

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANNA D. SANDERS and U.S. POSTAL SERVICE,
POST OFFICE, Franklin, LA

*Docket No. 01-562; Submitted on the Record;
Issued March 13, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant established that she sustained a recurrence of disability due to a January 13, 1997 employment injury.

On January 13, 1997 appellant, then a 36-year-old letter carrier, filed a traumatic injury claim alleging that she fell while delivering mail and injured her low back and left knee. She did not report to work the next day and submitted supporting medical evidence. Appellant returned to work on January 29, 1997 and to full duty the following week. On February 6, 1997 she was involved in a nonwork-related motor vehicle accident and did not work the next day. On February 28, 1997 she stopped work completely.

By letter dated March 27, 1997, the Office of Workers' Compensation Programs accepted that appellant sustained an employment-related lumbar strain. On May 16, 1997 she submitted a Form CA-7 claim for compensation for the period March 26 through June 11, 1997 and later submitted Form CA-8 claims for compensation for subsequent periods. In a decision dated June 25, 1997, the Office denied appellant's claim for compensation for the period after March 26, 1997 on the grounds that the medical evidence did not establish that she was totally disabled due to the January 13, 1997 employment injury.

On July 8, 1997 appellant, through counsel, requested a hearing. At the hearing, held on June 2, 1998, she testified that she had been involved in a nonwork-related motor vehicle accident on April 19, 1996 that caused her to miss work until November 1996 when she returned to full duty. Appellant also testified regarding the January 13, 1997 employment injury and its consequences and regarding the nonwork-related motor vehicle accident that occurred on February 6, 1997. In a decision dated July 23, 1998, an Office hearing representative remanded the case to the Office for a second opinion evaluation.

The Office referred appellant, along with a statement of accepted facts, the medical record and a set of questions, to Dr. James C. McDaniel, a Board-certified orthopedic surgeon, for a second opinion evaluation. By decision dated November 3, 1998, the Office denied

appellant's claim for continued disability. The Office credited the opinion of Dr. McDaniel that appellant had normal orthopedic and neurological examinations.

On November 12, 1998 appellant, through counsel, again requested a hearing and alleged that Dr. McDaniel was biased. At the hearing, held on May 26, 1999, her attorney submitted a number of decisions of the Court of Appeals for the State of Louisiana which found that Dr. McDaniel was biased. By decision dated July 21, 1999, an Office hearing representative discredited the opinion of Dr. McDaniel. The hearing representative directed that Dr. McDaniel's opinion be stricken from the record and remanded the case for further development. Following a request for review by the district Director, in a decision finalized on November 15, 1999, the Assistant Chief of the Branch of Hearings and Review noted that the Office was not bound by the decisions of the Louisiana court and modified the July 21, 1999 decision to reflect that Dr. McDaniel's reports were not to be stricken from the record. The Assistant Chief found that Dr. McDaniel's opinion did not fit into the guidelines regarding exclusion of medical evidence found in Chapter 2.810 of the Office's procedural manual. He found, however, that the previous hearing representative permissibly found Dr. McDaniel's opinion of decreased probative value and remanded the case to the Office for a new second opinion evaluation.

Upon remand, the Office referred appellant, along with the medical record, a set of questions and a statement of accepted facts, to Dr. Christopher Cenac, a Board-certified orthopedic surgeon, for a second opinion evaluation. By decision dated February 18, 2000, the Office again denied that appellant had any continuing disability causally related to the January 13, 1997 employment injury. On March 3, 2000 appellant, through counsel, requested a hearing and submitted additional evidence. At the hearing, held on September 26, 2000 appellant testified regarding the January 13, 1997 employment injury and her return to work. She stated that she stopped work on February 28, 1997 because she was no longer physically capable of working and also testified regarding the subsequent medical treatment she had received. In a decision dated November 22, 2000 and finalized November 28, 2000, an Office hearing representative affirmed the prior decision. The instant appeal follows.

In this case, the relevant medical evidence includes a report dated April 23, 1996 in which Dr. Robert D. Franklin, a physiatrist, advised that appellant had been in a serious motor vehicle accident on April 19, 1996 when she injured her neck and upper back. He diagnosed myofascial pain syndrome with secondary headaches. Dr. Franklin continued to submit reports in which he noted that appellant was improving but that her symptoms persisted. In a January 10, 1997 report, he advised that appellant was doing "very poorly" with severe low back pain with referred symptoms in to her right lower extremity and had recently been seen in the emergency room.

