

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ISABEL RODRIGUEZ and U.S. POSTAL SERVICE,
AIRPORT MAIL FACILITY, San Francisco, CA

*Docket No. 98-266; Submitted on the Record;
Issued January 3, 2000*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained disability due to her February 20, 1986 and April 20, 1987 employment injuries after November 17, 1995.

On February 24, 1986 appellant, then a 39-year-old mailhandler, filed a notice of traumatic injury, alleging that she injured her back on February 20, 1986 in the course of her federal employment. On October 1, 1986 the Office of Workers' Compensation Programs accepted the claim for a low back strain and awarded compensation for total temporary disability. Following her return to limited duty, appellant filed a notice of recurrence of disability on May 14, 1987 alleging that she suffered a recurrence on April 20, 1987. The Office, however, determined that appellant's claim constituted one for a new injury and directed her to file a notice of traumatic injury. On June 16, 1987 appellant filed a notice of traumatic injury alleging that she injured her back on April 20, 1987 in the course of her federal employment. The Office subsequently combined appellant's claims due to the similarity of the injuries on February 20, 1986 and April 20, 1987. On July 31, 1987 the Office accepted that appellant sustained a lumbosacral strain on April 20, 1987 and compensation for total temporary disability was awarded.

Appellant was receiving compensation for total temporary disability when she accepted a limited-duty job as a modified mailhandler on March 15, 1995. The limited-duty position required that appellant work 4 hours per day, that she alternate sitting and standing every hour, that she limit walking and standing to 2 hours per day, that she limit lifting to 20 pounds, that she limit kneeling and that she perform no bending, squatting, climbing, twisting, grasping, fine manipulation or working above the shoulder. Appellant began working in this position on April 1, 1995. On April 17, 1995 the Office adjusted appellant's compensation to reflect the wages she earned in the limited-duty position.

On disability slips dated November 17 and December 5, 1995 Dr. John F. Pletz, appellant's treating physician and a specialist in emergency and internal medicine, opined that appellant was totally disabled. Following appellant's stoppage of work and her claims for continuing compensation, the Office developed a claim for a recurrence of disability.

On January 5, 1996 Dr. Pletz diagnosed lumbar degenerative disc disease, multilevel, with discogenic syndrome. He stated that appellant was increasingly disabled due to pain and that his physical examination revealed a slight list. On a disability slip dated January 5, 1996, Dr. Pletz indicated that appellant was unable to work until January 20, 1996. On January 19, 1996 he repeated his diagnosis of lumbar degenerative disc disease, multilevel, with discogenic syndrome and indicated that appellant's total disability would continue through February 20, 1996. On February 1, 1996 Dr. Pletz diagnosed painful degenerative disc disease, L4-5. He noted bilateral leg pain and low back pain. In a disability slip dated February 1, 1996, he indicated that appellant was unable to work until February 20, 1996. On February 28, 1996 Dr. Pletz repeated his previous diagnoses, finding that appellant remained totally disabled. On March 5, 1996 Dr. Pletz diagnosed painful degenerative disc disease, L4-5. He stated that magnetic resonance imaging (MRI) of the lumbosacral spine revealed a mild annular bulge of the L4-5 intervertebral disc, a small central protrusion of the L5, S1 intervertebral disc abutting the anterior aspect of the thecal sac. Dr. Pletz checked "yes" to indicate that the condition was caused or aggravated by an employment activity.

By decision dated April 18, 1996, the Office found that the evidence in file was not sufficient to establish that appellant had a recurrence of disability, necessitating total disability compensation benefits.

On April 29, 1996 Dr. Pletz diagnosed multilevel, painful degenerative disc disease. He indicated that there were no changes from an earlier MRI from 1992. He stated that computerized axial tomography CAT revealed no significant foraminal stenosis.

On April 29, 1996 Dr. Russell Fritz, a Board-certified radiologist, interpreted an x-ray of the lumbar spine and found a mild loss of disc height at L4-5 and L5-S1 suggesting disc degeneration. Dr. Fritz also interpreted a CAT scan of appellant's lumbar spine and found mild annular bulging at L4-5 and L5-S1 and mild right foraminal stenosis at L5-S1.

On May 6, 1996 Dr. Alden Soohoo, a chiropractor, stated that the exacerbation of appellant's symptoms in November 1995 was a recurrence of her original condition of multiple levels of disc degeneration, as there were no other precipitating factors except the long-standing physical stress of her work environment. He opined that appellant was totally disabled due to this condition.

