U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RON WALKER and U.S. POSTAL SERVICE,
VEHICLE OPERATIONS, Nashville, Tenn.

Docket No. 96-970; Submitted on the Record;
Issued January 14, 1998

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established a recurrence of disability commencing March 13, 1995 causally related to his employment injury.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained an aggravation of a herniated nucleus pulposus at L4-5 causally related to his federal employment. Appellant returned to a light-duty position on March 23, 1992. By decision dated June 10, 1992, the Office determined that the clerk position represented his capacity to earn wages and that appellant had no loss of wage-earning capacity.

Appellant filed a notice of recurrence of disability (Form CA-2a) commencing March 13, 1995. By decision dated September 1, 1995, the Office denied the claim. Appellant requested reconsideration and the Office denied modification by decision dated December 18, 1995.

The Board has reviewed the record and finds that appellant has not established a recurrence of disability commencing March 13, 1995.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.[1]

In the present case, appellant does not discuss a change in the light-duty job requirements. The Board notes that in the supervisors portion of the Form CA-2a, a supervisor

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

indicated that appellant had not worked since February 16, 1995 and on February 22, 1995 appellant had his license reduced from class "A" to "D," making him ineligible to drive. The light-duty job appeared to primarily involve general office duties, although "shuttle vehicles" was also included in the job description. It is not clear whether the downgrading of appellant's driving license affected the availability of the light-duty job. The Board notes that if appellant's own misconduct contributed to the termination of a light-duty job, it would not establish a recurrence of disability.[2] There is no probative evidence of record establishing a recurrence of disability based on a change in the nature and extent of the light-duty job requirements.

Appellant indicated on the Form CA-2a that his claim for a recurrence of disability was based on his medical condition. He submitted a March 21, 1995 report from Dr. Don Lounsbury, a chiropractor. Section 8101(2) of the Federal Employees' Compensation Act provides that the term '"physician' … includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist."[3] Dr. Lounsbury does not diagnose a subluxation as demonstrated by x-ray and therefore he is not considered a physician under the Act.

In a report dated June 5, 1995, Dr. J. Miller, an orthopedic surgeon, indicated that he had performed a fitness-for-duty examination. Dr. Miller stated that he saw appellant three years earlier and appellant's condition "has not changed very much." He provided results on examination and stated that appellant's restrictions did not permit him to perform full duties of lifting 70 pounds, but appellant should work in a sedentary job. Dr. Miller did not provide an opinion that appellant had a recurrence of total disability commencing March 13, 1995.

It is, as noted above, appellant's burden to establish his claim. In the absence of medical opinion evidence, based on a complete background, that establishes a change in the nature and extent of the employment-related condition on or after March 13, 1995, the Board finds that appellant has not met his burden of proof in this case.

[2] *See John W. Normand*, 39 ECAB 1378 (1988).

[3] 5 U.S.C. § 8101(2).

The decisions of the Office of Workers' Compensation Programs dated December 18 and September 1, 1995 are affirmed.

Dated, Washington, D.C.
January 14, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member