An emergency room report dated January 13, 1997, the date of injury in the instant case, indicated that appellant had slipped onto her left knee at work and injured her knee, left hip and lower back. Mild muscular pain was diagnosed. January 13, 1997 x-rays of the lumbar spine, left hip and left knee revealed no significant osseous or soft tissue abnormality. In a January 15, 1997 treatment note, Dr. Randall E. Horton, a Board-certified family practitioner, noted the history of the slip and fall at work on January 13, 1997 and appellant's complaints of lower lumbar pain radiating to the right hip. He diagnosed lumbar strain with possible underlying

lumbar radiculopathy. A magnetic resonance imaging (MRI) scan of the lumbar spine done on January 16, 1997 was normal.

Dr. Horton submitted additional treatment notes dated January 20, 22 and 28, 1997 in which he noted appellant's continuing complaints. In a duty status report dated January 28, 1997, he stated that she could drive eight hours per day with no heavy lifting. On January 31, 1997 Dr. Horton advised that she could return to regular duty.

An emergency room report dated February 6, 1997 noted that appellant had been involved in a motor vehicle accident that day. Minor contusions were diagnosed.

In a duty status report dated February 25, 1997, Dr. Horton reiterated that appellant could do her regular work. In a treatment note also dated February 25, 1997, he noted findings of "exquisite tenderness" and spasm and advised that appellant could not work. In a report dated February 25, 1997, a podiatrist, noted appellant's complaints of pain in her heels and bottoms of her feet. Heel bruise was diagnosed.¹

In a report dated March 3, 1997, Dr. Franklin advised that appellant was disabled until April 29, 1997. In a treatment note and duty status report dated March 5, 1997, Dr. Horton advised that appellant could return to work on April 30, 1997. In an attending physician's report dated March 19, 1997, Dr. Horton checked the "yes" box, indicating that appellant's condition was employment related, stating that she also had a history of previous lumbar strain. In a treatment note also dated March 19, 1997, Dr. Horton noted a new finding of facial pain and diagnosed facial neuralgia of undetermined cause. In a duty status report dated April 30, 1997, he advised that appellant could not work. In a treatment note also dated April 30, 1997, he diagnosed chronic lumbar pain with strain.

A bone scan dated May 1, 1997 was normal. Dr. Horton continued to submit reports and in a report dated June 11, 1997 advised that she could return to work on August 13, 1997. Dr. Franklin also continued to submit reports. In a July 8, 1997 treatment note, he noted that appellant was "no better" and complaining more and more of referred symptoms. Dr. Franklin noted her negative studies, opined that she possibly had an underlying lumbar lesion and suggested orthopedic evaluation. In subsequent reports, Dr. Horton noted appellant's complaints of back pain and continued to advise that appellant could not work.

In a June 1, 1998 report, Dr. Sheron R. Finster, a clinical psychologist, diagnosed major depression and post-traumatic stress disorder. She indicated that appellant reported that she suffered not only physical injury but also "unbearable emotional duress" at work as a result of the employment injury and other stressors at the employing establishment. Dr. Finster stated that appellant first presented on March 4, 1997 but was too distressed to complete a clinical assessment. She was further treated from April 3 to July 21, 1997 and was again seen from February 8 to May 22, 1998.

¹ The podiatrist's signature is illegible.

In an undated report that was received by the employing establishment on June 24, 1998, Dr. John W. Stafford, who practices occupational medicine, noted reviewing appellant's medical records,² and advised that appellant had a history of multiple injuries to her back including a 1986 employment injury when she was out of work for approximately eight months, a motor vehicle accident in December 1990 when she was out for two weeks, an employment injury in 1993 when she was out of work for approximately one year, a motor vehicle accident in April 1996, the current employment injury of January 13, 1997 and another motor vehicle accident in February 1997. He noted the negative MRI and bone scan. On examination, he advised that her complaint of excessive sensitivity to touch seemed, to him, to be "a little exaggerated." Straight leg raising test was negative and reflexes were normal. Appellant was guarded in her range of motion. Dr. Stafford concluded that her condition "may be both related to her preexisting problem and a possible aggravation of that problem in an injury" and recommended that she undergo extensive functional testing, electromyography and nerve conduction studies, lumbar myelogram and postmyelogram computerized tomography.

Dr. McDaniel, a Board-certified orthopedic surgeon, who performed a second opinion evaluation for the Office, provided a report dated October 5, 1998 in which he noted examining appellant that day. He provided a history of injury and advised that he had reviewed the medical record. X-rays of the lumbosacral spine and pelvis were interpreted as normal. He stated that she complained of light touch on examination and concluded that she had normal orthopedic and neurological examinations of her back, hip and lower extremity, finding that there was no objective evidence to substantiate any significant orthopedic or neurological injury or other abnormality. In a supplementary report dated October 28, 1998, Dr. McDaniel advised that the medical evidence did not support that appellant was disabled from her job as a letter carrier on or after February 25, 1997.

