

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH RODERICK and U.S. POSTAL SERVICE,
POST OFFICE, Jewett City, CT

*Docket No. 02-1626; Submitted on the Record;
Issued July 16, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant established that she sustained a recurrence of disability between May 18 and October 23, 1998 causally related to her accepted work injury.

On February 7, 1995 appellant, then a 37-year-old part-time flexible letter carrier, filed a notice of traumatic injury alleging that she fell down icy stairs on February 6, 1995 in the performance of duty. She was treated by Dr. Michael J. Halperin, a Board-certified orthopedic surgeon, on February 15, 1995. He released appellant to light duty with restrictions effective March 16, 1995. The Office of Workers' Compensation Programs accepted the claim for a right knee contusion and a lumbar strain. The Office subsequently approved surgery consisting of arthroscopy and lateral retinacular release of the right knee performed on August 28, 1995. Appellant received compensation for wage loss from August 28 to November 7, 1995, at which time she returned to sedentary duty. She later increased her activities from a completely sedentary position to allow for up to one and half hours of standing and walking per day.

On May 20, 1998 appellant filed a claim alleging a recurrence of disability beginning May 18, 1998. In support of her claim, she submitted a May 18, 1998 note from Dr. S. Pierce Browning, a Board-certified orthopedic surgeon, stating that she was totally disabled from a back injury due to the February 6, 1995 work injury.

Appellant also provided a prescription form dated March 1, 1998 and a May 4, 1998 report signed by Dr. A. Racy, a neurologist, who indicated that appellant had been experiencing black out spells and could not drive for at least three months. Dr. Racy noted that appellant could work full-time sedentary work only.¹ He stated, "[t]here is a probability that these spells stem from an injury that she sustained when she fell down flights of stairs and lost consciousness back in 1995" while on the job.

¹ The employing establishment noted that appellant had been placed on light duty effective March 16, 1998 in accordance with the medical restrictions from Dr. Racy until she stopped work on May 18, 1998.

By a letter dated May 27, 1998, the Office advised appellant of the medical and factual evidence required to establish her claim for a recurrence of disability, explaining that she had the burden to submit a reasoned medical opinion addressing why she was disabled for the period alleged and how that disability was causally related to the February 6, 1995 work injury.

In a decision dated July 6, 1998, the Office found that the medical evidence was insufficient to establish a causal relationship between appellant's work injury and her claimed recurrence of disability on May 18, 1998.

On August 25, 1998 appellant filed a duplicate claim for a recurrence of disability beginning May 18, 1998. She also requested an oral hearing. In a decision dated April 8, 1999, an Office hearing representative affirmed the Office's July 6, 1998 decision.

Appellant requested reconsideration and submitted a February 13, 1999 report from Dr. Browning, who noted that appellant's April 5, 1996 magnetic resonance imaging (MRI) scan showed a L4-5 disc protrusion. He opined that the original diagnosis of a simple lumbar sprain in connection with appellant's February 6, 1995 work injury was incorrect. Dr. Browning related that appellant's back pain had become progressively worse since 1995.² He advised that he had put appellant off work on May 18, 1998 due to back pain related to the work injury of February 6, 1995. Dr. Browning further noted that appellant stayed off work until August 30, 1998 when she returned to light duty, four hours per day and then she stopped work again on October 23, 1998. He concluded his report by stating:

"I do [not] think that this [her back pain] is properly described as a recurrence but rather as a normal progression for this type of injury to the L4-5 disc.... Certainly there is no doubt in my mind that the present problems arise out of the injury of February 6, 1995 and represent the normal progression from that injury."

In an addendum dated February 14, 1999, Dr. Browning stated that appellant's weight did not cause or aggravate her herniated disc. He noted that the herniated disc existed on the first MRI scan in 1996. He opined that appellant was totally disabled for work.

The Office referred appellant for a second opinion evaluation with Dr. Tushar Patel, a Board-certified orthopedist. In a May 24, 1999 report, he noted appellant's history of injury, complaints and physical findings. Dr. Patel opined that appellant's most significant problem was depression. He diagnosed degenerative disc disease, stating that the condition was unrelated to appellant's work injury. Dr. Patel concluded that appellant could perform sedentary work.

² He indicated that appellant was involved in a car accident on March 16, 1998 at which time she hit her head on the windshield and had a period of three to five days where she felt dizzy and had a sore neck. He did not feel like the car accident aggravated her lumbar back condition.

The Office found a conflict existed between Dr. Patel and Dr. Browning as to the extent of appellant's disability for work. The Office therefore, scheduled appellant for an impartial medical evaluation with Dr. Thomas J. Stevens, a Board-certified orthopedic surgeon.³

On December 8, 1999 appellant filed a claim alleging a recurrence of disability beginning October 23, 1998, which was accepted by the Office.