On June 5, 1996 Dr. Pletz diagnosed painful lumbar disc protrusions at L5 and L4 with annular bulging and mild right foraminal stenosis at L5 with facet arthropathy. He also separately diagnosed lumbar facet arthropathy. Dr. Pletz indicated that appellant reported an acute exacerbation of lower back and leg pain beginning October 30, 1995. He stated that appellant had a history of low back pain and lower extremity pain, geographically unchanged for at least three years. Dr. Pletz recorded appellant's complaints of low back pain, left buttock pain, left bilateral posterior thigh and calf pain with some left lateral thigh numbness, and some

central neck and lower thoracic pain. He stated that appellant could sit, stand, or walk for about 30 minutes at a time. Dr. Pletz also noted an inability to sit and stated that she intermittently experiences truncal shifting with severe muscle spasm. He noted that his examination on January 5, 1996 revealed a slight truncal list, a protective involuntary body mechanism responding to an injured disc. Dr. Pletz stated that appellant's April 29, 1996 CAT scan revealed no changes in anatomic findings when compared to the MRI scan of February 14, 1992. He stated that appellant's "subjective complaints, physical findings and lumbar MRI scan from 1992 and multiplanar CAT scan from 1996 demonstrate no significant differences in the patient's anatomic or clinical condition. She is, however, more disabled than prior to her recurrence." Dr. Pletz stated that appellant had objective findings, intermittently, with acute flares on examination. He opined that appellant never recovered from her injury of 1987 and that she had lingering low back and lower extremity pain. Dr. Pletz stated that, other than the cumulative stress from appellant's work, he knew of no other factors producing her recurrence. Finally, he stated that there were no precipitating factors causing the condition by itself.

On June 19, 1996 Dr. Pletz indicated that appellant's only injury was lumbosacral in nature.

On June 20, 1996 appellant requested reconsideration.

By decision dated July 29, 1996, the Office reviewed the merits of the claim and found that the evidence submitted in support of the application was insufficient to warrant modification of the prior decision.

In a report dated June 13, 1996, Dr. Pletz stated that appellant should limit bending, twisting, lifting, standing and sitting. He stated that these limitations stemmed from her employment injury.

On September 17, 1996 Dr. Pletz diagnosed multilevel degenerative disc disease, L5 and L4, with sprain. He stated that his June 5, 1996 diagnosis of lumbar facet arthropathy was the medical equivalent of a lumbar sprain. Dr. Pletz stated that there was no significant change in appellant's condition to suggest a new injury.

On October 16, 1996 Dr. Pletz diagnosed lumbar sprain. He opined that appellant's exacerbation of her usual condition was work related due to the repetitive twisting and some bending involved in casing mail, just as was her initial work injury. Dr. Pletz stated that this was substantiated on physical examination by appellant's objective shift, especially during acute flares. He also noted that there were no changes in appellant's condition shown by MRI and CAT scans.

On November 5, 1996 appellant requested reconsideration.

By decision dated November 26, 1996, the Office reviewed the merits of the case and found that the evidence submitted in support of the application was not sufficient to warrant modification of the prior decision. In an accompanying memorandum, the Office noted that Dr. Pletz did not identify the objective, spontaneous medical worsening in the underlying condition, which resulted from the April 20, 1987 employment injury. It also noted that he

related appellant's injury to repetitive twisting and bending, which would constitute a separate occupational disease claim. The Office also stated that Dr. Pletz did not medically address why appellant's current condition is related to her employment injury and why it was not related to her preexisting degenerative disc disease.

On January 29, 1997 Dr. Pletz stated that appellant had severe low back pain radiating to her left hip and to her anterolateral left thigh. He also noted that appellant had numbness in both feet and difficulty changing positions and walking. Dr. Pletz's physical examination rendered normal results. He stated that appellant remained totally disabled until March 1, 1997.

On March 5, 1997 Dr. Pletz diagnosed lumbar discogenic syndrome with painful lumbar discs on discography at L5 and L4 due to annular tears. He noted constant low back pain and left lower extremity pain in her anterior thigh. Dr. Pletz noted that appellant had trouble sitting and bending, which was worsening. He stated that the original diagnosis of lumbar sprain was not accurate. Dr. Pletz stated that appellant remained unable to work and that she required a left L4 selective nerve root block to decrease her inflammatory response and decrease her pain. He indicated that appellant was totally incapacitated until May 1, 1997.

On March 26, 1997 Dr. Pletz indicated that appellant should remain off work until May 1, 1997.

