

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANDREA BAKER and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

*Docket No. 98-2548; Submitted on the Record;
Issued March 29, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability commencing April 14, 1998 and continuing, causally related to her June 3, 1997 employment injury.

The Office of Workers' Compensation Programs accepted that on June 3, 1997 appellant, then a 42-year-old distribution clerk, sustained a lumbosacral strain and a herniated disc at L4 when she twisted at the waist while sitting and felt pain while casing mail. On June 9, 1997 appellant's treating physician opined that she was temporarily unfit for work. She was, however, returned to restricted work as of July 11, 1997. Appellant continued on limited duty through October 27, 1997 and continuing.¹

On April 9, 1998 appellant's treating physician, Dr. John Collis, a Board-certified neurosurgeon, indicated that appellant would be totally disabled from April 14 through April 29, 1998 due to L4 facet blocks she was scheduled to receive on April 14, 1998. Dr. Collis indicated appellant's diagnoses as lumbosacral strain and a small midline L4 disc herniation, and provided as history of injury that appellant twisted while at work, injuring her back.²

A follow-up report from Dr. Collis dated April 29, 1998 did not discuss appellant's disability status. He noted as a history of injury that on June 3, 1997 appellant sustained a twisting injury to her back while sitting in a special chair and that she had been symptomatic with back and leg symptoms since that time. Dr. Collis noted that April 28, 1998 was appellant's first visit following the facet block, that she reported bilateral sciatica, left greater than right, and worse pain in the lumbar area. Dr. Collis diagnosed lumbosacral strain and

¹ There is no evidence of record that she was ever able to return to regular duty or became completely asymptomatic.

² The surgeon who performed the facet block, Dr. Cesar H. Rojas-Villegas, a Board-certified neurosurgeon, also noted on appellant's discharge summary that appellant would be disabled from April 14 to April 28, 1998.

thereafter prescribed physical therapy for six weeks. A July 8, 1997 history and physical was attached.

On May 11, 1998 Dr. Collis completed an attending physician's form report which noted the date of injury as June 3, 1997, indicated appellant's diagnoses as a midline herniated disc at L4 and lumbosacral strain, opined that her present condition was due to the injury for which compensation was claimed, noted that she needed further treatment in the form of more epidural blocks and physical therapy, and opined that she remained disabled due to the work-related injury until May 28, 1998.

On May 12, 1998 Dr. Collis completed another form report which indicated appellant's diagnoses as herniated disc and lumbosacral strain, noted that she was unable to return to work and needed further treatment in the form of more blocks and opined that she remained disabled due to the work-related injury until May 28, 1998, noted as an estimated date.

By decision dated May 28, 1998, the Office denied appellant's recurrence claim finding that the evidence of record did not support that the claimed disability beginning April 14, 1998 and continuing through April 29, 1998 was due to the accepted work-related condition. The Office found that Dr. Collis' reports did not explain how appellant's condition had worsened to the point that she was unable to work.

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

The Office in this case failed to properly develop the evidence of record. The first question which must be addressed by the Office is whether the bilateral facet blocks appellant underwent on April 14, 1998 were causally related to her accepted June 3, 1997 employment-related conditions of a herniated L4 disc and lumbosacral strain. Only after a formal determination has been made on that issue, will the case be in posture to determine whether the disability resulting from undergoing the facet blocks is compensable.

Therefore, the case is being remanded to the Office for further development and a formal determination as to whether the surgical procedure, bilateral L4 facet blocks, undergone by appellant on April 14, 1998 was causally related to her June 3, 1997 L4 herniated disc and lumbosacral strain, to be followed by a *de novo* decision on the issue of whether disability resulting from this surgical procedure, if it is found to be causally related to appellant's accepted employment injuries, is compensable, and for what period.³

³ The Board has held that an employee returning to light duty, or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability by the weight of reliable, probative and substantial evidence and to show that he cannot perform the light duty. *Terry R. Hedman*, 38 ECAB 222 (1986). As part of his or her burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements. In this case there is no evidence that appellant's light-duty position had changed, such that she could no longer physically perform the job. However, if the medical evidence of record demonstrates that appellant's April 14, 1998 surgical procedure, bilateral L4 facet blocks, was due to her June 3, 1997 injury, it would constitute a change in her medical condition.

Consequently, the decision of the Office of Workers' Compensation Programs dated May 28, 1998 is hereby set aside and the case is remanded to the Office for further development in accordance with this decision of the Board.

Dated, Washington, D.C.
March 29, 2000

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member