

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARMEN M. SEDA and U.S. POSTAL SERVICE,
POST OFFICE, Cabo Rojo, PR

*Docket No. 03-807; Submitted on the Record;
Issued September 2, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met her burden to establish that she sustained a recurrence of disability as of November 9, 1999.

On November 5, 1994 appellant, then a 52-year-old postmaster, was injured when the vehicle she was driving crashed into a wall. She filed a claim for benefits, which the Office of Workers' Compensation Programs accepted for C2 fracture, fractured rib and lung contusions. The Office paid appellant appropriate compensation for total disability. She returned to work on light duty on November 7, 1995. Appellant went off work on November 9, 1999, allegedly due to pain caused by her work-related injuries.

On November 20, 1999 appellant filed a (Form CA-2a) claim for recurrence of disability, alleging that on November 9, 1999 she sustained a condition or disability caused or aggravated by her November 5, 1994 employment injury.

In a report dated December 7, 1999, Dr. Juan Lameiro, a specialist in neurosurgery, diagnosed lumbosacral spondylolithesis with severe spinal canal stenosis, a condition which was progressive and required surgery. On March 29, 2000 Dr. Lameiro performed decompressive and lumbar spine surgery on appellant.

On December 6, 2000 the Office referred appellant to Dr. Carlos Grovas-Badrena, a specialist in orthopedic surgery. In a report dated January 12, 2001, Dr. Grovas-Badrena stated that appellant had fully recovered from the effects of the work injuries, *e.g.*, the fracture at C2, fracture of the sternum, the lung contusion and fracture of the right rib. He added that, if the case was amended to include lumbar spondylolithesis at L4-5 she would still be suffering from disabling residuals, but that aside from that, her conditions had resolved.

By decision dated September 27, 2001, the Office denied appellant's claim for benefits based on a recurrence of disability.

By letter dated October 24, 2001, appellant requested a hearing, which was held on August 28, 2002. Appellant testified at the hearing that, although she had been released to return to work with restrictions of no lifting and bending and that she would be able to delegate the duties, which entailed performing these activities, her light-duty job actually required her to engage in these activities.

Subsequent to the hearing, appellant submitted an October 8, 2002 report from Dr. Ana M. Manana Ferro, a specialist in internal medicine. Dr. Manana Ferro reviewed the medical history, noted appellant's complaints of pain and her allegations that her light-duty job required her to engage in activities, which exceeded appellant's work restrictions and reiterated the diagnoses, but did not provide a rationalized, probative medical opinion that there was a change in the nature and extent of her medical condition.

By decision dated November 7, 2002, an Office hearing representative affirmed the Office's September 27, 2001 decision.

The Board finds that appellant has failed to meet her burden to establish that she sustained a recurrence of disability as of November 9, 1999.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.¹

The medical evidence pertaining to appellant's alleged recurrence of disability consisted of the reports from Drs. Grovas-Badrena and Manana Ferro. These reports provided a history of injury and a diagnosis of her work-related conditions, indicated very generally that appellant complained of disabling pain as of November 9, 1999 and related her claims that she was forced to perform duties beyond her physical restrictions, but did not contain a probative, rationalized medical opinion sufficient to establish that appellant's disability as of November 9, 1999 was causally related to her accepted November 5, 1994 employment injury.

The reports from Drs. Grovas-Badrena and Manana Ferro do not constitute sufficient medical evidence demonstrating a causal connection between appellant's employment injury and her alleged lower back condition and disability. Causal relationship must be established by rationalized medical opinion evidence. The reports in the record failed to provide an explanation in support of appellant's claim that she was totally disabled as of November 9, 1999. Dr. Grovas-Badrena, the referral physician, stated findings on examination, reviewed the medical history and statement of accepted facts and concluded that appellant did not have any current disability, which was caused or aggravated by her November 5, 1994 employment injury. Dr. Grovas-Badrena diagnosed lumbar spondylolisthesis at L4-5, but noted that this was not an accepted condition and, therefore, did not constitute a basis for finding that appellant had a

¹ *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

recurrence of her work-related disability. Thus, his report did not constitute sufficient medical evidence demonstrating a causal connection between appellant's employment injury and her alleged disability as of November 9, 1999. Dr. Manana Ferro reviewed the medical history, noted appellant's complaints of pain and her assertions that her light-duty job required appellant to engage in activities exceeding her work restrictions and reiterated the diagnosis of spondylolithesis at L4-5 with severe spinal canal stenosis. However, her report did not contain a rationalized, probative medical opinion that there was a change in the nature and extent of appellant's medical condition. Thus, the reports from Drs. Grovas-Badrena and Manana Ferro do not establish a worsening of appellant's employment-related conditions and, therefore, did not constitute probative, rationalized medical evidence demonstrating that a change occurred in the nature and extent of the injury-related conditions.

In addition, the Board finds that the evidence fails to establish that there was a change in the nature and extent of appellant's limited-duty assignment such that she no longer was physically able to perform the requirements of her light-duty job. The record demonstrates that appellant returned to work November 7, 1995 on light duty within the restrictions outlined by her treating physician. Further, there is nothing in the record which supports appellant's allegations that she was forced to perform duties exceeding these restrictions. Although appellant stopped working on November 9, 1999 she has submitted no additional factual evidence to support a claim that a change occurred in the nature and extent of her limited-duty assignment during the period claimed. Accordingly, as appellant has not submitted any factual or medical evidence supporting her claim that she was totally disabled from performing her light-duty assignment on November 9, 1999 as a result of her employment-related injuries, appellant failed to meet her burden of proof. Thus, as appellant has not submitted any factual or medical evidence supporting her claim that she was totally disabled from performing her light-duty assignment on November 9, 1999 as a result of her employment, appellant failed to meet her burden of proof. The Board, therefore, affirms the November 7, 2002 decision of the Office hearing representative, which affirmed the September 27, 2001 Office decision, that appellant was not entitled to compensation based on a recurrence of her employment-related disability.

The decision of the Office of Workers' Compensation Programs dated November 7, 2002 is hereby affirmed.

Dated, Washington, DC
September 2, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member