Dr. Horton continued to submit reports advising that appellant was totally disabled. In a report dated May 24, 1999, he advised that appellant had been under continuous medical care since her January 13, 1997 accident. In a November 2, 1999 report, Dr. Horton indicated that she could return to work with restrictions.

In a December 7, 1999 report, Dr. Cenac provided a history of injury and noted that he had reviewed the medical record. He stated:

"I find no objective orthopedic mechanical evidence or neurological dysfunction ongoing at this time relative to the January 13, 1997 injury. All diagnostic studies are normal. The patient has no anatomical impairment or physical limitations applicable to an alleged lumbar injury. The medical records and this examination do not support the fact that the patient had a disabling injury to the low back or knees as a result of [the] January 13, 1997 incident. She has no limitations applicable therefore the OWCP-5 form is not completed. All above comments are relative from an orthopedic standpoint. Whether or not the patient is disabled from any employment from psychiatric illness is deferred."

² The report was apparently prepared for the employing establishment.

In a supplementary report dated February 15, 2000, Dr. Cenac stated that he did not feel that any disability or inability to work would be causally related to the January 13, 1997 employment injury after she was released to return to full duty on February 3, 1997.

On May 2, 2000 appellant underwent a chronic pain evaluation by Dr. Stephen J. Derbes, who is Board-certified in internal medicine, and Dr. Richard H. Morse, who is Board-certified in psychiatry and neurology. Myofascial pain involving the lower back was diagnosed, and it was recommended that appellant consider inpatient treatment. The record indicates that appellant was an inpatient from June 5 to 30, 2000. She was additionally seen by Dr. John Fanning, a clinical neuropsychologist, Dr. John Freiberg, who is a Board-certified physiatrist, and Dr. Charles T. Reveley, who is Board-certified in psychiatry and neurology. In a discharge report signed by Drs. Reveley and Morse, myofascial pain syndrome with secondary depression was diagnosed.

The Board finds that appellant failed to establish that she sustained a recurrence of disability on February 28, 1997 causally related to the January 13, 1997 employment 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 recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.³ This burden includes the necessity of furnishing evidence from a qualified 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.⁴ The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused or aggravated by employment conditions is sufficient to establish causal relation.⁵

In this case the medical evidence is insufficient to establish that appellant sustained a recurrence of disability on February 28, 1997. Appellant submitted a number of reports from her treating Board-certified family practitioner, Dr. Horton. However, in a January 31, 1997 report, he advised that she could return to her regular duties following the January 13, 1997 injury. Subsequent to February 28, 1997, the day she stopped work, Dr. Horton, who diagnosed chronic lumbar pain with strain, consistently advised that she could not work. He, however, did not provide any rationalized explanation other than to indicate that appellant was suffering from pain. In contradictory reports dated February 25, 1997, Dr. Horton indicated that she suffered from exquisite tenderness and spasm, yet in a second report also dated that day, he advised that she could do her regular work. Furthermore, while he provided a check mark in several reports indicating that appellant's condition was employment related, he provided no explanation other than to state that she had previous lumbar strain, and in none of the treatment notes did he

³ *Kevin J. McGrath*, 42 ECAB 109 (1990); *John E. Blount*, 30 ECAB 1374 (1974).

⁴ *Carolyn F. Allen*, 47 ECAB 240 (1995).

⁵ *Alberta S. Williamson*, 47 ECAB 569 (1996).

provide an explanation of what caused appellant's condition. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.⁶ Thus, Dr. Horton's reports are insufficient to meet appellant's burden.

Likewise, Dr. Franklin did not indicate that appellant's back condition was related to the January 13, 1997 employment injury. Appellant was in motor vehicle accidents that were not employment related in April 1996 and on February 6, 1997. It was after the second motor vehicle accident that appellant stopped work. None of the physicians explained the contribution played by appellant's two nonwork-related motor vehicle accidents on her continuing back condition. Both Dr. McDaniel and Dr. Cenac, who are Board-certified in orthopedic surgery, noted the negative findings on MRI and bone scan and, based on their examinations, advised that appellant had no disability from work after February 28, 1997 causally related to the January 13, 1997 employment injury. For these reasons, appellant did not meet her burden of proof to establish that she sustained a recurrence of disability on February 28, 1997 causally related to the January 13, 1997 employment injury.⁷

The decision of the Office of Workers' Compensation Programs dated November 22, 2000 and finalized November 28, 2000 is hereby affirmed.

Dated, Washington, DC
March 13, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁶ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁷ The Board notes that neither myofascial pain syndrome nor an emotional condition have been accepted as employment related. As stated above, as part of the burden of proof, an employee must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship between the condition and the employment injury. *Carolyn F. Allen*, *supra* note 4. In this case, appellant did not submit such evidence.