

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

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S.O., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,  
Chelsea, MA, Employer  
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**Docket No. 08-738  
Issued: February 13, 2009**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On January 15, 2008 appellant filed a timely appeal from the January 25, November 2 and December 10, 2007 decisions of the Office of Workers' Compensation Programs denying her claims for recurrences of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant established that she sustained recurrences of disability commencing on August 1, 2006 and January 9, 2007 causally related to an accepted lumbosacral strain. On appeal, appellant asserted that the Office did not fully consider her physician's reports.

## **FACTUAL HISTORY**

This is appellant's second appeal before the Board. By decision dated August 27, 1996,<sup>1</sup> the Board affirmed a May 9, 1994 decision of the Office finding a \$2,458.29 overpayment of compensation for the period June 12, 1989 to December 14, 1991. The law and the facts of the case as set forth in the Board's prior decision are hereby incorporated by reference. The relevant facts are set forth below.

On January 13, 1992 the Office determined that appellant's actual earnings as a modified clerk working four hours a day represented her wage-earning capacity. Beginning in 2005, appellant worked sedentary duty for four hours a day, removing return receipt cards from revenue envelopes.

Dr. Shapur A. Ameri, an attending Board-certified neurosurgeon, submitted periodic reports from 1993 through January 2006 diagnosing degenerative lumbar disc disease with sciatica. He limited appellant to working sedentary duty four hours a day with consecutive days off. Beginning in July 2005, appellant was also followed by Dr. Joe Ordia, an attending Board-certified neurosurgeon specializing in pain management. Dr. Ordia submitted reports through August 2005 diagnosing lumbar degenerative disc disease. He noted that appellant aggravated her back in February 2005 when she slipped and fell at home while getting out of bed.<sup>2</sup>

On October 12, 2006 appellant filed a recurrence of disability claim (Form CA-2a) commencing in August 2006. She stopped work on September 5, 2006. Appellant attributed her condition to prolonged sitting at work while removing return receipt cards from trays of revenue envelopes. In a November 22, 2006 letter, the Office advised her of the evidence needed to establish her claim.

Appellant submitted reports dated from August 2005 to December 2006 by Dr. Julien Vaisman, a Board-certified anesthesiologist, who noted a 1987 occupational back injury. Dr. Vaisman diagnosed sacroiliitis and cervical strain with right trapezius spasm. He administered a sacroiliac steroid injection on December 5, 2006.

In reports from January to March 2007, Dr. Ameri diagnosed a ruptured lumbar disc and spondylosis. He opined that appellant had reached maximum medical improvement. Dr. Ameri limited appellant to working four hours a day with no prolonged sitting. In a March 31, 2007 form report, he checked a box "yes" indicating his support for a causal relationship between appellant's duties as a mail carrier and her back condition. Dr. Ameri found appellant partially disabled from November 1987 onward but noted no periods of total disability.

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<sup>1</sup> Docket No. 94-1539 (issued August 27, 1996). The appeal filed under Docket No. 94-1539 pertained to File No. xxxxxx693, the same claim file presently before the Board, accepted for a November 17, 1987 lumbosacral sprain. The record now before the Board also contains evidence from File No. xxxxxx421, accepted for an April 29, 1987 lumbar sprain and temporary aggravation of degenerative disc disease.

<sup>2</sup> In a September 15, 2005 report, Dr. George B. McManama, Jr., a Board-certified orthopedic surgeon consulting to the employing establishment, found appellant able to work eight hours a day limited duty.

By decision dated January 25, 2007, the Office denied the recurrence of disability claim on the grounds that causal relationship was not established. It found that appellant's physicians attributed her disability to nonaccepted conditions.

On July 21, 2007 appellant filed a recurrence of disability claim (Form CA-2a) commencing July 9, 2007 related to the accepted November 1987 lumbosacral sprain. She asserted that she sustained a new condition of the sacroiliac joint in September 2006 while on light duty. The employing establishment stated that, beginning on August 18, 2005, appellant performed sedentary duty in the revenue department for four hours a day, removing receipt cards from envelopes. Appellant was instructed to remain in the revenue area and not in other sectors of the workroom floor.

On July 30, 2007, at appellant's timely request, the Office held an oral hearing regarding the denial of her recurrence claim. At the hearing, appellant asserted that, beginning in 2003, prolonged sitting at work aggravated sacroiliac joint pain.

In an August 13, 2007 letter, the Office advised appellant of the evidence needed to establish her July 21, 2007 claim for recurrence of disability. If appellant established the claimed recurrence of disability, the Office would then decide if the 1992 wage-earning capacity determination required modification.

In reports from January 23 to July 26, 2007, Dr. Ordia related appellant's account of stopping work due to pain from lumbar steroid injections. He planned additional injections and prescribed physical therapy.

Dr. Vaisman submitted reports from February 21 to August 22, 2007 diagnosing sacroiliitis and severe degenerative disc disease from L5 to S2.<sup>3</sup> In a July 9, 2007 report, he checked a box "yes" supporting a causal relationship between appellant's back condition and a 1987 occupational incident. Dr. Vaisman administered lumbar steroid injections under monitored anesthesia care on July 9, August 28 and October 16, 2007. Appellant was instructed not to drive or operate heavy machinery for 24 hours after the procedures. Dr. Vaisman held appellant off work indefinitely beginning August 22, 2007.

The Office obtained a second opinion from Dr. Joel A. Saperstein, a Board-certified orthopedic surgeon. In an October 26, 2007 report, Dr. Saperstein diagnosed chronic degenerative lumbar arthritis, depression and chronic pain syndrome with significant exaggeration and behavioral abnormality. He stated that appellant had no residual disability from the accepted injuries. Dr. Saperstein permanently limited appellant to working four hours a day light duty but noted that these limitations were due to chronic pain syndrome.

