U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLORIA M. PATTERSON and U.S. POSTAL SERVICE,
POST OFFICE, Southampton, NY

Docket No. 00-418; Submitted on the Record;
Issued June 15, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained a recurrence of total disability on February 2, 1996 causally related to her July 12, 1988[1] employment injury.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to establish that she sustained a recurrence of total disability on February 2, 1996 causally related to her July 12, 1988 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 to establish, 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 either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.[2] In the instant case, appellant has failed to establish either a change in the nature or extent of her light-duty requirements or a change in her accepted injury-related condition.

On July 12, 1988 appellant then a 43-year-old part-time flexible letter carrier, sustained a cervical and lumbosacral sprain in the performance of duty following a work-related motor vehicle accident. She returned to work in a light-duty capacity.

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[1] Although the Office of Workers' Compensation Programs has indicated in various documents that appellant's employment injury was sustained on July 2, 1988 and appellant indicated in her claim for a recurrence of disability that the original injury occurred on July 2, 1988, a review of the case record shows that the date of injury was actually July 12, 1988.

[2] *See Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Stuart K. Stanton*, 40 ECAB 859, 864 (1989).

On April 1, 1996 appellant filed a claim for a recurrence of disability on February 2, 1996 that she attributed to her July 12, 1988 employment injury. She alleged that she never fully recovered from her 1988 employment injury and had experienced constant pain. Appellant alleged that on or about November 19, 1995 she was forced to request relocation and reemployment "due to spontaneous return and increase in symptoms, as well as newly imposed restrictions set by Dr. Donald Holzer."

In letters dated April 24 and 29, 1996, representatives of the employing establishment stated that appellant had relocated to Phoenix, Arizona to accompany her husband who was retiring and relocating for his health. Appellant had informed the employing establishment at her former location that she expected to obtain a position with the employing establishment in Phoenix but was prepared to resign the position in her former location if she was not offered a position in Arizona. In November 1995 appellant was granted 30 days leave without pay in order to move to Phoenix. In early February 1996, appellant advised the employing establishment that she was unable to obtain a position in Arizona. On February 8, 1996 her supervisor sent her a leave form and a resignation form and told her that she would either have to resign her position or provide evidence that she could not report for duty by February 20, 1996. Appellant did not report for duty and submitted a leave request form on February 25, 1996 on which she had checked the box marked "on-the-job injury" as her reason for being incapacitated for work. On March 1, 1996 the employing establishment received a letter from appellant's attorney stating that she could not report for duty due to an employment-related disability and indicated that she had relocated to Arizona for health reasons on her physician's instructions. The employing establishment issued a notice of removal dated April 5, 1996, for absence without leave and received a recurrence of disability claim form from appellant on that date.

By decision dated June 19, 1998, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that she sustained a recurrence of disability on February 2, 1996 causally related to her July 12, 1988 employment injury.

By letter dated April 28, 1999, appellant's husband[3] requested reconsideration and submitted additional evidence.

By decision dated July 23, 1999 and issued September 27, 1999,[4] the Office denied modification of its June 19, 1998 decision.

In a report dated August 16, 1996, Dr. Davis A. Suber, a Board-certified psychiatrist and neurologist, stated that he examined appellant on April 10, 1996. He diagnosed lumbar radiculitis associated with a lumbar disc herniation. Dr. Suber stated: "It is not at all unexpected that [appellant] will benefit from a warm and dry tropical climate which will help alleviate her symptoms in the future. Medically, I do feel that there is a causal relationship between the recurrence of disability on February 2, 1996 and the initial injury of July 2, 1988." However, Dr. Suber's opinion is based upon a single examination in April 1996. He failed to provide any

[3] Apparently, appellant died in March or April 1998.

[4] The decision was properly issued on September 27, 1999 when a copy of the decision was sent to appellant's representative. *See Sara K. Pierce*, 51 ECAB ___ (Docket No. 98-708, issued May 12, 2000).

medical rationale explaining how there had been a change in the nature or extent of appellant's employment-related back sprain in 1988, or a change in the nature or extent of her light-duty requirements such that she was unable to perform her light-duty position on and after February 2, 1996. Therefore, this report does not establish that appellant sustained a recurrence of total disability on February 2, 1996 causally related to her July 12, 1988 employment injury.

In a report dated September 20, 1996, Dr. Holzer, a neurologist, indicated that he had treated appellant from 1990 to August 1995 for low back pain caused by her July 12, 1988 employment injury. Dr. Holzer stated that when he saw her on December 19, 1994 tests revealed a disc herniation that had worsened. Dr. Holzer stated that on May 8, 1995 appellant continued to have significant low back pain radiating to the left lower extremity. He stated that he last saw appellant on August 14, 1995, at which time he suggested that her lumbar symptomatology was getting worse and recommended that she move to a drier climate. There are no medical reports of record from Dr. Holzer for December 19, 1994, May 8 or August 14, 1995. Prior to his September 20, 1996 report, the last medical report of record from him was dated May 23, 1994. In Dr. Holzer's September 20, 1996 report, Dr. Holzer did not explain how appellant's herniated disc was related to the 1988 employment injury. He did not provide any medical rationale explaining how there had been a change in the nature or extent of appellant's accepted conditions, a cervical and lumbosacral sprain, or a change in the nature or extent of her light-duty job requirements such that she was unable to perform her light-duty position. Furthermore, Dr. Holzer's report is not based upon a complete and accurate factual background as he indicated that appellant moved to Arizona for her health but there is evidence of record that appellant moved to Arizona when her husband retired there for his health problems. Due to these deficiencies, Dr. Holzer's report does not establish that appellant sustained a recurrence of disability on February 2, 1996 causally related to her July 12, 1988 employment injury.

Appellant submitted a report dated March 26, 1997 from a chiropractor, Dr. Richard C. Sears, Jr., in support of her claim for a recurrence of disability. However, under section 8101(2) of the Federal Employees' Compensation Act, chiropractors are only considered physicians and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.[5] Dr. Sears did not indicate in his report that appellant's condition was a subluxation demonstrated by x-ray to exist. Therefore, he is not considered a physician in this case and his report is of no probative value.

In a report dated July 21, 1997, Dr. Suber stated that appellant had evidence of lumbar radiculitis, degenerative joint disease and multiple bulging discs with a possible disc herniation and continued to have symptoms that prevented her from working. He stated his opinion that she was unable to perform her duties due to continued pain. However, Dr. Suber did not explain how there had been a change in the nature or extent of appellant's accepted conditions, a cervical and lumbosacral sprain, or a change in the nature or extent of her light-duty job requirements such that she was unable to perform her light-duty position. Therefore, his report is not sufficient to establish that appellant had a recurrence of total disability on February 2, 1996 causally related to her July 12, 1988 employment injury.

[5] 5 U.S.C. § 8101(2); *see Jack B. Wood*, 40 ECAB 95, 109 (1988).

As appellant failed to show either a change in the nature or extent of her light-duty requirements or a change in her accepted injury-related condition, she did not establish that she sustained a recurrence of total disability on February 2, 1996 causally related to her July 12, 1988 employment injury and the Office properly denied her claim.

The decision of the Office of Workers' Compensation Programs dated July 23, 1999 and issued September 27, 1999 is affirmed.

Dated, Washington, DC
June 15, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member