

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

CHARLENE MILLER, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Hillsboro, OH, Employer**

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**Docket No. 05-543
Issued: June 1, 2005**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On January 3, 2005 appellant filed a timely appeal of a December 6, 2004 decision of the Office of Workers' Compensation Programs, denying her claim for a recurrence of disability as of August 31, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established a recurrence of disability commencing August 31, 2004, causally related to her October 10, 2000 employment injury.

FACTUAL HISTORY

On November 10, 2000 appellant, then a 53-year-old rural carrier, filed a traumatic injury claim for continuation of pay/compensation (Form CA-1) alleging that on October 10, 2000 she sustained a back injury while attempting to stop a cart moving downhill. The Office accepted the claim for acute lumbosacral sprain and a herniated L4-5 disc. Appellant was off work until a

return to regular duty on December 3, 2002. The Office developed the medical record with respect to a schedule award.¹

On September 2, 2004 appellant filed a notice of recurrence of disability commencing August 31, 2004. She submitted an August 31, 2004 form report from Dr. Michael Kramer, an orthopedic surgeon, indicating that appellant was disabled from August 31 to October 4, 2004. Accompanying the report was an August 31, 2004 treatment note from Dr. Kramer, stating that appellant had persistent and recurrent problems with the left leg, worse than in the past. He provided results on examination, noting weakness in the left ankle, left leg pain and foot numbness. Dr. Kramer stated that he was concerned about a recurrent disc herniation. On August 31, 2004 Dr. Kramer also completed a form report dated November 1, 2004, indicating that appellant was totally disabled from November 1 to 22, 2004. The record also contains an October 7, 2004 report from Dr. John Wolf, a Board-certified orthopedic surgeon, selected as an impartial medical specialist with respect to the schedule award issue. He provided a history, results on examination and an opinion that appellant had not reached maximum medical improvement.

By decision dated December 6, 2004, the Office denied appellant's claim for a recurrence of disability.

LEGAL PRECEDENT

A person 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 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.²

ANALYSIS

Appellant did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on August 31, 2004 causally related to her employment injury. Dr. Kramer provided a brief treatment note indicating that she had left leg symptoms on August 31, 2004, including pain, weakness and numbness.³ He did not, however, provide an opinion that appellant's condition was causally related to the employment injury, with medical reasons for his opinion. Moreover, he did not provide a reasoned opinion on disability for work as of August 31, 2004.

¹ The record does not contain a final decision with respect to a schedule award.

² *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

³ In the December 6, 2004 decision, the Office stated that the medical evidence was from Dr. Paul Gangl, an orthopedic surgeon. The August 31, 2004 reports are from Dr. Kramer.

The record does not contain a medical report with a reasoned medical opinion, based on a complete and accurate background, with respect to an employment-related disability commencing August 31, 2004. It is appellant's burden of proof to submit evidence sufficient to establish her claim and she did not meet her burden of proof in this case.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a recurrence of disability commencing August 31, 2004.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 6, 2004 is affirmed.

Issued: June 1, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member