By decision dated and finalized November 2, 2007, an Office hearing representative affirmed the January 25, 2007 decision, finding that appellant had not sustained a recurrence of disability commencing September 5, 2006. The hearing representative found that appellant and her physicians attributed the claimed period of disability to sacroiliitis, a nonaccepted condition.

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<sup>3</sup> A June 6, 2007 lumbar MRI scan showed a T11 compression fracture with wedging, a minimal disc bulge at L3-4 and degenerative disc disease from L4-S1.

Also, appellant alleged new work factors, thus breaking the chain of causation from the accepted 1987 lumbar injury. The hearing representative noted that, although appellant's light-duty position changed in 2003, her new duties were within prescribed work restrictions.

Appellant submitted an October 30, 2007 report from Dr. Ordia, noting continued sacroiliitis and recommending an additional epidural steroid injection. She participated in physical therapy through November 15, 2007.

By decision dated December 10, 2007, the Office denied appellant's claim for a recurrence of disability commencing July 9, 2007 on the grounds that causal relationship was not established. It found that the medical evidence did not support a period of disability due to the accepted lumbar injuries. The Office noted that, as appellant had not established the claimed recurrence of disability, the January 13, 1992 wage-earning capacity determination did not require modification.

### **LEGAL PRECEDENT**

The Office's implementing regulations define a recurrence of disability as "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."<sup>4</sup> When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.<sup>5</sup> An award of compensation may not be based on surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.<sup>6</sup>

### **ANALYSIS**

The Office accepted that in 1987 appellant sustained two lumbosacral sprains and a temporary aggravation of degenerative disc disease. Appellant remained on light duty following the injuries, working a series of sedentary clerical positions within restrictions provided by her physicians. On October 12, 2006 and July 21, 2007 she filed claims for recurrences of disability commencing August 1, 2006 and July 9, 2007 respectively. Appellant attributed the claimed recurrences to a new sacroiliac condition caused by prolonged sitting at work beginning in 2003, in particular while removing return revenue receipts beginning on August 18, 2005. To meet her burden of proof, she must demonstrate either a spontaneous change in the accepted lumbar

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<sup>4</sup> 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). *See also Philip L. Barnes*, 55 ECAB 426 (2004).

<sup>5</sup> *Carl C. Graci*, 50 ECAB 557 (1999); *Mary G. Allen*, 50 ECAB 103 (1998); *see also Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>6</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

conditions or in her assigned light duties such that she could no longer perform her job requirements.<sup>7</sup> Appellant thus has the burden of providing sufficient evidence, including rationalized medical evidence, to establish the causal relationship asserted.<sup>8</sup>

The Board finds, however, that intervening incidents negated the causal relationship between the accepted lumbar conditions and appellant's condition as of January 7, 2006. Appellant attributed her back pain to prolonged sitting at work commencing 2003. This exposure to new work factors after appellant returned to light duty did not represent a spontaneous change in the accepted lumbar conditions.<sup>9</sup> The Board notes that Dr. Ordia, an attending Board-certified neurosurgeon, stated that appellant aggravated her back in February 2005 when she slipped and fell at home. The nature of this injury was not fully described and appellant has not claimed that it was as a consequence of her accepted back condition.

Additionally, appellant did not submit medical evidence establishing that her assigned duties had changed such that she was not medically able to perform them. Her light-duty assignments commencing in 1992 were light or sedentary clerical positions, limited to four hours a day. Dr. Ameri, a Board-certified neurosurgeon, submitted numerous reports from 1993 through January 2006 advising that appellant was able to perform light or sedentary duty for four hours a day. While he prohibited prolonged sitting as of January 2007, he did not attribute this limitation to her accepted lumbar conditions. Rather, Dr. Ameri diagnosed appellant with degenerative lumbar disc disease and sciatica, which the Office has not accepted as work related.

Moreover, appellant did not submit rationalized medical evidence from her attending physicians explaining how and why the accepted 1987 lumbosacral sprains and temporary aggravation of degenerative disc disease would cause disability as of August 1, 2006 or January 9, 2007. Dr. Vaisman, an attending Board-certified anesthesiologist, held appellant off work as of August 22, 2007. He attributed appellant's back condition to sacroiliitis and degenerative disc disease. As noted, sacroiliitis is not an accepted condition and Dr. Vaisman did not address how the accepted temporary aggravation of degenerative disc disease would cause disability commencing in 2007. Dr. Vaisman checked a box "yes" on a July 9, 2007 form report indicating his support for causal relationship. Similarly, Dr. Ameri checked a box "yes" in a March 31, 2007 form report. However, neither physician provided any medical rationale explaining how and why the accepted lumbar sprains and temporary aggravation of degenerative disc disease would cause total disability for work on and after August 1, 2006. Their opinions are of insufficient probative value to establish the claimed causal relationship.<sup>10</sup> The Board has held that merely checking a box on a form report is of diminished probative value in establishing causal relationship.<sup>11</sup>

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<sup>7</sup> *Carl C. Graci*, *supra* note 5.

<sup>8</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>9</sup> *Bryant F. Blackmon*, 56 ECAB 752 (2005).

<sup>10</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>11</sup> *Calvin E. King*, 51 ECAB 394 (2000).

Appellant did not establish a change in the nature and extent of her accepted conditions or in her light-duty position such that she could no longer perform her assigned duties. For these reasons, the Office's denial of the claimed recurrences of disability was proper under the law and the facts of the case.

**CONCLUSION**

The Board finds that appellant has not established that she sustained recurrences of disability commencing on August 1, 2006 and January 9, 2007.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated December 10, November 2 and January 25, 2007 are affirmed.

Issued: February 13, 2009  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board