U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERRY D. GLANDER and U.S. POSTAL SERVICE,
POST OFFICE, Cedar Rapids, IA

Docket No. 99-569; Submitted on the Record;
Issued December 1, 2000

DECISION and ORDER

Before WILLIE T.C. THOMAS, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

The issues are: (1) whether appellant is entitled to compensation for temporary total disability for the period April 20, 1993 through January 28, 1994; and (2) whether the Office of Workers' Compensation Programs abused its discretion by denying appellant's request for a further review of his case on its merits under 5 U.S.C. § 8128(a).

On August 6, 1997 the Office accepted that appellant, then 50 years of age, sustained "acceleration [of] bilateral knee arthritis" in the performance of his duties as a letter carrier beginning in 1991. The Office granted appellant compensation for periods of temporary total disability following acceptance of his claim. However, the Office denied compensation for the period April 20, 1993 through January 28, 1994, finding that he "returned to limited duty on March 27, 1993" and "accepted a written job offer of sedentary work on January 28, 1994."

On June 19, 1998 an Office hearing representative affirmed the August 6, 1997 decision denying compensation for the period April 20, 1993 through January 28, 1994, finding that appellant "stopped work due to pain when limited-duty work was available."

Appellant requested modification of the June 19, 1998 decision, which was denied by decision dated July 28, 1998 on the grounds that "the medical evidence fails to establish that [appellant] was totally disable[d] for the period April 20, 1993 through January 28, 1994."

Appellant again requested reconsideration, which was denied by a nonmerit decision dated September 11, 1998. The Office found that the medical evidence appellant had submitted in support of his request was cumulative.

The Board, however, finds that this case must be reversed.

An employee returning to light duty, or whose medical evidence shows the ability to perform light duty, has the burden of proof to establish a recurrence of temporary total disability by the weight of reliable, probative and substantial evidence and to show that he cannot perform

the light duty.[1] As part of his burden, the employee must show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the light-duty requirements.[2]

The medical evidence of record supports that Dr. R. Scott Cairns, appellant's treating Board-certified orthopedic surgeon, could, following his December 21, 1992 osteotomy, return to light duty on March 24, 1993. Dr. Cairns indicated that appellant "may walk one hour a day and gradually increase." Appellant apparently actually returned to light duty effective March 28, 1993 with the foregoing restrictions.

In a medical progress note dated April 13, 1993, Dr. Cairns reported that appellant claimed that he was unable to work. Upon examination, appellant had patellar crepitus, a rather ponderous gait and significant degenerative changes including the patellofemoral joint. Dr. Cairns opined that appellant "probably needs a new job. He is given a work release saying desk-type job only."

By report dated May 17, 1993, Dr. John M. O'Shea, a Board-certified family practitioner, noted that appellant suffered "from degenerative joint disease, aggravated and accelerated substantially by the wear and tear of his activity as a mail carrier." He advised that appellant "should seek a job which would not require him to be standing for any prolonged period of time or doing any long-distance walking."

By report dated June 15, 1993, Dr. O'Shea recommended that appellant "be placed on sit-down duty if at all possible since weight bearing and specifically walking seem to aggravate his condition." Thereafter, appellant continued to be seen and treated by Dr. O'Shea for his bilateral knee arthritis.

However, a memorandum dated May 26, 1993 from appellant's postmaster to the employing establishment manager of operations in Cedar Rapids, IA, regarding appellant's Form CA-2 claim form[3] and appellant's request for light duty revealed:

> "My understanding of [appellant's] limitations, from the medical report and discussions with him are no walking over 10-15 minutes, no standing over 15-30 minutes, but he can sit.
>
> "At [this employing establishment] we have no work that meets [appellant's] limitations."

The medical reports of record support that appellant remained in need of light duty essentially sedentary work from April 13, 1993.

[1] *Terry R. Hedman*, 38 ECAB 222,227 (1986).

[2] *Id.*

[3] Appellant's original claim form was completed and signed by his supervisor on May 28, 1993.

The May 26, 1993 memorandum establishes that the employing establishment had no light or limited duty that was within appellant's medical restrictions. The employing establishment's admission constitutes a change in the nature and extent of his light-duty job. Therefore, appellant became, as of April 20, 1993, again temporarily totally disabled and entitled to wage-loss compensation until he accepted the employing establishment's written job offer of sedentary work on January 28, 1994.

Consequently, the June 19, 1998 decision of the Office hearing representative is reversed in part as to appellant's compensation entitlement during the period April 20, 1993 through January 28, 1994. The Board finds that appellant is entitled to wage-loss compensation for temporary total disability for the period April 20, 1993 through January 28, 1994.[4]

Because of the disposition of this case, the Office decisions dated July 28 and September 11, 1998 are hereby rendered moot.

The decision of the Office of Workers' Compensation Programs dated June 19, 1998 is reversed in part;[5] the decisions dated July 28 and September 11, 1998 are moot.

Dated, Washington, DC
December 1, 2000

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

[4] The Board finds that, with regard to appellant's entitlement to wage-loss compensation for the period June 7, 1994 and continuing, this period is not adverse to appellant as the Office hearing representative found entitlement. As the Board's jurisdiction is limited to the review of adverse Office decisions issued within one year of the date of the Board's docketing of the appeal, the Board has no jurisdiction over this aspect of appellant's claim. *See* 20 C.F.R. §§ 501.3(a) and 501.3(d)(2).

[5] *See supra* note 3.