

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CRISTINA AVILES and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, Concord, CA

*Docket No. 03-1856; Submitted on the Record;  
Issued September 17, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on July 14, 2000 causally related to her December 30, 1992 low back strain.

On December 30, 1992 appellant, then a 36-year-old letter carrier filed a notice of traumatic injury alleging that on December 30, 1992 she bent over to lift a tray of letters and felt a sharp pain in her lower back. The Office of Workers' Compensation Programs accepted the claim for low back strain.

Medical reports from the Sun Valley Urgent Care Medical Center indicated that appellant was being discharged and had recovered from her low back strain by November 14, 1993. Appellant returned to work in a light-duty position as a city carrier.

On July 14, 2000 appellant filed a notice of occupational disease for a low back strain describing the same injury as described on the traumatic injury claim for the December 30, 1992 injury. In a physician's first report of injury dated July 14, 2000, Dr. Jerald R. Gerst, a Board-certified internist,<sup>1</sup> discussed the history of the December 30, 1992 injury of lifting a tray of mail. Dr. Gerst stated that appellant had continued to work with back pain after she returned to work. He noted that appellant had presented to the clinic that day because she was being asked to work overtime and she did not believe she could do it due to low back pain. He diagnosed lumbar strain and chronic lumbar pain.

In a duty status report dated July 14, 2000, Dr. Gerst stated that appellant could resume work on that day with limited restrictions.

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<sup>1</sup> Dr. Gerst is also Board-certified in preventive medicine.

In a statement, appellant noted that since her low back injury on December 30, 1992 her “life had changed forever” both at home and at work. Appellant stated that she could not sit or stand or walk for long periods of time or carry a mail satchel on her shoulder because of her low back pain.

By letter dated December 8, 2000, the Office requested that appellant submit additional medical evidence to support her claim. By decision dated February 16, 2001, the Office denied the claim for an occupational disease finding that the evidence was insufficient to establish that appellant’s employment caused her condition.

Appellant disagreed with the decision and requested an oral hearing. By decision dated August 22, 2001, the Office hearing representative determined that the case was not in posture for decision and set aside the February 16, 2001 decision, finding that appellant was actually claiming a recurrence of disability of the December 30, 1992 work injury. The case was returned to the Office to be developed and adjudicated as a recurrence of disability beginning July 14, 2000.

By letter dated November 29, 2001, the Office requested that appellant submit additional medical evidence, including a physician’s narrative report with an opinion and explanation on the causal relationship between her current disability and the accepted work injury. No additional medical evidence was received.

By decision dated March 4, 2002, the Office denied appellant’s claim for recurrence of disability finding that the medical evidence was insufficient to establish a recurrence of the original work injury. The Office noted that appellant had not submitted any medical evidence since January 1993.

In a progress report dated June 6, 2002, Dr. Gerst stated that appellant had relatively mild back pain after several days rest and that she could return to modified work on June 4, 2002 with restrictions of lifting/carrying a maximum of 10 pounds constantly, 11 to 25 pounds occasionally and no carrying unbalanced loads and no working overtime. He indicated that appellant was being “pressured” to work overtime and was fearful that this would increase her back pain. Dr. Gerst eventually changed appellant’s return to work date to January 21, 2003.

By letter dated March 3, 2003, appellant requested reconsideration and submitted a February 27, 2003 narrative report from Dr. Gerst, who stated that appellant was originally injured on December 30, 1992 and was treated for her low back injury until January 14, 1993. Appellant indicated to Dr. Gerst that she continued to have persistent, low-level back pain after she returned to work, even though she only sought medical attention once between January 14, 1993 and July 14, 2000. He stated:

“On the latter day [July 14, 2000] ... [appellant] gave the above history, adding that over the preceding few months while at work she was somewhat more symptomatic at the end of the day and was apprehensive about having to work overtime. She noted that the pain was radiating from the low back into the legs rather more frequently and was radiating further down the thighs. She stated that, although she had not been working with any formal limits, she had, in fact,

avoided routes requiring the use of a satchel. On those occasions when she was not able to avoid using a satchel, she had broken the route down so that she had lighter satchel loads than usual. Since July 14, 2000 she has been treated with limitation of activities, NSAID's [nonsteroid anti-inflammatory drugs], stretching and home exercise. Her symptoms have waxed and waned but have not resolved and have fluctuated at a somewhat higher level than in the interval from 1993 to 2000."

