

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GRACE HARLEY and U.S. POSTAL SERVICE,
NORTH PHILADELPHIA STATION, Philadelphia, PA

*Docket No. 98-1264; Submitted on the Record;
Issued October 20, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant established that she sustained a recurrence of disability on March 21, 1996 causally related to the December 23, 1991 employment injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant has not established that she sustained a recurrence of disability.

On December 23, 1991 appellant, then a 35-year-old letter carrier, sustained an acute cervical strain, concussion and adjustment reaction in an employment-related motor vehicle accident. She returned to limited duty on April 21, 1993 and subsequently filed four claims for recurrences sustained during 1993. Following further development, by decision dated December 7, 1995, the Office of Workers' Compensation Programs denied the recurrence claims. By letter dated December 7, 1995, the Office informed appellant that it proposed to terminate her compensation. She submitted nothing further and, by decision dated January 31, 1996, the Office terminated her benefits on the grounds that she had no employment-related residuals. On February 15, 1996 appellant, through counsel, requested a hearing regarding the January 31, 1996 termination of compensation.

On March 20, 1996 appellant filed a Form CA-2a recurrence claim, alleging that on March 16, 1996 she sustained a recurrence of disability because her limited duty had changed to light duty, which included the requirement that she case mail, which she alleged she could not perform. On May 2, 1996 she filed a Form CA-7, claim for compensation, for the period beginning March 21, 1996. By letter dated July 1, 1996, the Office informed appellant that she needed to furnish medical evidence in support of her recurrence claim. On July 23, 1996 a hearing was held regarding the January 31, 1996 termination of compensation. In an October 16, 1996 decision, an Office hearing representative reversed the termination finding that, although appellant's orthopedic condition had ceased, the Office had not met its burden of proof to determine that her adjustment reaction had ceased.

On November 4, 1996 appellant submitted Forms CA-8 for the periods March 21, 1996 and forward, and supporting medical evidence. By letter dated December 16, 1996, the Office informed appellant that the medical evidence sent in support of her claims for compensation related her inability to work to her orthopedic condition and that she needed to submit medical documentation that her total disability for the period claimed was due to her psychiatric condition. By decision dated January 22, 1997, the Office found that appellant's disability after March 21, 1996 was not employment related. Appellant, through counsel, requested a hearing that was held on September 24, 1997. At the hearing, appellant's counsel argued that her disability after March 21, 1996 was due to both a change in her light-duty requirements and a worsening of her cervical condition. Appellant testified that she was told that she had to return to casing mail, which she did for a few hours on March 16, 1996 when she started having problems with her arms, neck and back. By decision dated December 11, 1997, an Office hearing representative affirmed as modified the January 22, 1997 decision.¹ The instant appeal follows.

An individual 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 recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.² This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.³ Causal relationship is a medical issue⁴ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence, which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.⁵

The relevant medical evidence includes reports submitted by appellant's treating osteopathic physician, Dr. J.M. Hassman. In treatment notes dated April 10 and May 2, 1996, he noted findings on examination, and in an attending physician's report dated May 7, 1996, provided restrictions to appellant's physical activity and advised that she could work only at sedentary duty and could not case mail. Dr. Hassman continued to submit reports and, by letter dated July 16, 1996, advised that appellant had presented on March 18, 1996 with a "flare-up of

¹ The hearing representative modified the decision to reflect that her claimed disability began on March 16, 1996 rather than March 21, 1996.

² *Kevin J. McGrath*, 42 ECAB 109 (1990); *John E. Blount*, 30 ECAB 1374 (1974).

³ *Frances B. Evans*, 32 ECAB 60 (1980).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁵ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

her symptoms” related to the December 23, 1991 employment injury. He noted findings of spasm and tenderness on examination and diagnosed chronic strain/sprain of the cervical, thoracic and lumbar spine, paravertebral muscle spasms, bulging disc at L3-S1 and strain/sprain of the right shoulder area. Dr. Hassman advised that appellant had been released to return to limited duty on May 2, 1996 but that this was unavailable. In conclusion, he stated:

“At this time it is my medical opinion that this patient remains symptomatic with residual findings described above. In view of the history stated by my patient and my physical examinations, it is my belief that the injuries sustained in my diagnoses are associated to the accident trauma of December 23, 1991....”

Dr. Hassman continued to provide reports regarding appellant’s condition.

On the reverse of the Form CA-2a submitted by appellant on March 20, 1996, the employing establishment stated that on March 15, 1996 appellant’s limited-duty status changed to light duty and advised that she had cased mail “on occasion.” In a statement dated March 21, 1996, Angela Smith, appellant’s supervisor, stated:

“On March 20, 1996 [appellant] alleged that she suffered a recurrence. [Her] status from limited duty to light duty had been changed and she felt that she is not well enough to be casing mail and delivering. On March 16, 1996 [she] had an assignment to case an aux[iliary] route of approx[imately] 5.5 feet of mail. At the end of this day March 16, 1996, [she] elected to take leave for the next workday March 18, 1996. Her drop day was March 19, 1996. When [appellant] reported for duty on March 20, 1996 she stated that she had to go to the doctor’s office on March 19, 1996 and her lawyer wants her to bring a CA-2a form to him. I asked her what was her problem. [Appellant] replied ‘when I cased mail on Saturday, March 16, 1996 my neck and lower back became aggravated.’ The dispute I have with this statement is, before [her] claim was terminated she cased mail from time to time, as recently as this month, on March 11, 1996 and at no time did [she] complain....”

By letter dated September 16, 1996, the employing establishment noted that appellant had been involved in two nonemployment-related motor vehicle accidents and stated that her job duties included casing mail from 1992 to 1994 and it was not until 1995 that this was not included in her daily duties.

On appeal appellant’s counsel contends that there was a change in the nature and extent of appellant’s light-duty requirements and a worsening of her physical condition. The record in this case demonstrates that appellant’s orthopedic condition had resolved by January 30, 1996 thus rendering moot her contention regarding her limited-duty job requirements. The Board further finds that the medical evidence is insufficient to establish that appellant sustained a recurrence of disability causally related to the accepted employment injury.

Under the Federal Employees' Compensation Act,⁶ the term "disability" means incapacity, because of the employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury, but who nonetheless has the capacity to earn wages she was receiving at the time of injury, has no disability as that term is used in the Act.⁷ While appellant submitted reports from Dr. Hassman, he did not provide a rational explanation of why appellant could not work. As appellant failed to submit rationalized medical evidence that identified specific employment factors that caused her to stop work on March 21, 1996, she failed to discharge her burden of proof and the Board finds that she failed to establish a recurrence of disability.

The decision of the Office of Workers' Compensation Programs dated December 11, 1997 is hereby affirmed.

Dated, Washington, DC
October 20, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ 5 U.S.C. §§ 8101-8193.

⁷ See *Maxine J. Sanders*, 46 ECAB 835 (1995).