U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOROTHY A. REYNOLDS and U.S. POSTAL SERVICE, POST OFFICE, Birmingham, Ala.

Docket No. 96-723; Submitted on the Record;
Issued June 24, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained a recurrence of total disability on or after March 16, 1992.

The Board has duly reviewed the case record and finds that this case is not in posture for decision.

In the present case, the Office of Workers' Compensation Programs has accepted that appellant, a postal clerk, sustained a lumbosacral strain and chronic lumbosacral syndrome in the performance of duty on May 23, 1977. Appellant returned to work for intermittent, brief periods, essentially receiving temporary total disability benefits from May 1977 until March 7, 1992. Appellant returned to work as a modified distribution clerk on March 7, 1992. Appellant's return to work in the modified position had been approved by her treating physicians, Dr. Perry L. Savage, a Board-certified orthopedic surgeon, and Dr. Richard McFague, a physiatrist. Appellant stopped work on March 16, 1992 and claimed a recurrence of total disability. The Office denied appellant's notice of recurrence of disability by decisions dated June 24, 1994 and September 21, 1995, finalized on September 26, 1995.

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 a 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]

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[1] *Mary A. Howard*, 45 ECAB 646 (1994).

Appellant has submitted reports from her treating physician Dr. E. Mapendla Moyo, an internist, with whom she began treating in March 1992 indicating that she was totally disabled from work due to low back syndrome with lumbosacral disc disease, secondary to her accepted injury and depression due to low back pain, after March 16, 1992. Appellant also submitted a number of reports from Dr. Gordon J. Kirschberg, a Board-certified neurologist, who first examined her in July 1994 and reported that MRI examination indicated a worsening of appellant's lumbosacral disc condition between 1992 and 1994. Appellant furthermore submitted reports from Dr. Glenn O. Archibald, a psychiatrist, who noted that he first treated appellant in June 1993. Dr. Archibald related that appellant had a diagnosis of depressive disorder, single episode, which was related to her physical back condition and subsequent chronic pain syndrome. Appellant therefore has submitted medical evidence to the record documenting that her accepted back condition and sequelae thereof worsened after March 16, 1992, causing total disability.

The Office referred appellant to Dr. Matthew Berchuk, a Board-certified orthopedic surgeon, for a second opinion examination. In reports dating from January 10 to March 10, 1994, Dr. Berchuk reported that appellant had discogenic pain at the L5-S1 level. Dr. Berchuk recommended that appellant perform sedentary work, however, after review of the modified clerk position description indicated that appellant could also perform this position.

The Board thus finds that a conflict exists in the medical opinion evidence as to whether appellant was totally disabled after March 16, 1992 or was able to perform the duties of the modified clerk position. Section 8123(a) of the Federal Employees' Compensation Act[2] provides that if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[3] On remand, the Office shall refer appellant to an appropriate specialist for an impartial medical specialist. The impartial medical specialist shall determine whether appellant's accepted back condition or any resulting pain disorder causally related thereto caused appellant total disability on or after March 16, 1992. After such further development as necessary, the Office shall issue a *de novo* decision.

[2] 5 U.S.C. § 8123(a).

[3] *Harrison Combs, Jr.*, 45 ECAB 716 (1994).

The decision of the Office of Workers' Compensation Programs dated September 21, 1995 and finalized on September 26, 1995 is hereby set aside and this case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, D.C.
June 24, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member