Dr. Gerst further noted that a December 10, 2002 magnetic resonance image scan and plain film radiographs of the lumbar spine and sacroiliac joints (SIJ) obtained on June 4, 2002 showed L5-S1 degenerative changes. He stated that appellant's medical history and current complaints were consistent with the objective findings. He noted that appellant should restrict her activities to lifting a maximum of 25 pounds and no carrying of unbalanced loads. Dr. Gerst diagnosed lumbar strain/sprain with chronic pain and lumbar facet and left SIJ degenerative changes.

He also stated:

"The presence of SI [sacroiliac] degenerative changes more pronounced on the left is certainly consistent with the fact that most carriers place a satchel, when it is used, over the left shoulder, keeping the right hand free to actually deliver the mail. Although [appellant] has tried to avoid use of a satchel since 1993, she has not done so completely and she has been a carrier since 1986."

By decision dated March 25, 2003, the Office denied modification of the March 4, 2002 decision, finding that the medical evidence submitted was insufficient to establish a causal relationship between appellant's current condition and the December 30, 1992 work injury. The Office noted that appellant submitted no medical evidence from January 1993 until July 2000.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability on July 14, 2000 causally related to her December 30, 1992 accepted work injury.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.<sup>2</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.<sup>3</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>4</sup>

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<sup>2</sup> *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

<sup>3</sup> *Mary S. Brock*, 40 ECAB 461, 471-72 (1989).

<sup>4</sup> *Michael Stockert*, 39 ECAB 1186-88 (1988).

Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>5</sup>

The medical evidence in this case is insufficient to establish a causal connection between appellant's current condition and the December 30, 1992 work injury. Although Dr. Gerst diagnosed lumbar strain and chronic lumbar pain, the evidence is insufficient to establish that appellant's current condition is due to the accepted December 30, 1992 work injury. Dr. Gerst noted that appellant's symptoms were consistent appellant's duties as a letter carrier, which included carrying a satchel of mail. However, he did not describe the relationship between appellant's work duties and her condition or explain the mechanism of injury. The report of Dr. Gerst do not sufficiently address the issue of causal relationship, especially in view of the seven-year period between appellant's return to work in 1993 and his treatment in 2000,

Dr. Gerst never opined that appellant was totally disabled for work. In his first duty status report dated July 14, 2000, the beginning date that appellant alleged she was totally disabled for work, he stated that appellant could return to work on that day with restrictions. Even though in later reports, Dr. Gerst continued to change appellant's return to work date, he opined that appellant could eventually return to modified-duty work as long as she met his lifting restrictions and did not carry unbalanced loads of mail or work any overtime. Dr. Gerst did not provide a rationalized opinion that appellant was totally disabled for work beginning July 14, 2000.

In Dr. Gerst's narrative report dated February 27, 2003, he noted that appellant had continued to suffer from low back pain after she returned to work after the accepted work injury, yet he did not opine that appellant had a spontaneous recurrence of the original symptoms on July 14, 2000. Dr. Gerst did indicate that, since July 14, 2000, appellant had been treated with a limitation of activities and home exercises and that her symptoms had recently been at a "higher level" than from 1993 to 2000, yet he did not specify that appellant had experienced a spontaneous increase in symptoms on July 14, 2000 or explain how her symptoms were causal or contributed to by the December 30, 1992 work injury.

Dr. Gerst also diagnosed degenerative changes in the lumbar spine and noted that appellant's current complaints were consistent with the objective findings, but he did not explain how these degenerative changes of the spine were causally related to the low back strain of December 1992. Dr. Gerst noted that the presence of the degenerative changes on the left were "consistent" with the fact that most letter carriers place a mail satchel over the left shoulder to keep the right hand free to deliver mail, however, he did not explain how appellant's duties as a letter carrier caused or contributed to her current condition. Dr. Gerst's reports are of diminished probative value as they do not explain how a low back strain from 1992 developed into

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<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

degenerative changes of the lumbar spine more than eight years later nor describe appellant's specific duties as a letter carrier and how they contributed to the progression of her back condition. The Board notes that appellant did not submit any medical evidence from 1993 until July 2000.

The record does not contain a physician's rationalized medical opinion stating that appellant's current condition is related to the original work injury on December 30, 1992. Even though physicians mentioned the original work injury and described the incident of lifting a tray of letters, the record does not contain a well-rationalized opinion that appellant's current degenerative changes are due to the original work injury.

Accordingly, the Board finds that appellant did not meet her burden of proof in this case and that the Office properly denied her claim for compensation for recurrence of total disability.

The March 25, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
September 17, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member