

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN E. OATES and U.S. POSTAL SERVICE,
POST OFFICE, Syracuse, N.Y.

*Docket No. 96-2658; Submitted on the Record;
Issued July 23, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability from November 15 to 29, 1994 related to his September 23, 1994 employment injury.

The Office of Workers' Compensation Programs accepted that appellant sustained a lumbosacral sprain on September 23, 1994. Appellant stopped work on September 23, 1994 and received continuation of pay until he returned to limited duty on October 19, 1994. Appellant again stopped work on October 21, 1994, and again received continuation of pay until he returned to limited duty on November 9, 1994.

Appellant again stopped work on November 15, 1994, returning to work on November 29, 1994. He filed a claim for a recurrence of disability, claiming that his disability during this period was due to his September 23, 1994 employment injury. The Office denied this claim by a March 23, 1995 decision; this decision was affirmed by an Office hearing representative in a decision dated July 31, 1996.

The Board finds that appellant has not established that he sustained a recurrence of disability from November 15 to 29, 1994 related to his September 23, 1994 employment injury.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 to show that he or 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

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

In the present case, the only medical evidence that lends any support to appellant's claim for a recurrence of disability from November 15 to 29, 1994 is a November 16, 1994 report from appellant's attending physician, Dr. Dominick C. Adornato, Jr., a neurosurgeon. This report, which is on an Office form, lists a diagnosis of "rule out herniated lumbar disc," and findings of "awaiting authorization for patient to have MRI scan of his lumbar spine." This report also lists a period of total disability from September 23, 1994 to unknown, which disregards the fact that appellant twice returned to work during this period. While Dr. Adornato did check a box to indicate that appellant's condition was related to his September 23, 1994 employment injury, the Board has held that, without any explanation or rationale, the checking of a box on a form is insufficient to meet appellant's burden of proof.² Dr. Adornato's November 16, 1994 report does not contain any rationale or explanation of how appellant's condition changed on November 15, 1994 so that he was no longer able to perform the light-duty position he was performing until that date. This report is insufficient to meet appellant's burden of proof.

The decision of the Office of Workers' Compensation Programs dated July 31, 1996 is affirmed.

Dated, Washington, D.C.
July 23, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member

² *Salvatore Dante Roscello*, 31 ECAB 247 (1979).