U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANITA Y. COACH and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Philadelphia, PA

Docket No. 99-766; Submitted on the Record;
Issued May 10, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a recurrence of disability beginning September 21, 1998 due to her September 5, 1998 employment injury.

On September 5, 1998 appellant filed a claim for an injury to the lower middle left side of her back sustained on that date by pulling tubs of mail. She did not stop work at that time, but was assigned limited duty cutting straps off bundles while sitting. Appellant stopped work on September 15, 1998 and received continuation of pay for that day; she returned to work the following day.

Appellant again stopped work on September 21, 1998. On October 5, 1998 she filed a claim for a recurrence of disability due to her September 5, 1998 employment injury, which the Office of Workers' Compensation Programs accepted for a lumbar strain. Appellant described the circumstances of the recurrence of disability as being unable to get out of bed when she awoke on September 21, 1998. By letter dated October 13, 1998, the Office advised appellant that it needed further information on her claim, including a medical report containing a detailed description of the physician's findings and the physician's opinion, with medical reasons, as to the relationship of her disability to her original injury.

By decision dated November 17, 1998, the Office found that the evidence was insufficient to establish that the claimed recurrence of disability was causally related to appellant's September 5, 1998 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]

The Board finds that appellant has not established that she sustained a recurrence of disability beginning September 21, 1998 due to her September 5, 1998 employment injury.

At the time of the Office's final decision on November 17, 1998, the only evidence that lends any support to appellant's claim for a recurrence of disability on September 21, 1998 consisted of brief notes from her attending physician, Dr. Walter F. Wrenn.[2] In these notes, which are dated October 2 and 24, 1998, Dr. Wrenn diagnosed cervical and lumbar sprain and strain and stated that appellant should remain off work until cleared by him. Although the Office's procedure manual states that, in a claim for a recurrence of disability within 90 days of the claimant's return to work, a claimant is not required to produce the same evidence as for a recurrence claimed long after the apparent recovery and return to work and that the focus is on disability rather than causal relationship, it also states that the report from the attending physician should "describe the duties which the employee cannot perform and the demonstrated objective medical findings that form the basis for renewed disability for work."[3] As the notes from Dr. Wrenn do not contain a description of duties appellant cannot perform or of any findings on examination, they are not sufficient to meet appellant's burden of proof. The case record at the time of the Office's decision also contained two reports from Dr. Frederick S. Lieberman, but these reports, which are dated October 15 and 20, 1998, do not indicate appellant was disabled. A report of an October 26, 1998 fitness-for-duty examination done for the employing establishment indicates appellant could perform her regular duties.

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

[2] Subsequent to the Office's November 17, 1998 decision, appellant submitted additional medical evidence. However, as the Board's review is limited by 20 C.F.R. § 501.2(c) to "the evidence in the case record which was before the Office at the time of its final decision," the Board cannot review this evidence on the present appeal.

[3] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.6(b) (January 1995).

The decision of the Office of Workers' Compensation Programs dated November 17, 1998 is affirmed.

Dated, Washington, D.C.
May 10, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member