The Office referred appellant for an impartial medical examination with Dr. Alan H. Goodman, a Board-certified orthopedist. In a report dated November 29, 2000, he noted that appellant had not worked since October 23, 1998. Dr. Goodman reviewed a copy of the medical record and a statement of accepted facts. His report includes physical findings and a discussion of appellant's work history, her history of treatment for seizure disorder and her chief complaint of low back pain. Dr. Goodman opined that appellant probably sustained a chronic lumbar strain with her current low back symptoms being only partly related to the work injury. He felt that her condition was enhanced by underlying depression. Dr. Goodman concluded that from a musculoskeletal standpoint, appellant was not totally disabled and could perform selected light work. In an OWCP-5c form dated November 29, 2000, Dr. Goodman reported that appellant was able to sit, walk, stand, twist, push and pull for up to two hours per day. He listed a 10-pound lifting restriction.

In a February 13, 2002 decision, the Office denied modification of its prior decisions dated April 8, 1999 and July 6, 1998.

The Board finds that appellant failed to establish that she sustained a recurrence of disability between May 18 and October 23, 1998 causally related to her accepted work injury.

When an employee claims a recurrence of or continuing disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed period of disability is causally related to the accepted injury.⁴ A claimant's burden of proof in establishing a recurrence of disability requires the submission of medical evidence from a 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.⁵

³ The Office's attempt at obtaining an impartial medical evaluation opinion addressing appellant's disability for work on or after May 18, 1998 was unsuccessful. In a March 3, 2000 report, Dr. Stevens opined that appellant was partially disabled for work based on the condition of the L4-5 disc as demonstrated by an April 5, 1999 MRI scan. He further stated that if it were not for her depression disorder, appellant could perform some light-duty work. When asked to clarify his opinion as to "whether appellant would have been disabled due to a work-related back condition or another nonoccupational condition in May 1998," Dr. Stevens responded that appellant had not sustained an orthopedic injury on February 6, 1995. Since the Office specifically accepted that appellant sustained a right knee contusion and a lumbar strain on February 6, 1995, Dr. Steven's opinion was not rationalized with respect to the relevant issue presented. The Office therefore, properly sent appellant for a new impartial medical evaluation.

⁴ *Carmen Gould*, 50 ECAB, 504 (1999); *Kenneth R. Love*, 50 ECAB 193 (1998).

⁵ *Ricky Storms*, 52 ECAB 349 (2001); *Helen K. Holt*, 50 ECAB 279 (1999).

The Office has accepted that appellant sustained a lumbar strain and a right knee condition causally related to a fall at work in the performance of duty on February 6, 1995. The Office also accepted that appellant sustained a recurrence of disability beginning October 23, 1998. The issue of the case is whether appellant sustained a recurrence of disability beginning May 18, 1998. The record reflects that appellant was off work from May 18 to August 30, 1998.

In support of her recurrence of disability claim, appellant submitted a May 18, 1998 treatment note from Dr. Browning, which stated that she was disabled for work due to back pain related to the February 6, 1995 work injury. The Office had appellant undergo a second opinion evaluation with Dr. Patel on May 12, 1999. He opined that appellant suffered from degenerative disc disease but he did not find any periods of disability due to that condition. Dr. Patel opined that appellant could perform sedentary work. In order to resolve the conflict in the medical record between the opinions of Drs. Browning and Criscuolo and Dr. Patel as to the nature and extent of appellant's work injury, the Office correctly sent appellant for an examination by an impartial medical specialist.⁶ Dr. Goodman opined that appellant was not totally disabled from a musculoskeletal standpoint due to the accepted work injury.

It is well established that when a case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual and medical background, must be given special weight.⁷ The Board has carefully reviewed Dr. Goodman's opinion and finds that it is sufficiently well rationalized and based on a proper factual and medical background. He explained that while appellant suffers from a chronic back strain due in part to the February 6, 1995 work injury, she was not considered to be totally disabled from work. Dr. Goodman's opinion therefore, does not support a finding that appellant sustained a recurrence of disability on or after May 18, 1998 due to the accepted work injury. Because his opinion is entitled to special weight, the Board concludes that appellant failed to discharge her burden of proof to establish that she sustained a recurrence of disability on May 18, 1998. Thus, the Office properly denied her claim for compensation.

⁶ Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination; *see* 5 U.S.C. § 8123(a); *Chris Hamilton*, 52 ECAB 110 (2001).

⁷ *Gloria J. Godfrey*, 52 ECAB 486 (2001); *Michael Hughes*, 52 ECAB 387 (2001).

The decision of the Office of Workers' Compensation Programs dated February 13, 2002 is hereby affirmed.

Dated, Washington, DC
July 16, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member