On April 30, 1997 Dr. Pletz diagnosed lumbar degenerative disc disease and a sprain. He checked "yes" to indicate that appellant's present condition was due to the April 20, 1987 injury and it indicated that appellant was totally disabled for her usual work.

On June 5, 1997 Dr. Pletz indicated that he provided objective findings concerning appellant's condition. He noted that appellant's 1990 electromyography showed an absent right H reflex and a 54 percent reduction in the left peroneal muscle, distal evoked amplitude on the left, with polyphasic potentials on the right in the peroneus longus muscle group. He also stated that in 1990 a decreased range of motion of the lumbar spine was noted by a physical therapist. Dr. Pletz indicated that a 1992 MRI demonstrated a disc protrusion which was proven to be symptomatic by lumbar discography with injection at L5 and L4. Dr. Pletz also noted degenerative changes at L5 and L4. He diagnosed painful lumbar disc protrusions at L5 and L4, with annular bulging and mild right foraminal stenosis at L5 with facet arthropathy. Dr. Pletz indicated that appellant's degenerative disc changes were not the basis of her problem. He stated that appellant had annular tears, which allowed the disc to bulge and were painful. Dr. Pletz opined that loading her spine with her upper body weight, including bending and twisting, aggravate her condition and cause acute episodes, in which appellant's demonstrates a truncal list. He stated that this was a result of appellant's injury. Dr. Pletz concluded that appellant's progression to total disability was a progression of her injury and not a preexisting condition.

On June 23, 1997 appellant requested reconsideration.

By decision dated September 18, 1997, the Office reviewed the merits of the case and found that the evidence failed to warrant modification of the prior decision. The Office indicated that in his June 5, 1997 report, Dr. Pletz failed to provide medical reasoning supported by

objective findings to explain how appellant's current condition/disability was related to her April 20, 1987 accepted injury.

The Board finds that the case is not in posture for decision.

An employee who claims benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim.² When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 show that he 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.³

As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.⁴ However, it is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁵

In the present case, Dr. Pletz, appellant's treating physician and a specialist in emergency and internal medicine, opined on June 5, 1997 that appellant's progression to total disability was a progression of her accepted employment injury rather than any preexisting condition. On April 30, 1997 he checked "yes" to indicate that appellant's present totally disabling condition stemmed from her April 20, 1987 accepted injury. On October 16, 1996 Dr. Pletz opined that appellant's exacerbation of her usual condition, a lumbar sprain, was work related. On September 17, 1996 he denied the existence of a new injury affecting appellant's condition. On June 13, 1996 Dr. Pletz indicated that appellant's limitations stemmed from her employment injury. He stated on June 5, 1996 that appellant was more disabled than prior to her recurrence and that appellant never fully recovered from her injury of 1982. Finally, Dr. Pletz stated that, other than cumulative stress from her work, he knew of no other factors producing her recurrence and that there were no precipitating factors causing the condition by itself.⁶

¹ 5 U.S.C. §§ 8101-8193.

² *Ruthie Evans*, 41 ECAB 416, 423-24 (1990); *Donald R. Vanlehn*, 40 ECAB 1237-38 (1989).

³ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1985).

⁴ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁵ *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1983).

⁶ The record also contains an opinion from Dr. Soohoo, a chiropractor, who opines that appellant's present totally disabling condition stems from her accepted injuries. Dr. Soohoo's opinion, however, fails to constitute competent medical evidence because the record is devoid of evidence of subluxation as demonstrated by x-ray; see *Cheryl L. Veale*, 47 ECAB 607 (1996).

The Board notes that while none of the reports of Dr. Pletz are completely rationalized, they are consistent in indicating that appellant sustained disability due to her February 20, 1986 and April 20, 1987 employment injuries on or after November 17, 1995, and are not contradicted by any substantial medical or factual evidence of record. Therefore, while the reports are not sufficient to meet appellant's burden of proof to establish her claim, they raise an uncontroverted inference between appellant's claimed disability and the accepted employment injuries and are sufficient to require the Office to further develop the medical evidence and the case record.⁷

Accordingly, the case must be remanded to the Office for further evidentiary development regarding the issue of whether appellant sustained disability due to her February 20, 1986 and April 20, 1987 employment injuries on or after November 17, 1995. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decisions of the Office of Workers' Compensation Programs dated September 18, 1997 and November 26, 1996 are set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
January 3, 2000

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ See *Robert A. Redmond*, 40 ECAB 796, 801 (1989).