

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KANDICE J. VEATCH and U.S. POSTAL SERVICE,
POST OFFICE, West Bloomfield, MI

*Docket No. 00-491; Submitted on the Record;
Issued December 14, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on or about September 24, 1998, causally related to her September 29, 1997 employment injury.

On September 29, 1997 appellant, then a 48-year-old letter carrier, filed a traumatic injury claim, alleging that she sustained an injury to her left arm while in the performance of duty. The Office of Workers' Compensation Programs accepted the claim for left biceps strain. Although appellant did not stop work as a result of her September 29, 1997 injury, she was placed on limited duty following her accepted injury.

On October 8, 1998 appellant filed a notice of recurrence of disability (Form CA-2a), alleging that she sustained a recurrence of disability on September 24, 1998 causally related to her September 29, 1997 employment injury. In conjunction with her claim, appellant submitted an August 27, 1998 magnetic resonance imaging (MRI) scan of the cervical spine, which revealed disc herniation at C5-6. Additional evidence included a September 8, 1998 report from Dr. Robert S. Levine, who indicated that recent MRI scans revealed a herniated cervical disc and capsulitis of the left rotator cuff. Dr. Levine expressed uncertainty as to the primary source of appellant's pain and noted that he referred her to Dr. Lawrence G. Rapp for further evaluation of the herniated disc. In a report dated September 23, 1998, he noted that appellant appeared to be in "moderate to severe discomfort" and he diagnosed left upper extremity radicular pain, multifactorial including impingement syndrome with the shoulder. Dr. Rapp also noted epicondylitis by history, possibly due to nerve root compression. He recommended that appellant undergo cervical epidural steroid injection followed by "med-x" therapy.¹

Appellant also submitted a September 24, 1998 note from her treating physician, Dr. Thomas G. Clifton, who stated that appellant was unable to work during the period

¹ By letter dated October 7, 1998, the Office denied authorization for the recommended procedure on the basis that appellant's claim had not been accepted for an employment-related cervical condition.

September 24 through October 8, 1998 due to rotator cuff tear and ruptured cervical disc. Dr. Clifton also provided an October 13, 1998 report (Form CA-20), wherein he provided a diagnosis of radiculopathy at C5-6. In attributing this condition to appellant's September 29, 1997 employment injury, Dr. Clifton stated "onset [of] symptoms after work injury." Additionally, in the remarks section of the report, Dr. Clifton wrote "[s]ince you saw fit to refuse treatment modalities [appellant] is off work indefinitely."

In a letter dated October 22, 1998, the Office advised appellant of the need for additional medical evidence. The Office explained that the claim had only been accepted for left biceps strain and that, if her physician believed the cervical condition and any related disability arose from the September 29, 1997 employment injury, he should provide an opinion explaining the causal relationship.

By decision dated November 24, 1998, the Office expanded appellant's claim to include herniated nucleus pulposus at C5-6 as an additional accepted condition arising from her September 29, 1997 employment injury.² The Office, however, denied appellant's claim for recurrence of disability based on her failure to establish that the claimed recurrence of disability on September 24, 1998 was causally related to the September 29, 1997 employment injury.

The Board finds that appellant failed to establish that she sustained a recurrence of disability on or about September 24, 1998, causally related to her September 29, 1997 employment injury.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position, or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the employment-related condition or a change in the nature and extent of the light-duty job requirements.³

As previously noted, the Office advised appellant by letter dated October 22, 1998 that the evidence submitted was insufficient to establish her claimed recurrence of disability. The Office specifically requested that appellant submit a report from her physician explaining the causal relationship between her September 29, 1997 employment injury and her cervical condition and any related disability. Appellant did not timely respond to the Office's request for additional medical evidence.

Although the Office subsequently expanded the claim to include herniated nucleus pulposus at C5-6, this determination was based on Dr. Pollack's August 3, 1998 report, who found at the time that appellant was capable of performing work with restrictions of lifting no

² The Office accepted the additional condition of herniated nucleus pulposus at C5-6 based on the opinion of Dr. Norman L. Pollak, a Board-certified orthopedic surgeon and Office referral physician, who examined appellant on August 3, 1998.

³ *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

more than 25 pounds, limited reaching above the shoulder and no carrying mail. Appellant was working when Dr. Pollack examined her in early August 1998 and her claimed recurrence of disability commenced more than seven weeks after his examination. The evidence that is contemporaneous with appellant's claimed period of disability does not clearly establish a change in the nature and extent of her employment-related condition so as to preclude her from performing her light-duty assignment.⁴ The September 1998 reports of Drs. Levine and Rapp do not address the issue of her disability for work. Dr. Clifton's September 24 and October 13, 1998 reports, while noting that appellant is unable to work, do not clearly explain how appellant's current condition precluded her from performing her light-duty assignment. Moreover, Dr. Clifton's October 13, 1998 report suggests that his decision to keep appellant off work indefinitely was in part a reaction to the Office's initial refusal to authorize recommended medical treatment for appellant's condition. Thus, it is unclear from the record why appellant's condition precluded her from performing her light-duty assignment.

The record indicates that appellant's herniated disc at C5-6 did not preclude her from working as of August 3, 1998. While Dr. Clifton indicated appellant was disabled as of September 24, 1998, he offered no explanation for appellant's deteriorating condition. In the absence of rationalized medical opinion evidence explaining how appellant's employment-related condition changed on or about September 24, 1998 so as to preclude her from performing her light-duty assignment, the Office properly denied appellant's claimed recurrence of disability.

The November 24, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 14, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ Appellant did not specifically allege a change in the nature and extent of her light-duty job requirements and the record does not support such a finding.