In a March 21, 2003 decision, the Office denied appellant's request for reconsideration finding the medical evidence of record was insufficient to warrant further merit review of the case.

On March 24, 2003 appellant requested reconsideration. She submitted a March 24, 2003 letter from Dr. Wahi who stated that her medical records established that she experienced several back conditions which caused her to be intermittently disabled for work at various periods of time. He reiterated that based on the objective data derived from his physical examinations and tests results and those of Drs. Smith and Echols, appellant was disabled during the claimed periods due to the November 19, 1997 employment injury.

In a June 28, 2004 decision, the Office denied modification of its prior decisions.

### **LEGAL PRECEDENT**

As used in the Federal Employees' Compensation Act,<sup>4</sup> the term "disability" means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>5</sup> Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn wages.<sup>6</sup> An employee who has a physical impairment causally related to her federal employment, but who nonetheless has the capacity to earn the wages she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.<sup>7</sup> When, however, the medical evidence

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(f).

<sup>6</sup> See *Fred Foster*, 1 ECAB 21 at 24-25 (1947) (finding that the Act provides for the payment of compensation in disability cases upon the basis of the impairment in the employee's capacity to earn wages and not upon physical impairment as such).

<sup>7</sup> See *Gary L. Loser*, 38 ECAB 673 (1987) (although the evidence indicated that appellant had sustained a permanent impairment of his legs because of work-related thrombophlebitis, it did not demonstrate that his condition prevented him from returning to his work as a chemist or caused any incapacity to earn the wages he was receiving at the time of injury).

establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.

To meet this burden, a claimant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor(s). The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>8</sup>

### ANALYSIS

In this case, the Office accepted that appellant sustained a lumbar sprain on November 19, 1997. Appellant, however, has failed to establish that her accepted condition resulted in her disability for work during the specific claimed periods of March 1 through 4, July 6 through 22 and December 9 through 31, 1999.

In a March 1, 1999 attending physician's report, Dr. Smith indicated by check mark that appellant's lumbar sprain was caused by her November 19, 1997 employment injury. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history is of diminished probative value.<sup>9</sup> Dr. Smith did not explain how or why appellant became disabled for work from March 1 to 4, 1999 nor how any such disability was caused by the accepted employment injury.

Dr. Smith's July 21, 1999 attending physician's supplemental report, which found that appellant's lumbar sprain was caused by her November 19, 1997 employment injury, is equivocal since he placed a check mark in the box labeled "yes" and "no" as to whether appellant's condition was caused by the accepted employment injury. He did not provide any discussion of appellant's disability for work as of July 6 to 22, 1999 or relate her disability to the accepted lumbar strain. Dr. Smith's narrative report of the same date found that appellant sustained a lumbar sprain due to her November 19, 1997 employment injury and that an August 19, 1998 MRI scan revealed a bulging disc. He opined that appellant was totally disabled from July 6 through 22, 1999, but failed to address how her disability was causally related to the accepted lumbar strain and not the diagnosed bulging disc, a condition not accepted by the Office as related to the 1997 employment injury.

The EMG report revealed normal NCV studies and muscle test results and no evidence of radiculopathy or neuropathy. An MRI scan report indicated that appellant had a mild disc bulge at L5-S1 with mild mass effect upon the thecal sac. Dr. Illuri found that appellant had a bulging

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<sup>8</sup> *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

<sup>9</sup> *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

disc at L5-S1, but without mass impression on the thecal sac based on an MRI scan. The NCV/EMG studies found active mild chronic bilateral radiculopathy greater on the right than the left at L5-S1. None of these diagnostic studies or accompanying medical reports addressed the relevant issue of whether appellant was disabled during the claimed periods due to her accepted lumbar strain.

Dr. Echols found that appellant had a lumbosacral disc bulge with impingement of the thecal sac at L5-S1 that he initially attributed to occupational factors of her employment such as lifting and bending. His initial report did not discuss the 1997 injury accepted in this case. He subsequently related her disc bulge to the 1997 injury with a check mark but failed to explain how or why appellant's disability was causally related to her November 19, 1997 employment injury. In subsequent reports, Dr. Echols stated that the 1997 injury was diagnosed as lumbar strain without the benefits of x-ray and attributed the disc herniation as a progression of the accepted injury. He did not discuss appellant's treatment at the Northwestern University Emergency Room or x-rays obtained of her low back on November 19, 1997. He did not address her treatment by Dr. Smith to explain his belief that the injury was diagnosed as a sprain. As the reports of Dr. Echols do not appear to include a full or accurate history, his opinion relating appellant's claimed disability to the 1997 injury is of diminished probative value.

In a March 26, 2002 report, Dr. Schiappa reviewed a history of the 1997 injury and stated that the length of appellant's disability was unknown. In an April 11, 2002 report, he found that appellant was totally disabled and referred her to a pain clinic. He did not provide any opinion on whether appellant's disability for the claimed periods was due to her November 19, 1997 employment injury. For this reason, his reports are of diminished probative value.

Dr. Wahi stated that appellant's lumbosacral bulging disc was aggravated by her November 19, 1997 employment injury and that she was disabled during the claimed periods of disability. He did not explain how appellant's disability during the periods in 1999 was causally related to her accepted employment injury. His forms reveal that appellant received physical therapy from October 25, 2002 until February 7, 2003 but do not discuss whether appellant was disabled during the claimed period due to the November 19, 1997 employment injury. These reports fail to provide a full or accurate history of injury and are of diminished probative value.

### CONCLUSION

The Board finds that appellant has failed to establish that she is entitled to wage-loss compensation for total disability during the periods March 1 through 4, July 6 through 22 and December 9 through 31, 1999. She has not provided rationalized medical opinion evidence to support that her disability for work was causally related to her November 19, 1997 employment injury.<sup>10</sup>

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<sup>10</sup> On appeal appellant contends that the Office did not timely address her March 24, 2003 request for reconsideration as it did not issue a decision until June 28, 2004, 15 months after her request for reconsideration. The Board notes, however, that the Office granted appellant a merit review of her claim and granted her full appeal rights in its June 28, 2004 decision. Federal (FECA) Procedure Manual, Part -- 2 Claims, *Reconsideration*, Chapter 2.1602.9 (May 1996); *Brian R. Leonard*, 43 ECAB 255 (1991).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 28, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 27, 2005  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member