

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MEGAN K. KLEIN and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Denver, CO

*Docket No. 02-796; Submitted on the Record;
Issued August 14, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant has met her burden of proof in establishing that she had an employment-related recurrence of disability effective October 24, 1994.

The case has been on appeal previously.¹ In an April 30, 2001 decision, the Board noted that appellant filed a claim on October 5, 1990 for neck and shoulder spasms. The Office of Workers' Compensation Programs accepted appellant's claim for chronic cervical strain resulting in right shoulder pain, tension headaches and thoracic outlet syndrome. She received temporary total disability compensation from September 3, 1992 to July 7, 1994 when she returned to work. Appellant stopped working again on October 25, 1994 and filed a claim for recurrence of disability. The Board found that the medical evidence of record only stated that appellant had increasing pain due to the employment injury. The Board indicated that the medical evidence did not explain how appellant's employment injury or her return to limited duty caused her recurrence of disability, particularly as there was no objective medical evidence to explain appellant's continued complaints of pain. The Board found, however, that the Office had improperly denied a request for reconsideration, finding that appellant had submitted a new, relevant medical report from Dr. Christopher Ryan, a Board-certified physiatrist, which related appellant's condition to her employment injury. The Board remanded the case for a merit consideration of Dr. Ryan's report.

In a July 11, 2001 merit decision, the Office found that the evidence submitted was insufficient to warrant modification of its prior decisions.

The Board finds that appellant has not met her burden of proof in establishing that her recurrence of disability effective October 25, 1994 was causally related to her employment injury.

¹ Docket No. 99-1750 (issued April 30, 2001). The history of the case is contained in the prior decision and is incorporated by reference.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which he seeks compensation was causally related to his employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.²

In his November 23, 1998 report, Dr. Ryan diagnosed myofascial neck and shoulder pain, alternatively called a chronic sprain disorder. He noted that nutritional and postural status contributed to it, which were not related to appellant's work injury. Dr. Ryan indicated that appellant was reported to have a protein deficiency which caused a lack of muscle mass that predisposed appellant to developing her muscular problem. He commented that appellant's cervical and shoulder strain developed into a chronic condition as she had no way to repair the injury that occurred at work. Dr. Ryan concluded that, but for the employment injury, the neck and shoulder symptoms would not have manifested themselves and appellant would not have developed a chronic muscular and skeletal condition. He stated that appellant had ongoing difficulties that were clearly demonstrated as being consistent, particularly the limitation of motion of the cervical spine and the shoulder. Dr. Ryan indicated that these objective findings, the negative magnetic resonance imaging (MRI) scan notwithstanding, demonstrated objectively appellant's disability and substantiated her complaints of pain. He commented that the MRI scan helped to establish that the muscular condition was a substantial one as the MRI scan did not show any arthritis which would generally cause a limitation of motion. Dr. Ryan stated that there was no evidence that appellant had any other injury after she stopped working in October 1994. He concluded, therefore, that appellant's inability to return to work was most medically probably due to the original employment injury of 1990 and the subsequent aggravation of 1994. Dr. Ryan noted that appellant had a history of severe symptoms since the employment injury and commented that her capacity for work was greatly in question. He indicated that appellant's ongoing disability had some psychological fallout. Dr. Ryan concluded that appellant's difficulty with stress as well as chronic pain rendered her incapable of gainful employment.

Dr. Ryan concluded that appellant had myofascial pain disorder and concluded that the condition was causally related to appellant's employment injury. However, he did not offer a detailed explanation on how appellant's chronic pain disorder would have persisted for eight years after the employment injury and caused her recurrence of disability for four years. Dr. Ryan noted that appellant had a protein deficiency which would have kept her from healing from the employment injury. However, this rationale is speculative. Dr. Ryan noted that the MRI scan did not show any objective findings. He concluded from the MRI scan that appellant's pain therefore had to be muscular in origin. Dr. Ryan did not state, however, how the muscular pain would have been caused by the employment injury and progressed to the point that appellant was disabled after her return to work in July 1994. His report therefore has little probative value and is insufficient to show that appellant's recurrence of disability was causally related to her employment injury.

² *Dominic M. DeScala*, 37 ECAB 369 (1986).

The decision of the Office of Workers' Compensation Programs dated July 11, 2001 is hereby affirmed.

Dated, Washington, DC
August 14, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member