U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANK J. DELL'ANNO and U.S. POSTAL SERVICE,
POST OFFICE, Westbury, NY

Docket No. 98-2422; Submitted on the Record;
Issued March 29, 2000

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof to establish that he sustained a recurrence of disability on or after November 2, 1996 causally related to his February 16, 1995 employment injury, such that he can no longer perform his full-time light-duty job.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability on or after November 2, 1996, causally related to his February 16, 1995 employment injury, such that he can no longer perform his full-time light-duty job.

On March 2, 1995 appellant, then a 48-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 16, 1995, while in the performance of his duties, he slipped and fell on an icy driveway injuring his left knee. He stopped work on February 18, 1995. Appellant returned to work on February 27, 1995, for one day and then stopped again. On March 23, 1995 he returned to limited duty, eight hours a day and continued to work under a series of temporary light-duty agreements.

On April 4, 1995 the Office of Workers' Compensation Programs accepted appellant's claim for a left knee sprain. Subsequent to a magnetic resonance imaging scan performed on June 8, 1995 which revealed the presence of a tear of the posterior horn of the medical meniscus, the Office expanded its acceptance of appellant's claim to include a torn left medial meniscus. The Office also authorized arthroscopic surgery, as requested by appellant's physician, but appellant elected not to undergo surgical treatment.

In a narrative medical report dated March 26, 1996, Dr. Sanford C. Schemen, a Board-certified orthopedic surgeon and appellant's treating physician, stated that appellant could continue to perform light duty, within specified restrictions, but added that appellant had informed him that having his days off in the middle of the week would make it easier for him to

complete his full workdays. In an accompanying duty status report also dated March 26, 1996, he requested that appellant be given either Wednesday or Thursday as one of his days off.

On June 10, 1996 Dr. Scheman, approved a forty hour a week permanent light-duty job proposed by the employing establishment. The job description given to Dr. Sanford did not state what days appellant would be required to work. On October 18, 1996 appellant declined to accepted the proposed position, which now indicated that Sunday and Tuesday would be his days off, stating that he was medically unable to accept.

On November 14, 1996 appellant filed a claim (Form CA-2a) alleging that he sustained a recurrence of disability on November 2, 1996 characterized by a deterioration of his condition and an inability to work four consecutive days. He further submitted a November 12, 1996 medical report from Dr. Scheman recommending that appellant reduce his work schedule to 30 hours a week and reiterating his earlier recommendation that appellant only work three consecutive days. Subsequently, appellant submitted a report dated December 24, 1996 from Dr. Scheman, further restricting appellant to 20 hours a week, to be performed over 5 hours a day, 4 days a week. In each instance, the employing establishment adjusted appellant's employment schedule to meet his physician's recommendations.

By decision dated July 8, 1997, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on or around November 2, 1996 causally related to the February 16, 1995 employment injury.

In a letter dated May 19, 1998, appellant, through his counsel, requested reconsideration of the Office's decision and submitted additional medical evidence in support of his request.

By decision dated June 23, 1998, the Office found the newly submitted evidence insufficient to support modification of its prior decision.

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 substantial, reliable and probative evidence and to show that he or she 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]

In the present case, appellant has neither shown a change in the nature and extent of his injury-related condition or a change in the nature and extent of the light-duty requirements. The record shows that following the February 16, 1995 employment-related injury, on March 23, 1995 appellant returned to work in a full-time, light-duty capacity with certain work restrictions. The record does not establish that the claimed recurrence of total disability was caused by a change in the nature or extent of the light-duty job requirements. Rather, the record shows that

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

[2] *Id.*

the only changes in the nature of appellant's light-duty job requirements occurred in response to specific requests for such changes by appellant and his physician.

The medical evidence of record is insufficient to establish that appellant was disabled from his light-duty position due to a change in the nature or extent of his accepted February 16, 1995 employment-related left knee sprain and torn left medial meniscus. In the present case, appellant has not submitted any medical evidence which establishes that his claimed condition on or around November 2, 1996 was causally related to any of his accepted employment injuries. The only relevant medical evidence pertaining to appellant's alleged November 2, 1996 recurrence of disability are the periodic reports[3] from Dr. Scheman. In his report dated November 12, 1996, the most contemporaneous report to appellant's claimed recurrence, Dr. Scheman notes that appellant reports having increased pain in his left knee, which appellant feels is the result of standing on his left knee. Dr. Scheman further notes appellant's complaints of right knee pain. He concludes that appellant remains partially disabled, is given a work schedule that will eliminate pain in his left knee as much as possible and can only work three days at a time. In his next report dated November 25, 1996, Dr. Scheman stated that appellant continued to complain of pain in his left knee and that he was advised to sit down and get off his feet if the pain became too severe. He concluded that, appellant "essentially has no change in his signs or symptoms since his last visit." In a subsequent report dated December 5, 1996, Dr. Scheman diagnoses appellant's knee condition as a torn left medial meniscus and states that over the past nine months, appellant has had intermittent episodes when his pain has increased. He also noted that appellant reported having right knee pain, which appellant believed to be due to standing more frequently on his right knee than on his left knee. Dr. Scheman further noted that appellant had occasional pain of his lumbar spine, but that this was not of major significance. He concluded that, appellant did not want to undergo surgery but preferred to tailor his work activities to accommodate his restrictions and that he remained partially disabled due to his February 16, 1995 employment injury. In a follow-up report dated December 12, 1996, Dr. Scheman further states that he feels appellant is standing around too much and causing pain in his left knee and recommends that he reduce his hours to 20 per week, spread over 4 days. In a follow-up report dated February 7, 1997, he noted appellant's continued complaints of pain in his left knee and concluded that, "[appellant] feels he would have less pain if he only has to work four days a week for five hours a day and I have instructed him that this is what he should do." In his next report dated February 17, 1997, Dr. Scheman reiterates his diagnosis of torn posterior horn of the left medial meniscus and stated that, appellant would be disabled with this condition for the remainder of his life and would have intermittent pain and discomfort. He further added that appellant could not stand on his feet for more than 20 or 30 minutes without having some degree of pain in his left knee. Dr. Scheman further noted that appellant complained of pain in his lower back and that he had diagnosed him with a lumbar sprain, as well as a knee condition. In follow-up reports dated March 21, May 9, April 2, June 30, August 11, August 25, September 22 and December 1, 1997 and January 12, February 23 and April 7, 1998, he continued to note appellant's complaints of pain and continued to recommend that he work four days a week, five hours a day.

[3] Each narrative report from Dr. Scheman is accompanied by a duty status report form on which the physician outlines appellant's specific physical restrictions.

While the medical evidence from Dr. Scheman lends support to a finding that appellant continues to have pain from his accepted injury, which intermittently increases, appellant has submitted no medical evidence, supported by medical rational and objective findings, that his condition has worsened to any degree. As appellant has failed to establish that he had a change in the nature or extent of his modified duties and did not submit a rationalized medical report based on a complete factual and medical background establishing a change in the nature or extent of his employment injury such that he can no longer perform his full-time light-duty job, the Board finds that he has failed to discharge his burden of proof.[4]

The June 23, 1998 and July 8, 1997 decisions of the Office of Workers' Compensation Programs are hereby affirmed.[5]

Dated, Washington, D.C.
March 29, 2000

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

[4] *Alberta S. Williamson*, 47 ECAB 569 (1996).

[5] The record also contains a decision of the Office dated July 8, 1998, which approves appellant's counsel's requested fee. Appellant did not oppose the fee before the Office and he did not appeal this decision to the Board.