

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ORELIA G. BARRIERE and U.S. POSTAL SERVICE,
POST OFFICE, Metairie, LA

*Docket No. 00-1316; Submitted on the Record;
Issued November 13, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a back injury causally related to her federal employment.

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

On August 21, 1999 appellant, then a 38-year-old window clerk, stated that on August 11, 1999 she tossed a parcel into a bin and felt a twinge in her back that was caused by her sciatic nerve. Appellant stopped work on August 12, 1999 returned to work for one day on August 23, 1999 and has not returned to work since. Appellant stated that she "was walking down the hallway towards the restroom, [when] my ankle started feeling sore. I started to limp. Two hours later my calf to my toes started throbbing with pain. By the end of the day my whole left leg was in extreme pain."

In a duty status report dated August 23, 1999, Dr. Patricia Jackson, a Board-certified internist, described appellant's injury as work-related sciatica. Dr. Jackson referred appellant to a chiropractor and released her to restricted duty effective that day.

By letter dated September 9, 1999, the Office of Workers' Compensation Programs advised appellant that it needed additional information to process her claim.

In a report dated September 1, 1999, Dr. Ralph Katz, a Board-certified orthopedic surgeon, described appellant's injury as an acute herniated disc at L5-S1, and placed her on total disability. Dr. Katz noted a familiarity with appellant's history of injury, including a similar injury in 1995 which required a back brace, physical therapy and a transcutaneous electrical nerve stimulator unit. Upon examination, Dr. Katz noted tenderness in the left gluteus area, in the sciatic notch and in the posterior thigh. Motor strength was 5 by 5 throughout, reflexes were symmetrical at L4 and S1. He noted a tension sign in the left lower extremity that "was consistent with a positive straight leg raise." Dr. Katz also noted appellant's difficulty with squatting and with forward flexion. He recommended a magnetic resonance imaging (MRI) scan

“to identify what I believe to be an acute herniated disc.” He also prescribed medication and placed her on total disability until the MRI scan was completed and reviewed.

In a report dated September 17, 1999, Dr. Katz stated that appellant had acute radiculopathy that, by checking a box, was causally related to her employment. He further noted that he had ordered an MRI scan and placed appellant on total disability from September 1, 1999.

In an attending physician’s report dated September 21, 1999, Dr. Jackson stated that appellant injured her back while at work on August 11, 1999 when she placed a parcel in a bin. She noted that she had treated appellant on August 23, 1999 and that she was totally disabled from that date to September 1, 1999, but that she had referred appellant to Dr. Katz who would provide follow-up care.

In a narrative statement dated September 24, 1999, appellant stated that she lifted a parcel weighing about 11 ounces, walked 3 or 4 feet with the parcel, reached up to place it in a mail bin “about 3 or 4 feet high,” and “felt a twinge in my back.” Immediately after that, as she walked to her locker room, she felt pain in her ankle that caused her to limp. By the end of her shift that day “my left buttocks down my left leg was in extreme pain.”

The record included internal Office memoranda dated September 16 and 20, 1999 with the following notes; authorization lumbar MRI and MRI authorization.¹

In a decision dated October 14, 1999, the Office denied appellant’s claim, finding that the medical evidence was not sufficient to establish that her condition was caused by her employment. The Office noted that appellant’s medical evidence consisted of an August 23, 1999 report from Dr. Jackson and the September 1, 1999 reports from Dr. Katz.²

However, a review of the record reveals a September 17, 1999 medical report from Dr. Katz, a September 21, 1999 medical report from Dr. Jackson and appellant’s September 24, 1999 narrative, all of which were received by the Office on October 10, 2001, prior to the Office’s October 14, 1999 decision.³ Because the Office did not review evidence that appellant timely submitted in support of her claim, the case must be remanded to the Office for consideration of that evidence. Upon review of appellant’s evidence, the Office will issue an appropriate decision.⁴

¹ On September 8, 1999 the employing establishment notified appellant that it had been informed that she was totally disabled from any work based on her physician’s diagnosis. A copy of the notice was sent to the Office.

² The Office also noted Dr. Jackson’s prescription for physical therapy dated August 26, 1999.

³ The Board notes that Dr. Katz’s September 17, 1999 attending physician’s report, Form CA-20, was specifically requested by the Office.

⁴ *William A. Couch*, 41 ECAB 548 (1990). The Office, on remand, will address the issue of Dr. Katz’s request for authorization of an MRI scan.

The October 14, 1999 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to the Office for full consideration of the evidence timely submitted, to be followed by a *de novo* decision on the case merits.⁵

Dated, Washington, DC
November 13, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

⁵ In view of the Board's disposition on the issue of whether appellant sustained a work-related back injury, the issue regarding the timeliness of appellant's request for an oral hearing before an Office representative is moot.