

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANN T. ROBINSON and U.S. POSTAL SERVICE,
POST OFFICE, Miami, FL

*Docket No. 01-761; Submitted on the Record;
Issued September 27, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established a recurrence of disability causally related to her August 10, 1993 employment injury.

This is the second appeal in the case. Previously, the Board found that appellant had not established a recurrence of disability as of May 1995 because the medical evidence was not sufficient to meet her burden of proof. The history of the case is contained in the Board's prior decision and is incorporated herein by reference.¹

In a letter dated August 22, 2000, appellant requested reconsideration and submitted a report dated June 30, 2000 from Dr. Jose Font, a surgeon. In a decision dated November 27, 2000, the Office of Workers' Compensation Programs denied modification.

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

In the prior decision, the Board noted that the medical report from Dr. Font contained speculative language and did not provide clear medical reasoning. In his June 30, 2000 report, he indicated that he had reviewed the Board's decision and the underlying medical records. Dr. Font stated:

“... It is my opinion within a reasonable degree of medical probability that the fall on August 10, 1993 was a contributing cause of [appellant's] lung and chest condition, which was ultimately diagnosed. She certainly had some symptoms which reacted like bronchitis or pleurisy and it certainly appears that what the fall did was cause a contusion in the lung, which leads to intra thoracic bleeding, which formed scar tissue and which ultimately led to her need for surgery.”²

¹ Docket No. 99-2229 (March 24, 2000).

² In a January 18, 1996 report, Dr. Font had diagnosed fibrinous hemorrhagic pleuritis, with marked pleural fibrosis.

Dr. Font concluded that, based on the history of appellant's fall and the type of symptomology she had, there was a cause-and-effect relationship between some of her pulmonary and thoracic conditions and her employment injury.

Although the Office found this report to be speculative because Dr. Font used the term "appears" when discussing causal relationship, his opinion is unequivocal and based on a reasonable degree of medical certainty. Moreover, he provides medical reasoning to explain his opinion. Dr. Font indicated that the fall caused a lung contusion, resulting in bleeding, which led to scar tissue formation and subsequent surgery. While he does not completely resolve the issue, he does provide probative, uncontradicted evidence in support of causal relationship in this case.³

Although appellant has the burden of proof to establish her claim, the Office shares responsibility in the development of the evidence.⁴ Accordingly, the case will be remanded to the Office for additional development on the issue of whether appellant has a lung condition causally related to her employment injury and if so, the nature and extent of any disability for work as a result. After such development as the Office deems necessary, it should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated November 27, 2000 is set aside and the case is remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
September 27, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

³ See *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *William J. Cantrell*, 34 ECAB 1233 (1983).