U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH A. CRUM and U.S. POSTAL SERVICE,
POST OFFICE, San Jose, Calif.

Docket No. 96-940; Submitted on the Record;
Issued January 26, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof in establishing that she sustained a recurrence of disability between September 1 and December 29, 1993 causally related to her accepted May 1985 employment injury of bilateral shoulder tendinitis.

In April 1988 appellant, then a 23-year-old manual postal clerk, filed an occupational disease claim, alleging that she had pain in her shoulders from lifting heavy trays and parcels. She stopped work on April 13, 1988. On February 9, 1989 the Office of Workers' Compensation Programs accepted appellant's claim for bilateral shoulder tendinitis. Also on February 9, 1989 appellant accepted a limited-duty full-time position with the employing establishment.[1] On May 11, 1993 appellant filed a claim for recurrence of disability beginning April 1993. She alleged that she could not perform many of her clerical duties, including no continuous motion, no lifting over the shoulder and no lifting items over 10 pounds. On September 29, 1993 appellant filed a claim for continuing compensation for the period of March 8 to August 31, 1993. On December 21, 1993 the Office denied appellant's claim for continuing compensation on the grounds that the medical evidence was insufficient to establish that appellant could not perform her limited-duty position full time or that any disability was causally related to her May 1985 employment injury. On December 31, 1993 appellant filed a claim for continuing compensation for the period of September 1 to December 29, 1993. By decision dated April 19, 1994, the Office denied appellant's December 31, 1993 claim on the grounds that the weight of the medical evidence established that appellant's disability was not causally related to her May 1985 employment injury. By merit decisions dated March 15 and

[1] On March 16, 1989 appellant filed a claim for continuing compensation for the period of June 3, 1988 to February 9, 1989. The Office accepted this claim by decision dated August 16, 1989. After appellant returned to full-time limited-duty work, she filed intermittent claims for continuing compensation for time spent in physical therapy for which she used leave without pay. Appellant also missed work for several days at a time intermittently in 1990 and 1992 due to shoulder problems. A review of the record also indicates that appellant sustained an injury to her back on January 28, 1991.

August 4, 1995, the Office affirmed the April 19, 1994 decision, finding that the evidence submitted was not sufficient to establish modification.

The Board has carefully reviewed the entire case record and finds that this case is not in posture for decision on appeal and must be remanded for further development of the evidence.[2]

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which she seeks compensation was causally related to her employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.[3] 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 the 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 requirement.[4]

In the instant case, appellant alleged in her claim for recurrence that she was not capable of performing the requirements of her limited-duty assignment. In support of her assertion, appellant submitted a narrative report dated January 4, 1994 by Dr. James Guetzkow, a Board-certified family practitioner and appellant's treating physician. In this report, Dr. Guetzkow indicated that appellant continued to have shoulder pain and flareups of her original injury allegedly due to the employing establishment's inability to give her a limited-duty position which met his specifications of minimal lifting and carrying. Appellant had submitted an earlier report by Dr. Guetzkow, dated June 8, 1993, in which he reported that appellant appeared to be developing frozen shoulder syndrome and recommended immediate physical therapy. Dr. Guetzkow also provided numerous notes between May 15 and December 1993 in which he stated that appellant could only work six hours a day without further explanation. When appellant was advised by letter dated January 24, 1994 that the medical evidence submitted was insufficient to pay compensation for residual disability for two hours per day between September and December 1993, she submitted a form medical report by Dr. Guetzkow in which he reiterated his findings of rotator cuff tendinitis, bilateral limited range of motion and lumbar disc disease with restrictions on reaching, pulling, pushing, sitting without back support or repetitive use of her arm. While the reports by Dr. Guetzkow are not sufficient to establish that appellant had a recurrence of disability between September and December 1993 causally related to her May 1985 employment injury, the Board finds that these reports in conjunction with the February 17, 1994 second opinion examination report of Dr. Stanley K. Monteith, a Board-certified orthopedic surgeon, are sufficient to require further development of the evidence. The

[2] The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed her appeal with the Board on January 29, 1996, the only decisions before the Board are the Office's March 15 and August 4, 1995 decisions. *See* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

[3] *Dominic M. DeScala*, 37 ECAB 369 (1986).

[4] *George DePasquale*, 39 ECAB 295 (1987); *Terry R. Hedman*, 38 ECAB 222 (1986).

Board notes that when an employee initially submits supportive factual and/or medical evidence which is not sufficient to carry the burden of proof, the Office must inform the claimant of the defects in proof and grant at least 30 calendar days for the claimant to submit the evidence required to meet the burden of proof. The Office may undertake to develop either factual or medical evidence for determination of the claim.[5] It is well established that proceedings under the Act are not adversarial in nature[6] and while the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.[7] The Office has the obligation to see that justice is done.[8]

In the present case, once the Office undertook the development of appellant's claim by sending her for a second opinion examination, it had an obligation to fully discharge its duty of developing the evidence in relation to her claim for a recurrence of disability by obtaining a reasoned second opinion report. Dr. Monteith provided an opinion that appellant had bilateral tendinitis of the shoulders of longstanding with an element of bicipital tendinitis which might have responded to various surgeries had appellant agreed with that option. He stated that appellant continued to have residuals based on the physical findings on examination and her history and would continue to have problems until she had surgery. Dr. Monteith reported that appellant could perform work as a window clerk, provided she did not lift over 20 pounds and did not raise her arms above her shoulders and that she could work 8 hours a day if motivated to do so. He concluded that he could not understand why appellant "could only work six hours a day -- I would think she could work eight hours a day." As appellant urged in her requests for reconsideration, Dr. Monteith has not fully addressed the central issue of this case, *viz.*, whether she sustained a recurrence of disability between September 1 and December 29, 1993 which caused her to be disabled for two hours per day due to residuals of her May 1985 employment injury. The Office's finding that the weight of the medical evidence rested with the report of Dr. Monteith, who stated that he would "think" appellant "could work eight hours a day" and that he could not understand why she was working six hours a day is not proper as his conclusion in this regard is not definitive or fully reasoned. Dr. Monteith has not specifically addressed the period of alleged recurrence in question and has not fully explained his conclusion that appellant could work more than six hours a day in light of his own physical findings on examination or in view of his definitive conclusion that appellant did continue to have residuals of her May 1985 employment injury. Thus, this case must be remanded for the Office to request that Dr. Monteith specifically address the time period in question in relation to appellant's claim of a recurrence of disability. On remand the Office should further develop the evidence by providing Dr. Monteith with a statement of accepted facts and requesting that he submit a rationalized medical opinion on whether appellant had any recurrence of disability between September 1 and December 1993 causally related to her accepted May 1985 employment injury. After such development as the Office deems necessary, a *de novo* decision shall be issued.

[5] 20 C.F.R. § 10.11(b); *see also John J. Carlone*, 41 ECAB 354 (1989).

[6] *See e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985); *Michael Gallo*, 29 ECAB 159 (1978).

[7] *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

[8] *William J. Cantrell*, 34 ECAB 1233 (1983).

The decisions of the Office of Workers' Compensation Programs dated August 4 and March 15, 1995 are set aside and the case is remanded for further proceedings in accordance with this decision.

Dated, Washington, D.C.
January 26, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member