U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TINA HERRON and DEPARTMENT OF VETERANS AFFAIRS, MEDICAL CENTER, Indianapolis, IN

Docket No. 99-247; Submitted on the Record;
Issued May 22, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained a recurrence of disability beginning November 19, 1997 due to her March 24, 1997 employment injury.

On March 24, 1997 appellant, then a 35-year-old light-duty food service worker, filed a claim for a back strain sustained on that day by bending over a sink cleaning vegetables. The Office of Workers' Compensation Programs accepted that appellant sustained a lumbar strain with sciatica. Appellant received continuation of pay from March 25 to May 8, 1997, followed by compensation for temporary total disability which continued until she returned to work on September 24, 1997 as a telephone operator.

On December 16, 1997 appellant filed a claim for a recurrence of disability due to her March 24, 1997 employment injury. Appellant listed the date of the recurrence and the date she stopped work following the recurrence as November 19, 1997. Appellant described the circumstances of the recurrence of disability: "A slow buildup of improper FCE [functional capacity evaluation] guidelines while at work eventually causing the body to break down." By letter dated January 29, 1998, the Office advised appellant that it needed a full explanation of how her light-duty assignment changed and became more demanding so that it no longer met the restrictions set by her doctor, or a physician's report describing objective findings which convinced him her condition had worsened and explaining how she could no longer perform the duties she was performing when she stopped work.

By decision dated February 28, 1998, the Office found that the evidence failed to demonstrate a causal relationship between her March 24, 1997 injury and the claimed recurrence of disability on November 19, 1997. Appellant requested reconsideration and submitted additional evidence. The Office, by decision dated September 15, 1998, found that the additional evidence was not sufficient to warrant modification of its prior decision.

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]

The Board finds that appellant has not established that she sustained a recurrence of disability beginning November 19, 1997 due to her March 24, 1997 employment injury.

The medical evidence does not establish a change in the nature and extent of the injury-related condition. The Office accepted that appellant sustained a lumbar strain with sciatica on March 24, 1997. Appellant's attending physician, Dr. Charles M. Platz, a Board-certified family practitioner, indicated in a December 29, 1997 report that these conditions, along with appellant's fibromyalgia, were disabling, but did not state appellant's condition had changed or set forth any findings that would indicate her employment-related condition had changed. In reports dated February 3, 1998, Dr. Platz diagnosed fibromyalgia and myofascial pain syndrome, conditions not accepted by the Office as related to appellant's employment. In a report dated April 23, 1998, Dr. Platz described appellant's 1992 and 1994 injuries, and stated: "On her return to work she continued to be assigned to do unsuitable tasks, and as a result of repetitive use has now developed chronic fibromyalgia, which results in persistent pain and impairment. I believe this condition is a result of the lack of accommodation provided by her employer." This report is insufficient to establish that appellant's chronic fibromyalgia is causally related to her employment, as it contains no details as to what "unsuitable tasks" or "lack of accommodation" occurred and because it contains no rationale. Moreover, neither this report nor any of the other medical evidence appellant submitted indicates there is a causal relation between appellant's disability beginning November 19, 1997 and her March 24, 1997 employment injury. Appellant has not established a change in the nature and extent of the injury-related condition.

Appellant also has not established a change in the nature and extent of the light-duty job requirements. Shortly after appellant began her assignment as a telephone operator on September 24, 1997, she stopped work on September 29 and 30 and October 1, 1997, contending that her work station was not properly set up to avoid twisting. The employing establishment then changed her work station, providing a high back chair with back support, a stand for her computer monitor and a foot rest. It also allowed appellant to step away from her work console every 45 minutes. Appellant acknowledged that these changes had been made by October 3, 1997. The employing establishment's accommodations are consistent with the restrictions set forth in a September 17, 1997 functional capacity evaluation signed by Dr. Platz.

In a letter dated June 18, 1998, appellant stated that one of the other telephone operators told her that operators take in approximately 1,200 calls per hour, that a maximum of three operators were on duty, and that this eliminated her ability to work at her own pace, one of the restrictions set forth in the functional capacity evaluation. Appellant, however, did not submit

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

any corroboration that this statement from a fellow telephone operator was accurate, or show how this precluded her from working at her own pace, when she was allowed to step away from her work station every 45 minutes. Appellant also contended that she did not receive adequate training, that her work area was small and crowded, and that her fellow telephone operators were rude. Even if these can be considered changes in appellant's light-duty assignment, they would not establish a recurrence of disability, as only changes that cause the light-duty assignment to exceed the employee's work tolerance limitations result in a compensable recurrence of disability.[2] Appellant has not established a change in the nature and extent of her light-duty requirements such that they exceed her work tolerance limitations.

The decisions of the Office of Workers' Compensation Programs dated September 15 and February 28, 1998 are affirmed.

Dated, Washington, D.C.
May 22, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member

[2] *Kim Kiltz*, 51 ECAB ___ (Docket No. 98-1907, issued March 9, 2000).